

Consultation on the Investigation of Offences regulations and Code of Practice for Investigations

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Scottish Government
Riaghaltas na h-Alba
gov.scot

Ministerial Foreword



We are building a new public service in Scotland, that will be founded upon the principles of fairness, dignity and respect. The scale of this undertaking is massive - once our agency Social Security Scotland is in steady state operations, we will be making regular payments to some 1.4 million citizens in Scotland, with a value in excess of £3 billion. While the instances of benefit fraud as a percentage of claims is very low, we can expect that deliberate attempts will be made to defraud the social security system.

In line with the rest of the Scottish public sector, fraud will not be tolerated – money lost to fraud is money that cannot be invested in social security or other public services in Scotland.

The Social Security (Scotland) Act 2018 received Royal Assent on the 1st of June. It sets out the offences that may be committed if false or misleading information is provided in making an application, or if there is a failure to report changes in circumstances in a reasonable timescale and without reasonable excuse. Importantly, these offences have been carefully framed to ensure genuine errors and mistakes will not be criminalised.

However, where there is an allegation or suspicion that a fraud offence has been committed, Social Security Scotland will be responsible for gathering information and the evidence required to determine whether an offence has been committed. Any such investigation will be carried out under a presumption of innocence, in line with our rights-based approach. However, should the evidence suggest an offence has been committed, the evidence will be passed to the prosecuting authorities.

To enable effective evidence-gathering, the Act sets out a power for Ministers to make regulations for fraud investigations. This refers to powers required to compel people and organisations to provide us with information relevant to any investigation. The regulations will also set out who is allowed to use these powers and the circumstances under which they can be used.

However, just as important is the way in which these powers are deployed. Section 76 of the Act rightly requires that these regulations are accompanied by a Code of Practice for Investigations. We consider it important not only to set out how we will use our proposed regulatory powers for investigations, but to demonstrate how we will ensure people are treated with dignity and respect during an investigation.

This consultation will inform our final policy, and ensure that the scope of these investigatory powers are acceptable and proportionate to what we are trying to achieve. We now need your views to inform final decisions and to check that the detail of what we are proposing is right before we lay the final regulations. I encourage you to respond to the consultation, and thank you in advance for taking the time to give us your views.

A handwritten signature in black ink, appearing to read 'S Anne Somerville'.

Shirley-Anne Somerville MSP
Cabinet Secretary for Social Security and Older People

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INTRODUCTION

1. Through the [Social Security \(Scotland\) Act 2018](#), which received Royal Assent on the 1st of June 2018, we will deliver the eleven benefits being devolved. Integral to the successful delivery of these benefits are several 'cross-cutting' services and the ability to effectively investigate fraud is one of these.
2. Both the Scottish Public Services Manual and the Scottish Government's fraud strategy underline the importance of preventing fraud where we can, but also of detecting it, recouping the funds and enforcing the legislation where offences have been committed. While our main focus is on designing robust, secure processes and systems, it is inevitable that there will be fraudulent attempts to obtain assistance.
3. Detected fraud overpayments in the UK benefits system are currently at 1.2%, which is the highest recorded rate. While these figures are influenced by a range of factors, it is clear from existing practice that there is no room for complacency.
4. The Social Security (Scotland) Act sets out offences that may be committed by individuals and organisations, at sections 71 - 73. These include obtaining social security assistance by deceit, failing (or causing another person to fail) to notify a change of circumstances, and individual culpability for corporate offending.
5. Social Security Scotland will be a Specialist Reporting Agency and will be responsible for investigating and gathering evidence in relation to allegations or suspicions of fraud. However, the decision to prosecute these offences will rest with the Crown Office and Procurator Fiscal Service (COPFS). Based upon the evidence gathered during a social security investigation, the COPFS will decide whether there is sufficient proof and it is in the public interest to prosecute.
6. Various methods of gathering information are already available to Social Security Scotland such as accessing open sources of information, or using Schedule 2 paragraph 2 of the Data Protection Act (which allows the disclosure of personal information where it is for the prevention of crime). Those powers are also used by a number of Scottish public organisations such as Scottish Student Awards Agency and the Scottish NHS Counter Fraud Service that do not have special statutory information-gathering powers.
7. By its nature, benefit fraud is an act of misrepresentation or concealment and those who are deliberately dishonest in their benefit claims are unlikely to provide information voluntarily. Equally, many organisations are bound by a duty of confidentiality to their customers and may be uncertain or cautious about exercising the discretion required to decide whether they should provide information, even where they are allowed to do so under the Data Protection Act. These are not therefore reliable methods of obtaining information and experience of other agencies suggests they are not always successful.
8. The creation of statutory information gathering powers that allow authorised officers to compel people and organisations to provide information addresses this problem. It removes any doubt about whether or not they should comply with a request for information. It also shifts the onus of accountability onto Social Security Scotland to make judgements about what is requested and to be able to justify those requests.

9. Section 75 of the Social Security (Scotland) Act sets out a power for Scottish Ministers to make regulations for the investigation of fraud offences and these proposed powers are the tools we believe will enable Social Security Scotland to do that effectively. Section 76 of the Act also places a duty on Ministers to publish a Code of Practice for Investigations, which will be published in advance of any fraud investigations carried out by the agency.

SECTION 1 - ABOUT THE CONSULTATION

What are we consulting about?

10. We are consulting on our proposals for Investigation of Offences regulations and a Code of Practice for Investigations under Sections 75 and 76 of the Social Security (Scotland) Act. The full text of the draft Code of Practice and the Investigation of Offences regulations are set out at Annex A and Annex B respectively.
11. The main purpose of the Code of Practice is to set out how we will use the regulatory powers in the Investigation of Offences regulations. However, we feel it is appropriate to extend its scope further, setting out the standards of conduct to be employed during investigations, and how people will be treated with dignity and respect. The Investigation of Offences regulations will set out information-gathering powers that allow authorised officers to compel people and organisations to provide information, shifting the onus of accountability onto Social Security Scotland. They also set out the consequences for non-compliance with a request for information.
12. Given the integrated nature of the Code of Practice and the Investigation of Offences regulations, we think it is appropriate to consult on both at the same time.
13. The Scottish Government ran an overarching [Consultation on Social Security in Scotland](#)¹ from July to October 2016. The section on fraud asked a number of questions about the Department for Work and Pensions (DWP) existing Fraud Investigation Service, its investigatory powers under the Social Security Administration Act 1992 and Code of Practice for Obtaining Information.
14. Over 100 responses from both organisations (including the public sector) and individuals were received. While views were mixed, it was clear that in addition to technical information about how the statutory powers of investigation would be used, respondents felt that there should be more information about how people would be treated during an investigation. For example, many respondents felt there should be a stronger emphasis on safeguards against misuse of powers, and reassurance about how those being investigated will be treated when they come into direct contact with an investigation, such as when they are being interviewed.
15. This has helped to inform our approach to our own Code of Practice for Investigations, which goes further than simply describing how the agency will use

¹ <https://consult.gov.scot/social-security/social-security-in-scotland/>

the statutory powers through the Investigation of Offences regulations. The Code also sets out the broader expectation for the process including interview under caution, and in particular aspects which have potential to impact on dignity, respect and fairness.

How has the Scottish Government developed the Investigation of Offences regulations and the Code of Practice for Investigations

16. In developing the regulations and the Code of Practice, Scottish Government has worked with a range of other public sector organisations to understand the existing types of fraud that might face Social Security Scotland in relation to devolved benefits. A key stakeholder in this is DWP which currently undertakes investigations of benefit fraud in Scotland alongside Local Authorities. We have also worked with NHS Scotland, The Student Awards Agency for Scotland and the Northern Ireland Social Security Agency among others. We have taken into account responses to the 2016 Consultation on Social Security in Scotland in relation to existing powers used for the fraud investigation and the existing Code of Practice, and have sought views from stakeholder reference groups.

Who do we want to hear from?

17. We are keen to gather the views of people with a working knowledge of social security and experience of working with fraud in the social security system, for example solicitors, welfare rights officers, Local Authorities, tribunals and the counter-fraud community.

18. In addition we are keen to hear from individuals, organisations and groups with an interest or experience in this particular area including, for example organisations who are already asked routinely to provide information to DWP or Local Authorities in relation to fraud investigations.

19. We would welcome the views of people who may have experience of a benefits related fraud investigation. We recognise the potential sensitivity around sharing experiences of this nature and will treat any such information carefully. Respondents do not need to provide their name unless they want to and may request that their response is not published.

How will the regulations be taken forward?

20. The responses to the consultation will be analysed and fully considered, informing decisions on our final policy position. The regulations and Code will then be revised as needed and both will then be laid in Parliament. As set out in the Social Security (Scotland) Act, the fraud investigation regulations will be subject to affirmative procedure in the Scottish Parliament. Post-consultation, the Code of Practice requires to be published and a copy laid in the Scottish Parliament. This will take place before any investigations are undertaken by the agency.

What comments are requested and by when?

21. All responses should be submitted to us by Monday 29 October 2018. More information, including how to respond, can be found at Annex C and D.

SECTION 2 - THE CODE OF PRACTICE FOR INVESTIGATIONS AND POWERS IN THE INVESTIGATION OF OFFENCES REGULATIONS

How we have set out this consultation

22. As noted earlier in this document, we are consulting on both the Code of Practice and the Investigation of Offences regulations. We have set out the consultation with reference to the different sections of the Code of Practice and, where a section relates to powers in the regulations, we have set these out in a box.

23. The draft Code of Practice contains five chapters and one annex :

- [Chapter 1 Powers to Investigate and Safeguards](#)
- [Chapter 2 Standards for Counter Fraud Officers](#)
- [Chapter 3 What to expect if you are being investigated](#)
- [Chapter 4 Outcome of an investigation](#)
- [Chapter 5 Complaints](#)
- [Annex of relevant legislation](#)

Chapter 1: Powers to Investigate and Safeguards

24. In this chapter of the Code of Practice, we explain the offences that will be investigated, the principles and legislation that govern investigation and the range of information gathering powers that counter fraud officers of Social Security Scotland will have available to them as tools in their investigation. Some of these derive from Part 3 of the Investigation of Offences regulations, some from other legislative gateways, interdepartmental agreements or common law.

25. We also explain the rights and responsibilities of those we may ask to provide us with information under regulations 4, 5 and 6 of the Investigation of Offences regulations and about how we propose to do this. It describes the range of methods that may be used such as the gathering of documents, taking witness statements, visiting premises, surveillance and joint working with other fraud investigation bodies.

Powers for authorised persons to obtain information

26. An important element of an investigation into offences will be the need to obtain relevant information from individuals and organisations. An example might be earnings information from an organisation that employs staff, or details of funeral costs from a funeral director.

27. DWP currently have the power to do this through existing UK benefit legislation, which allows them to request information from a prescribed list of organisations, for example telecommunications companies and utilities.

28. However, we are proposing a different approach. Through the Investigation of Offences regulations, we are proposing the power to request information from any person thought to have information relevant to one or more of the matters that may be investigated (see Box 1). This may refer to both individuals and organisations and this approach follows a similar principle to that in the [Revenue Scotland and Tax Powers Act 2014](#). This approach also recognises that the Scottish Government is engaged in a rolling programme of benefit

implementation with as yet unknown benefit rules and criteria, administered by a brand new agency.

29. This will enable us to be flexible in our investigative methods without having to revisit the regulations every time a different relevant source of information becomes apparent. However, the use of this power is tightly controlled by a requirement for authorisation set out in [regulation 4](#) of the Investigation of Offences regulations.
30. The power is strictly limited to only requesting information relating to a particular person of interest and who it is believed may have committed an offence provided for in Section 71 – 73 of the Act. An authorised officer must have cause to believe an organisation has information relevant to a social security offence and this must be evidenced. They must consider the known facts of the case and be satisfied that it is necessary and proportionate to obtain information via the statutory powers. No-one can be compelled to provide information that might incriminate them or their civil partner/spouse, or divulge legally privileged information.

Power to require information

4.—(1) Subject to paragraph (3), an authorised officer who has grounds for suspecting that a person has or may have possession of or access to any information about any matter that is relevant to one or more of the matters that may be investigated may, by notice, require that person to provide the information described in paragraph (2).

(2) The information a person may be required to provide is all such information as is described in the notice of which the person is in possession, or to which the person has access, and which it is reasonable for the authorised officer to require in connection with an investigation.

(3) A notice given under paragraph (1) must specify the time period from the date the person receives the notice within which the information is to be provided, which must be no fewer than 10 working days from that date.

(4) An authorised officer may vary a notice, but only to remove a requirement or to extend the time period for compliance.

(5) Nothing in paragraph (4) restricts the ability of an authorised officer to issue a further notice requiring information.

(6) Where a notice given under paragraph (1) is sent by post or email, the person will be taken to have received the notice 48 hours after it is sent, unless the contrary is shown.

(7) No person may be required under this regulation to provide—

- (a) any information that incriminates, or tends to incriminate, either the person or the person's spouse or civil partner; or
- (b) any information in relation to which a claim for legal professional privilege between client and legal adviser would be successful in any proceedings, whether that information is in documentary form or not.

Box 1. Proposed regulation 4 of the Investigations and Offences regulations

Question 1a.

Do you agree with our approach to requesting information in [regulation 4](#) of the Investigation of Offences regulations, as shown in Box 1 and outlined in paragraphs 26 to 30?

Yes / No

Q1b. If No, please explain why.

Electronic Records

31. Through [regulation 5](#) of the Investigation of Offences regulations we are proposing to allow authorised officers to obtain information that may be held electronically (see Box 2). This follows common modern practice, reflecting the fact that many records are now stored electronically. This power can only be used to investigate an offence under the Social Security (Scotland) Act 2018 and only authorised Social Security Scotland officers may use it. The regulation sets out the rules around how the electronic information may be handled by authorised officers, including its destruction.

Power of Scottish Ministers to require electronic access to information

1.—(1) Where it appears to the Scottish Ministers that—

- (a) a person keeps electronic records;
- (b) those records contain or are likely from time to time to contain information that is relevant to any of the matters that may be investigated; and
- (c) facilities exist under which electronic access to those records is being provided, or is capable of being provided, by that person to other persons,

the Scottish Ministers may require that person to enter into arrangements under which authorised officers are allowed access to such records.

(2) An authorised officer –

- (a) will be entitled to obtain information in accordance with arrangements entered into under paragraph (1) only if the officer’s authorisation states that it applies for the purposes of that paragraph;
- (b) may only seek to obtain information in accordance with such arrangements if the information relates to a particular person and could be the subject of a requirement for information under regulation 4(1).

(3) Arrangements under paragraph (1) may include—

- (a) requirements as to the electronic access to records that is to be made available to authorised officers;
- (b) requirements as to the keeping of records of the use that is made of the arrangements;
- (c) requirements restricting the disclosure of information about the use that is made of the arrangements;
- (d) such other requirements as the Scottish Ministers consider appropriate in connection with allowing access to records by authorised officers.

(4) An authorised officer who is allowed access in accordance with arrangements entered into under paragraph (1) is entitled to make copies of, and to take extracts from, any records containing information which the authorised officer would be entitled to require under regulation 4(1).

(5) Any copies or extracts made or taken in accordance with paragraph (4) must be destroyed when they cease to be needed in connection with all of the matters that may be investigated.

Box 2. Proposed regulation 5 of the Investigation of Offences regulations

Question 2a.

Do you agree with our approach to obtaining electronic information under [regulation 5](#) shown in Box 2 and outlined in paragraph 31?

Yes / No

Q2b. If No, please explain why.

Visiting Premises

32. There may be times when it is necessary for authorised officers to visit premises to search them, for example to carry out inquiries, obtain relevant documents or to question people they find there. Current UK legislation gives DWP the power to enter certain premises for the purposes of examination and inquiry in connection with the prevention, detection and securing evidence of social security benefit fraud. However, DWP's policy is that officers can only enter premises with consent, which is set out clearly in guidance.
33. Our proposal, through [regulation 6](#), is to allow authorised officers to do this but subject to specified restrictions (see Box 3). Authorised officers may not enter a dwelling house (this means premises that are used solely for residential purposes, and not, for example, as a venue for working from home). The regulation also expressly states that an authorised officer can only enter premises with the permission of the owner or occupier.
34. The regulation also requires that officers must produce proof of their authorisation if required. Information obtained in this way may only be kept for as long as it is needed and, similarly to regulation 4, a person cannot be made to provide information that is self incriminating to them or their spouse/civil partner or that would be subject to legal privilege.

Entry and search of premises

6.—(1) Subject to paragraph (2), an authorised officer is entitled to enter any premises to which it is reasonable for the authorised officer to require entry in order to exercise the powers conferred by this regulation, at any reasonable time and either alone or accompanied by such other person or persons as the authorised officer thinks appropriate in the circumstances.

(2) An authorised officer—

- (a) may not search any premises used solely as a private dwelling-house, and
- (b) may enter any premises only with the permission of their owner or occupier.

(3) An authorised officer seeking permission to enter any premises in accordance with this regulation must, if required to do so, produce the certificate containing the person's authorisation for the purposes of these Regulations.

(4) An authorised officer who has entered any premises under this regulation—

- (a) may search the premises, if they are not used solely as a private dwelling-house and
- (b) may carry out any inquiry there,

as appears to the officer to be appropriate in connection with any one or more of the matters that may be investigated.

(5) An authorised officer who has entered any premises may—

- (a) question any person whom the authorised officer finds there;
- (b) require any person whom the authorised officer finds there to do either or both of the following, if reasonably required in connection with one or more of the matters that may be investigated—
 - (i) to provide the authorised officer with information,
 - (ii) to produce documents or, if necessary, create copies of, or extracts from, documents;
- (c) take possession of and remove, or make copies of, any documents which appear to the authorised officer to contain information that is relevant to any of those matters.

(6) Any documents removed in accordance with paragraph (5)(c) must be returned, and any copies that are made destroyed, when they cease to be needed in connection with all of the matters that may be investigated.

(7) No person may be required under this regulation to provide—

- (a) any information that incriminates, or tends to incriminate, either the person or the person's spouse or civil partner; or
- (b) any information in relation to which a claim for legal professional privilege between client and legal adviser would be successful in any proceedings,

whether that information is in documentary form or not.

Box 3. Proposed regulation 6 of the Investigation of Offences regulations

Question 3a.

Do you agree with our approach to entry and search of premises for the purposes of a fraud investigation under [regulation 6](#), shown in Box 3 and outlined in paragraphs 32 to 34?

Yes / No

Q3b. If No, please explain why

Deliberate Obstruction or Delay of an Investigation

35. It will be important that authorised officers are able to obtain the information they require as part of a fraud investigation as quickly as possible, in order to conduct it swiftly and efficiently. We believe that is a necessary element of ensuring a person is treated fairly and with dignity and respect. If an authorised officer is deliberately hampered in their attempts to do that, and without any form of reasonable excuse, we believe there should be a penalty for failure to provide the information requested.
36. We are proposing a number of offences that may be committed in connection with impeding an investigation, set out in [regulation 7](#) (see Box 4). The proposed offences would only be committed where for example an individual or organisation fails without justification to comply with a request, deliberately provides false information or does anything else deliberately to delay or obstruct an authorised officer in carrying out their duties under the regulations. This may incur a penalty in the form of a fine of up to £1,000.

Delay, obstruction etc of an investigation

7. A person is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale if the person—

- (a) deliberately delays or obstructs an authorised officer in the exercise of any power under these Regulations;
- (b) fails, without reasonable excuse, to comply with any requirement imposed by or under these Regulations;
- (c) deliberately provides information which the person knows, or ought to know, is false or misleading;
- (d) deliberately destroys information that has been required under regulation 4 or 5, to avoid compliance with the requirement.

Box 4. Proposed regulation 7 of the Investigation of Offences regulations

Question 4a.

Do you agree with our proposal for new offences relating to delay or obstruction of an investigation, as outlined in paragraphs 35 to 36 and in [regulation 7](#) shown in Box 4?

Yes / No

Q4b. If No, please explain why.

Question 5.

Do you have any other comments about [Chapter 1](#) of the Code of Practice for Investigations?

Chapter 2: Standards for Counter Fraud Officers

37. [Chapter 2 of the Code of Practice](#) is designed to provide both information and reassurance about what is our most important protection against the abuse of power – our staff. It describes the standards required of civil servants working in Social Security Scotland and their mandatory training, but also checks and balances that have been put in place to prevent misuse of investigatory powers.
38. We recognise that the powers to obtain information provided by these regulations are significant. Therefore, we think it is important that only a small number of specially-trained officers are able to use them. We are proposing a formal process for authorising and restricting the use of the powers to obtain information to those people who are required to use them (what we call ‘authorised officers’). This process for authorising officers is proposed in [regulation 3](#) of the Investigation of Offences regulations (see Box 5), with chapter 2 of the Code of Practice describing how authorised officers will be given appropriate specialist training and accreditation.

Setting the limits of the activities of an authorised person

39. It is important that the powers to be used by authorised persons can only be used in certain defined circumstances. We believe there must be clarity on what those circumstances are, so that people can be reassured that they cannot be misused.
40. We believe the circumstances when an authorised person can use information-gathering powers should be limited to:
- Securing the evidence required to prove whether social security assistance has been provided where there is reasonable suspicion that there was no entitlement or reduced entitlement.
 - Investigating the circumstances of accidents, injuries, etc in relation to employment-injury assistance claims and any other claims where this is relevant.
 - Investigating the possible commission of devolved social security offences.

Authorisations for investigators

3.—(1) An individual has the authorisation of the Scottish Ministers for the purposes of these Regulations if, and only if, the Scottish Ministers have granted an authorisation for one or more of the matters that may be investigated (see paragraph (5)).

(2) An authorisation may only be granted to an individual who is an employee of a public body, within the meaning of section 12(2) of the Act, and ceases if that individual's employment terminates.

(3) An authorisation granted for the purposes of these Regulations to an individual—

- (a) must be contained in a certificate provided to that individual as evidence of their entitlement to exercise powers conferred by these Regulations;
- (b) may contain provision as to the period for which the authorisation is to have effect; and
- (c) may restrict the powers exercisable under the authorisation so as to limit their exercise to some of the matters that may be investigated, to particular circumstances or in relation to particular types of assistance.

(4) An authorisation granted under these Regulations may be withdrawn at any time by the Scottish Ministers.

(5) An individual who for the time being has the authorisation of the Scottish Ministers for the purposes of these Regulations shall be entitled, in connection with one or more of the matters that may be investigated, to exercise any of the powers which are conferred on an authorised officer by regulations 4, 5 and 6.

(6) The matters that may be investigated are—

- (a) activity related to the possible commission of any of the following offences—
 - (i) trying to obtain assistance by deceit as described in section 71 of the Act;
 - (ii) failing to notify a change in circumstances as described in section 72 of the Act;
 - (iii) causing a failure to notify a change in circumstances as described in section 73 of the Act;
- (b) in relation to the offences described in sub-paragraph (a), where a disease or injury has given rise to, or may give rise to, a claim for assistance under the Act, the circumstances in which that disease or injury—
 - (i) occurred, or may have occurred, or
 - (ii) was, or may have been, received or contracted,

Box 5. Proposed regulation 3 of the Investigation of Offences regulations

Question 6a.

Do you agree with our approach to authorising a person to use the information gathering powers set out in the Investigation of Offences regulations, as shown in [regulation 3](#) in Box 5 and outlined in paragraph 38?

Yes / No

Q6b. If No, please explain why?

Question 7a.

Do you think the restrictions placed on authorised officers are correct as shown in [regulation 3](#) in Box 5 and outlined in paragraphs 39 and 40?

Yes / No

Q7b. If No, what other restrictions do you feel are required?

Question 8.

Do you have any other comments about the contents of [Chapter 2](#) of the Code of Practice for Investigations?

Chapter 3: What to expect if you are being investigated

41. [Chapter 3 of the Code of Practice](#) is perhaps most important to individuals under investigation. It describes our expectations of what will happen when an investigation reaches the stage that evidence has been gathered, and the counter fraud officer needs to hear directly from the person being investigated in the form of a voluntary interview. This will often be the first time someone will become aware of the investigation and the only time there is direct interaction between the counter fraud investigators and the person they have been investigating.
42. This chapter explains that the purpose of an interview is to allow the person being investigated the chance to put their side of the story and offer a reasonable explanation for the circumstances that have arisen or to provide any documentary evidence they think may clarify matters. In line with the Scottish Government's commitment to a rights based approach, it stresses that the counter fraud officer carrying out the interview will always approach this with an open mind and ensure the person is treated with dignity and respect.
43. This section draws on best practice and codes of practice from the criminal justice system and covers the purpose of an interview, what the person can expect, in terms of setting up an interview under caution, and their rights. We are keen to ensure that this chapter reflects how the legislative principles of fairness, dignity and respect will be applied during a fraud investigation.

Question 9a.

Does [Chapter 3 of the Code of Practice](#) provide sufficient detail to explain how a person will be treated with fairness, dignity and respect during a fraud investigation?

Yes / No

Q9b. If No, please explain what else you think could be added to ensure this

Question 10.

Do you have any other comments about the contents of [Chapter 3 of the Code of Practice for Investigations](#)?

Chapter 4: Outcome of an investigation

44. Social Security Scotland staff will have to be clear with people regarding the outcome of an investigation. If it becomes evident to a person they have been the subject of a fraud investigation, it is important, in terms of a rights based approach, dignity and respect that they are clearly told the outcome and next steps. How we will go about this is set out in [Chapter 4 of the Code of Practice](#). It explains what will happen when enough information has been gathered to draw the investigation to a conclusion. It sets out the range of options available to Social Security Scotland depending on the facts of the case.

45. These will be:

- Do nothing
- Correct the determination of entitlement to assistance and ask for any overpaid assistance to be repaid
- Send a report to the COPFS if we believe an offence may have been committed, allowing that body to consider prosecution

Chapter 4 also refers to what will happen to the information that has been gathered and the relevant law that applies.

Question 11a.

Does [Chapter 4 of the Code of Practice](#) clearly set out how the potential outcome of an investigation will be explained to an individual?

Yes / No

Q11b. If No, what else should this chapter explain?

Question 12a.

Do you believe that our approach set out in [Chapter 4 of the Code of Practice](#) will help to ensure a person is treated fairly, with dignity and respect?

Yes / No

Q12b. If No, please indicate what else you think we might do to ensure this.

Chapter 5: Complaints

46. It is important that both individuals and organisations who have come into contact with a fraud investigation have a way to express dissatisfaction about Social Security Scotland's action or lack of action, or about the standard of service provided by it.

47. This process must be clear, simple and provide confidence that a complaint will be heard fairly. We have set out, in [Chapter 5 of the Code of Practice](#), the complaints procedures that will be available in relation to the different aspects of a fraud investigation - direct interaction with Social Security Scotland and authorised surveillance. However, some of the procedures in relation to the Agency's complaint process are not yet finalised and will be available for the final published version of the Code.

Question 13a.

Do you agree with our approach to complaints in [Chapter 5 of the Code of Practice](#) for Investigations?

Yes / No

Q13b. If No, please tell us what else you would like to see included.

Annex of relevant legislation

48. Fraud investigation is a law enforcement activity, and we will therefore follow a number of protocols and procedural codes normally associated with criminal investigations carried out by the Police e.g. the Criminal Justice and Licensing (Scotland) Act 2010 Code of Practice - Disclosure Of Evidence In Criminal Proceedings. This is similar to agencies such as Local Authorities and DWP.

49. In an [annex](#) to the Code of Practice we have set out a list of the relevant legislation and, where appropriate, other Codes of Practice that we believe the agency will need to be guided by in terms of how we conduct our investigations.

Question 14a.

Do you believe we have identified the correct [legislation and Codes of Practice](#) that will be relevant to fraud investigations for devolved benefits?

Yes / No

Q14b. If No, what else do you think should have been included?

Question 15a.

Is the content of the Codes of Practice for Investigations right?

Yes / No

Q15b. If No, what else do you think should have been included?

General Questions

Question 16.

Is there anything else you would like to tell us about the Code of Practice for Investigations?

Question 17.

Is there anything else you would like to tell us about the Investigation of Offences regulations?

SECTION 3 - IMPACT ASSESSMENTS ON THE CODE OF PRACTICE AND INVESTIGATION OF OFFENCES REGULATIONS

50. The Scottish Government published a number of impact assessments as part of the development of the Social Security (Scotland) Bill. It was recognised that further impact assessments would be required as part of the development and implementation of secondary legislation emanating from that Bill once enacted.
51. The Investigation of Offences regulations, on which we are consulting, is one such secondary instrument. Section 75 of the Social Security (Scotland) Act gives Ministers a power to set out in regulations further provision in relation to fraud investigations. Therefore, we would like to take the opportunity during this consultation to set out our initial views on the impacts we believe there will be through the Investigation of Offences regulations and to seek further views and comments from stakeholders. We would also like to consider more widely any impacts relating to fraud investigations more generally, which are covered under the Code of Practice for Investigations. This will enable us to develop and publish full impact assessments.
52. We believe the following impact assessments are relevant:
- The Business and Regulatory Impact Assessment (BRIA)
 - The Equality Impact Assessment (EQIA)

BUSINESS AND REGULATORY IMPACT ASSESSMENT

Introduction

53. As part of the social security consultation, stakeholders were asked for views on the existing range of powers granted to investigators. There were 67 respondents who answered this question (33 organisations and 34 individuals). Some thought that the existing range of powers were acceptable, some felt they required further development and some felt they were too wide.
54. Fourteen private businesses and 5 business organisations responded to the public consultation on social security in Scotland, but there was no clear message from businesses regarding fraud investigations.
55. Introduction of the Investigation of Offences regulations or the Code of Practice will not result in additional spend into the Scottish economy and therefore, we believe there is unlikely to be a significant impact upon the business base. However, it may represent a saving to the public purse if use of the powers results in fraudulently-obtained money being repaid.
56. There may be a small financial impact on individual businesses if they are requested to provide information as part of an investigation. However, this is within the context of existing practice, where DWP has existing powers to request information from organisations as part of an investigation. As these powers are only likely to be required in a smaller subset of cases, we do not believe introduction of these new regulations should result in any further financial impact.

57. However, the introduction of a new set of regulations, which may seem unfamiliar to stakeholders, could cause additional requests for information and support from existing advice services. The Scottish Government is aware of the potential pressure points and has noted the importance of the agency working alongside the advice and support services provided by a range of organisations including Citizens Advice Bureau, charities, social landlords and Local Authorities to provide a “seamless customer experience - from advice, to application to payment” as detailed in the Review of Publicly-funded Advice Services in Scotland.

Competition Assessment

58. The Scottish Government does not believe that the Investigation of Offences regulations or Code of Practice will have an adverse impact on the competitiveness of Scottish companies or the third sector within Scotland, the UK or elsewhere in Europe. Any impact would be infrequent and on the basis of an individual organisation.

Test run of business forms

59. No new business forms will be brought in with the implementation of the proposed legislation.

Legal Aid Impact Test

60. The Scottish Government does not expect any significant impact on the legal aid budget, and expects legal assistance through the statutory scheme of Advice and Assistance, and Advice by Way of Representation will continue.

Enforcement, sanctions and monitoring

61. The regulations set out penalties for deliberate obstruction of authorised officers in the use of their regulatory powers. Upon summary conviction, a person may be liable for a fine not exceeding level 3 on the standard scale (£1,000).

62. We do not believe that this should have a significant additional impact on organisations. Existing practice under the DWP system also allows conviction for obstruction of officers with a penalty not exceeding level 3 on the standard scale (upon conviction). Unlike the DWP, our draft Investigation of Offences regulations do not set out any further sanction, such as incurring a daily penalty for continuing non-compliance with information requests after a successful conviction.

63. In terms of monitoring, the Act sets out a duty on the Scottish Ministers to publish an annual report on the performance of the Scottish social security system. Audit Scotland will monitor and report on the delivery of the social security system, including the new agency.

Question 18a.

Have we identified all of the business related impacts?

Yes / No

Q18b. If No, what other impacts do you think should have been included?

EQUALITY IMPACT ASSESSMENT

64. The draft Investigation of Offences regulations set out a framework for obtaining information from organisations as part of a fraud investigation. They allow for the authorisation of officers in the agency to use the powers of entry and search of premises, and requesting information from persons and organisations. As well as considering equality impacts associated with these regulations, we would like to understand equality impacts in the wider sense of fraud investigations that are covered by the Code of Practice for Investigations. In doing so, we believe there may be impacts that we need to consider carefully.
65. As part of the response to the fraud section of the social security consultation, a few organisations highlighted the importance of understanding how a range of equality issues may affect benefit fraud, commenting that:
- gender may be an important aspect of some benefit fraud, due to aspects of coercive control and domestic abuse;
 - impairments could lead to difficulties communicating and understanding the system; and
 - racial prejudice may affect accusations of benefit fraud.

Protected Characteristics

66. With respect to the introduction of the Investigation of Offences regulations, we do not believe there will be any particular impact on groups who share protected characteristics. The principal interaction that will result from introduction of the regulations will be between officers of the agency and organisations, in order to obtain information relevant to an investigation. We believe there is unlikely to be an impact on individuals in receipt of assistance from the agency, particularly given that the draft regulations only allow entry and search of premises with consent and expressly prohibit entry and search of premises that are used solely as dwelling houses.
67. We recognise that the way in which agency officers go about requesting information may have some impacts on individuals in an organisation and we are keen to try to understand these impacts to inform a full impact assessment. However, we recognise the potential for impacts in relation to fraud investigations more generally. For example, there may be an impact on people with difficulty in communicating, if they are requested to provide information. This could be people who work for an organisation, a person questioned during a visit by authorised officers, or a person being questioned during an interview under caution.
68. The Act recognises the importance of inclusive communication. Section 4 sets out that the Scottish Ministers must have regard to the importance of communicating in an inclusive way, which means communicating in a way that ensures individuals who have difficulty communicating (in relation to speech, language or otherwise) can receive information and express themselves in ways that best meet each individual's needs. Service design is currently underway and

will include engagement with stakeholders and those with lived experience to develop an inclusive communications standard.

69. With respect to potential impacts linked to gender and race, it is important to note that any investigation of fraud offences will take into account the circumstances of the case. Such matters will be dealt with sensitively and compassionately and mitigating factors, such as coercion and domestic abuse, will be taken into account. Such a person may themselves be committing a social security offence if, for example, they cause another person to fail to notify a change in circumstances through coercion or abusive activities.

70. The Code of Practice for Investigations also sets out the standards of conduct that a person can expect during an investigation and the principles that will apply, including how, in line with our commitment to a rights based approach, we ensure a person is treated fairly, with dignity and respect. For example, the agency will take steps to ensure a person will be able to participate fully in an interview if they have restricted mobility that prevent them attending an office. This may include conducting the interview at their home or an office closer to their home location. This is consistent with the legislative principles relating to equality and non-discrimination.

Question 19a.

Are you aware of any equality issues we have not identified in terms of introduction of the Investigation of Offences regulations and fraud investigations more generally?

Yes / No

Q19b. If yes, what other impacts do you think should have been included?

Code of Practice for Investigations

Foreword

The delivery of devolved social security benefits is the largest programme of change in the Scottish Government since devolution. Social Security Scotland will eventually be making more payments in one week than the Scottish Government currently makes in one year. It will be important to ensure the right payments are made to the right people at the right time.

Social security is an investment in the people of Scotland, with the aim that the system should be efficient and deliver value for money. The Scottish Government is guided by the Scottish Public Finance Manual (SPFM) and counter fraud strategy “Protecting Public Resources in Scotland”² on the proper handling of fraud and reporting of public funds which also underline the importance of a commitment to ethical standards in public life.

When suspicious activity is found during the processing of a claim for a benefit, or an allegation of fraudulent activity is made by a third party, an investigation may be launched. The principles underpinning the Social Security (Scotland) Act 2018, in combination with the Social Security Charter, will directly impact the front line delivery of services to improve the everyday experiences of individuals. Therefore, like all other aspects of Social Security in Scotland, this Code is designed to take a rights based approach and to ensure that people will be treated with dignity and respect throughout.

Investigations involve gathering information from a variety of sources and giving the person being investigated an opportunity to explain how the circumstances have arisen. The Code of Practice for Investigations ensures that, as well as meeting the legal requirements for an investigation, Social Security Scotland investigators follow best practice. It is designed to give assurances about training and accountability of staff carrying out investigations and the processes that they will be required to follow.

The Code of Practice for Investigations sets out the standards Social Security Scotland should meet in its procedures and practices when investigating an allegation or suspicion of an offence. It provides information on what people should expect if they or someone else they know, or represent, is under investigation and underlines that enforcement action will not be taken lightly. It will only happen when there is a reasonable suspicion fraud has actually occurred or has been attempted by an individual, group, or organisation. Genuine errors will not be criminalised.

In line with a rights based approach, the Code also sets out how a complaint can be raised where a person who has been investigated feels staff have fallen short of these standards. Social security tribunals, civil and criminal courts will also have regard to this Code when deciding any question to which it is relevant.

² <http://www.gov.scot/Resource/0047/00478742.pdf>

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Introduction

1. Social security is an investment in the people of Scotland, and we start from the premise that everyone may be entitled to support. To ensure this public investment is maximised and spent appropriately, one of the key principles is that the Scottish social security system is efficient and delivers value for money.
2. The Scottish Public Finance Manual (SPFM)³ also sets out principles to guide the Scottish Government and other relevant bodies on the proper handling of fraud and reporting of public funds. It sets out legal, Parliamentary and administrative requirements and promotes good practice and high standards of behaviour.
3. Section 76 of the [Social Security \(Scotland\) Act 2018](#) (the Act) requires that Scottish Ministers publish and lay in Parliament a Code of Practice that explains how the powers of investigation will be used. This Code of Practice for Investigations fulfils that requirement and explains the professional standards expected in the investigation of social security fraud. It only applies to investigation of devolved benefits paid under the Act. Fraud investigations relating to benefits that the Department for Work and Pensions(DWP) will continue to deliver in Scotland are not covered by this Code. Further information can be found online at www.gov.uk/benefit-fraud.
4. Fraud investigators, social security tribunals and civil and criminal courts should take this Code into account when deciding questions to which it is relevant, but if the Code is breached this does not of itself give grounds for any legal action.
5. Stopping social security fraud from happening in the first place is extremely important and Social Security Scotland's systems and processes are being designed to reduce the risk of fraud and error. However, firm action is needed where deliberate attempts to defraud the social security system are made. Social Security Scotland has a duty to identify and manage risk, make sure there are whistle-blowing procedures, and effectively, professionally and sensitively investigate where there is a suspicion of fraud.
6. The Act provides the basis for claims and payments of devolved benefits and sets out the specific social security offences that may be committed. Where there is a suspicion that an offence may have been committed, thorough investigation to establish the facts will be needed. This is a key part of the Scottish Government's counter fraud strategy "Protecting Public Resources in Scotland"⁴.
7. There is also a duty to keep this Code under review. This is important, as it is recognised that this is the first version of a Code of Practice for Investigations to be published. We will seek to continuously improve and update the Code at appropriate times when we have the benefit of feedback and experience from a period of operations.

³ <http://www.gov.scot/Topics/Government/Finance/spfm/Intro>

⁴ <http://www.gov.scot/Publications/2015/06/7635>

Chapter 1

Powers to Investigate and Safeguards

Social Security Offences

8. Sections 71 to 73 of the Social Security (Scotland) Act provide for three specific types of offences that may be committed – by both individuals and organisations.
 - trying to obtain assistance by deceit (through providing false or misleading information);
 - failing to notify a relevant change of circumstances without a reasonable excuse; and
 - causing another person to fail to notify a change of circumstances.
9. Section 74 of the Act provides that individuals within an organisation can be held responsible for an offence committed by the organisation, where there is active involvement or neglect by a senior member of the organisation. The offences covered here are those provided for by the Act, namely sections 71 – 73, and any that are introduced by regulations made under it.
10. Section 75 of the 2018 Act allows offences to be created by regulations. These are types of offences that may be committed, for example, where authorised investigating officers want to use the powers set out in Investigation of Offences regulations but a request is not complied with or an attempt is made to obstruct the investigation.

Investigations

11. The purpose of an investigation is to gather evidence to decide whether there are reasonable grounds to conclude that an offence has been committed. Where a suspicion has arisen, counter fraud officers will in most cases need to gather evidence from a range of people and organisations to establish the facts.
12. Any investigation will be based on the principle that everything counter fraud officers do must be proportionate. They will only carry out activities that are strictly necessary to collect enough information to help them decide whether an offence has been committed.
13. Counter fraud officers can only request information within the limits permitted by law. For example, they can only do so where it is necessary for the prevention and detection of crime and the request is linked directly to the investigation. They must also ensure all the information they receive is held securely and confidentially. Information can only be disclosed where it is lawful to do so and in accordance with the Data Protection Act 2018 and General Data Protection Regulation.

Evidence will be gathered in the in the least intrusive way appropriate:

Open Source

14. Depending on the type of information required, counter fraud officers may be able to get what they need from open or public sources of information such as the electoral roll, Registers of Scotland or sources on the internet. A record will be kept of all searches undertaken and these will always be carried out in a way that provides an audit trail.

Other Organisations

15. Schedule 2 paragraph 2 of the Data Protection Act 2018 allows counter fraud officers to make requests to Data Controllers of other organisations to ask them to disclose information they hold where it will be used in connection with the prevention or detection of crime or the apprehension or prosecution of offenders. The decision to release the information rests with the Data Controller and they do not have to release the information. However, if they do, they must satisfy themselves that the exemption from normal rules preventing the disclosure of information are valid.

16. Section 85 of the Act⁵ and section 34 of the Scotland Act 2016⁶ also allow Scottish public authorities, as well as DWP, to share some types of data with Social Security Scotland to help carry out its functions, including the investigation of possible offences.

Information-Gathering Powers under the Social Security (Scotland) Act

17. Counter fraud officers will always aim to get the information they need quickly and discreetly with the least inconvenience to those that have it. However, in defined circumstances, where it is not possible to get the information from open sources or other organisations, Social Security Scotland will have regulatory powers to compel individuals and organisations to provide information.

18. Section 75 of the Act allows further provision in relation to investigation of offences under the Act to be made by regulations, including giving counter fraud officers powers to enter and search premises (other than dwelling-houses) and to seize material that is relevant to investigations. It also allows the creation of offences in relation to obstruction of investigations and failure to provide information required. The Investigation of Offences regulations⁷ will set out a process for authorising certain counter fraud officers to use the regulatory powers requiring that information is provided by individuals and organisations, in defined

⁵ <http://www.legislation.gov.uk/asp/2018/9/section/85/enacted>

⁶ <https://www.legislation.gov.uk/ukpga/2016/11/section/34>

⁷ Draft Investigation of Offences regulations under section 75 are subject to consultation alongside this code. They are not finalised at time of writing.

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circumstances. Only Social Security Scotland’s counter fraud officers that are authorised for this purpose (‘authorised officers’) will be able to use these powers. This is an important safeguard against their misuse.

19. It is intended that authorised officers will use the powers only where they have grounds to suspect that the information held is relevant to the investigation of possible commission of an offence under section 71, 72, or 73 of the Act. Justification for requesting the information will have to be clearly documented.

20. In practice this means where an authorised officer suspects:

- a person has committed or is committing, a benefit offence
- a person has helped or is helping someone else to commit a benefit offence
- a person is being misrepresented as part of a benefit claim in respect of them
- a fraudulent act against Social Security Scotland has been committed

21. The types of information that may be required will vary depending on the circumstances of the case and the nature of the benefit. Examples may include bank statements, employment information, customer account information, household utility bills or electronic information. Where records are held electronically authorised officers may require that arrangements are made to provide access and they are entitled to make copies of, and to take extracts from records.

22. Where an authorised officer is considering obtaining information using the statutory information gathering powers, they will have to consider the circumstances of the case and whether use of these powers is necessary and proportionate. For example, that the officer will need to be able to show that the request is not speculative but is linked to the investigation of an offence, or that the type of information required cannot be obtained from anywhere else. This will provide further assurance that these powers are not open to abuse.

Duty on Information Providers

23. Written information may be requested from organisations or individuals. For example this could include service providers, charities, employers, businesses, mail delivery companies, utilities or sole traders.

24. It is intended that counter fraud officers should always approach information providers in writing, giving clear instructions about what they need, why they need it and what the law says, even where they have already spoken to them face-to-face.

25. Information must always be gathered with the right legal permissions, be relevant and be in proportion to the suspected offence. Officers should never ask for

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information unless it is needed and they should cause the least disruption possible, except where a particular course of action would put the investigation at risk.

26. Where a person or organisation has been asked by an authorised counter fraud officer to supply information in terms of regulations made under section 75 of the Act, it is intended that they will be required by law to comply with a request within a period specified in the request. If the person providing the information asks for more time the investigating officer may agree to an extension of the deadline. This will depend on the kind of information that has been asked for, the urgency and complexity of the investigation.
27. Information providers will be told about their legal obligation to provide information. They will always be given reasonable opportunity to hand over the information, but a failure to comply with a written request could be an offence under regulation [8(b)] of the Investigation of Offences regulations and a penalty may be imposed.
28. Requests will involve asking for information about a person whose name will be given, but if their full name is not known, as much information will be provided as possible to help the information provider identify who the request is about. Care will always be taken to avoid accidentally requesting information about innocent third parties who are not under investigation.
29. If the detail provided by the authorised counter fraud officer in their request for information is not specific enough to allow the information provider to confidently identify who the request is about, they will have a reasonable reason for failure to provide the requested information. Therefore, no offence should be committed in these circumstances. However, the request can be repeated, adding or changing the personal details where further specific information becomes available. Information about other people within a family can be requested only where their circumstances are directly relevant to the benefit claim being investigated.
30. Information providers will only be required to provide information that they can reasonably be expected to hold and that they keep as part of their normal business. If the information is not held or is no longer available, the person from whom it is requested cannot be committing an offence.
31. Where information is subject to confidentiality between a client and professional legal adviser it should not be requested, and a person cannot be committing an offence by failing to supply it. If communications are confidential and about seeking or giving legal advice, the person holding them has no obligation to provide them.
32. It is likely that much of the private information gathered by the methods described in this code will be personal data. Where this is the case, the Data Protection Act 2018 will apply to the processing of that data until it is securely destroyed.

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Witnesses

33. In some cases, counter fraud officers may also need to interview witnesses. These could be employers, people who work with the person under investigation, family members, friends, neighbours, others in the local community or other public officials. Officers will be specially trained and understand that it can be worrying and difficult for a witness giving evidence about someone they know.
34. Investigations will always be handled discreetly, recognising that the key purpose is to gather the information necessary to indicate whether a fraud offence has occurred. A person will only be asked to provide assistance if it is believed they have information to progress that aim, but in a way that does not disclose sensitive information about the person being investigated. Where witnesses are questioned, the purpose will be made clear and that, in the event of the findings of the investigation being referred to the COPFS, the information they provide will be included. While witness statements are given voluntarily, if someone does give a statement they could be required to appear in Court as a witness if cited in a criminal prosecution at a later date.

Visiting Premises

35. In some circumstances, it may be necessary for a counter fraud officer to visit premises to make inquiries, question people or collect evidence. It is intended that the Investigation of Offences regulations⁷ will give them the ability to enter a premises either alone or accompanied, but no power to require entry if the owner or occupier refuses to admit them. This will only happen at a reasonable time of day. The regulations will also allow officers to search premises (if allowed entry), but this should not be possible where the property is used solely as a person's dwelling. Only officers that have been authorised under regulation 3 of the Investigation of Offences regulations will be able to conduct visits to premises.
36. While in most cases prior notice will be given, there may be circumstances where this is not possible. If an un-notified visit is the most appropriate course of action, for example if there is a particular urgency with the investigation, the counter fraud officer will record their reasoning.

Covert Surveillance

37. Counter fraud officers may also seek an authorisation by the Chief Executive of Social Security Scotland to carry out directed surveillance in Scotland under the Regulation of Investigatory Powers (Scotland) Act (RIP(S)A) 2000. However, there are a number of important safeguards to ensure a person is treated fairly, with dignity and respect, particularly because the nature of covert surveillance means a person will not know it is happening. RIP(S)A provides a regulatory framework which aims to ensure that the use of those powers is compliant with the European Convention on Human Rights (EHCR). Covert surveillance will

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only ever be carried out as a last resort and only where it is necessary and proportionate to do so. This must be clearly demonstrated in a robust business case, where authorisation will be sought from the Chief Executive of the agency. Another important safeguard is that Social Security Scotland will be subject to independent oversight and inspection by the judicially-led Investigatory Powers Commissioner's Office.

38. RIP(S)A also sets out that authorised surveillance has to be part of a specific investigation or operation and all surveillance will be carried out in accordance with the [RIP\(S\)A code of practice](#). It provides guidance on when an authorisation may be appropriate and the procedures that must be followed before activity takes place. It also gives guidance on how information from surveillance should be treated, how it should be examined, retained, destroyed and how and when it can be disclosed.
39. An authorisation under RIP(S)A may also allow Scottish public authorities to conduct covert surveillance within the UK for a period up to three weeks at a time⁷. This may allow surveillance to continue if the person travels from Scotland to another part of the UK.

Joint Investigations

40. In more serious or complex cases of fraud, for example multiple benefits or organised crime, it may be appropriate to investigate with other law enforcement agencies or with other public bodies to prevent wider fraud or make sure that all of the offences are prosecuted together. These may include bodies such as DWP, Her Majesty's Revenue and Customs (HMRC), Local Authorities, the Home Office or the Police. This may mean information gathered during an investigation will be shared between these organisations, but this will always be done in accordance with the relevant law.
41. All investigations will be undertaken in accordance with requirements set out in other relevant legislation. This includes the Criminal Procedure (Scotland) Act 1995, the Criminal Justice and Licensing (Scotland) Act 2010, the Criminal Justice (Scotland) Act 2016, the Regulation of Investigatory Powers Act 2000, the Regulation of Investigatory Powers (Scotland) Act 2000 ("RIP(S)A"), the Data Protection Act 2018 and the General Data Protection Regulation. All relevant Codes of Practice⁸ including this one, should be followed. Investigations must also be carried out in a way which gives effect to the requirements of the European Convention on Human Rights, particularly Article 6 which is the right to a fair trial and Article 8 which is the right to respect for private and family life. All relevant legislation is listed in the [annex](#) to this document.

⁸ The Lord Advocate's Code of Practice re: section 57 of the Criminal Justice (Scotland) Act 2016 will be published in due course.

Chapter 2

Standards for Counter Fraud Officers

42. Social Security Scotland counter fraud officers investigating social security offences in Scotland will be directly employed by the public sector. This provides assurance that they will be appropriately trained, accountable for the way they treat people they investigate, and that their use of intrusive powers is closely monitored and controlled.
43. The civil service code sets out the standards of behaviour expected of all civil servants when performing their duties. They are expected to carry out their role with integrity, honesty, objectivity, and impartiality. This expectation extends to all counter fraud officers of Social Security Scotland.
44. Counter fraud officers will have to show:
- **Integrity:** putting the obligations of public service above personal interests
 - **Honesty:** being truthful and open
 - **Objectivity:** basing advice and decisions on thorough analysis of the evidence
 - **Impartiality:** acting only according to the merits of the case.

More information about the Civil Service Code can be found at the Scottish Government website <https://beta.gov.scot/publications/civil-service-code/>

45. All counter fraud officers will be specially trained members of staff who have the permission, expertise and skills to use their particular powers effectively and lawfully to gather the appropriate evidence. It is intended that some counter fraud officers will be specifically authorised by a certificate issued in accordance with regulation [3] of the draft Investigation of Offences regulations⁷ to use the additional powers set out in those regulations. These will be referred to as 'authorised officers'. This authorisation may be revoked at any time and provides further assurance that checks will be in place on whether use of the powers is proportionate and necessary.
46. If a counter fraud officer identifies a need to obtain information using the powers in the Investigation of Offences regulations, they must make a case to another counter fraud officer who will consider the facts of the case objectively and decide whether it is necessary and proportionate to do so.
47. Counter fraud officers will be subject to civil or criminal proceedings as well as disciplinary action if they are found to be abusing these powers. In addition they will also be subject to Codes of Practice relating to the other relevant legislation listed in the annex to this document and will have regard to the principles of the Act and Social Security Charter.

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48. As public sector employees, all Social Security Scotland staff will receive mandatory data protection, equality and diversity training. In addition, counter fraud officers will also be subject to internal disciplinary action for wrong-doing and any officer that unlawfully reveals information that they learned in the course of their work that relates to individuals under investigation may be prosecuted, whether they still work for Social Security Scotland or not.
49. The Information Commissioner is responsible for the promotion of good practice regarding the processing of personal data and for a breaches of the Data Protection Act 2018. Further information can be found on the Information Commissioner's Office website at www.ico.org.uk.

Chapter 3

What to expect if you are being investigated

50. By their nature, investigations are carried out discreetly. To avoid unnecessary worry and distress to those who are found to have no case to answer, Social Security Scotland will not normally tell a person that they are under investigation while the facts are still being established.
51. As much information as possible will be gathered before the individual under investigation is informed and, where there are reasons to suspect they may have committed an offence, they will always be given an opportunity to put their side of the story and offer a reasonable explanation at an interview.

Interview under caution

What is the interview for?

52. **An interview under caution is a fact finding exercise** that helps the counter fraud officer understand what has happened and decide what to do next. It does not necessarily mean the individual has done anything wrong or that they will be prosecuted.
53. **The interview is voluntary and is a chance to provide a reasonable explanation** or to dispute or clarify any of the evidence gathered during an investigation. A person can also provide any documents that may support their explanation. Social Security Scotland will be impartial and treat that person with dignity and respect and in accordance with the law.

What happens

54. **A letter will be issued with an invitation to attend the interview.** If another person such as an appointee, guardian or power of attorney is acting for the person who is receiving benefit, they will normally be dealt with directly. The agency will aim to ensure accessibility and be as flexible as possible about the time and place of the interview, working with the individual to assess their requirements. For example, it may be appropriate to conduct an interview in a person's home if they have restricted mobility, or somewhere local to their place of residence.
55. **The person who received the benefit payment will usually be interviewed,** but in some circumstances it may be another person if it is suspected they have helped someone else to claim benefits fraudulently.
56. **The interview will be recorded and is carried out under caution** – this means the suspect does not have to say anything, but that anything that is said may be used in evidence if there is a criminal prosecution. This will always be made clear to the person being interviewed before the interview begins. Recordings will be carefully stored with a clear audit trail to show how the evidence was obtained

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and handled until it is either produced in court or the investigation ends. If a case is passed to the COPFS, a person would be able to obtain a copy of interview recordings through their solicitor.

- 57. The person being questioned is entitled to have someone with them if they choose.** This is a very important principle, which focuses on the need to treat people with dignity and respect. A person can be accompanied by, for example, a friend, relative, advocate, welfare rights or legal representative, but there is no requirement in law for another person to be present. However, in the interests of fairness, an interview of a person under 16 years of age 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 a leaflet and made available in advance of the interview.
- 58. If the person being interviewed is an adult and because of a disability they appear to be unable to understand sufficiently what is happening or communicate effectively with the investigators, arrangements must be made to ensure that an appropriate adult is present at the interview.**
- 59. The role of the parent, other responsible adult or appropriate adult is to provide support to the person being interviewed to help them understand what is happening and to facilitate effective communication between that person and the interviewer.** They should not answer questions on behalf of the person being interviewed, but can help them or ask investigators to clarify questions during the interview. They will be given the opportunity to speak at appropriate times.
- 60. The person being interviewed is entitled to have a solicitor present during the interview or to consult with a solicitor at any time.** Although a person may choose not to exercise their right to have a solicitor present during the interview, they may change their mind at any time. If necessary, the interview should be adjourned until the person is given the opportunity to seek legal advice.
- 61. It is the responsibility of the person to contact their own solicitor** for the purposes of any private consultation or to arrange their attendance during the interview. They will be told about this in advance of the interview taking place.
- 62. A person should not be interviewed without a solicitor being present in the following situations:**
- if the person is under 16 years old;
 - if the person is aged 16 or 17 years old, unless there is agreement from a parent or other responsible adult that the interview may proceed without a solicitor being present; or

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- if the person is an adult and, owing to a disability, they appear to be unable to understand sufficiently what is happening or communicate effectively with interviewing officers.
- 63. The interview may be paused at any time for a break or to allow a person being interviewed to seek legal advice, and they are free to end it at any time.**
- 64. The person being questioned can always refuse to answer a question or to say anything at all.**
- 65. At least two counter fraud officers will always be present.**
- 66. An interpreter will be provided where appropriate.** In line with Section 4 of the Act, it will be ensured that individuals who have difficulty communicating (in relation to speech, language or otherwise) can understand questions and express themselves in ways that best meet their needs. This may be, for example, where English is not the first language, or the individual has a sensory impairment or communication difficulty. Account will also be taken of religious or cultural sensitivities where officers are aware of them.

Documents

- 67.** If information or documents are needed from the person being interviewed to help with the investigation, the reason it is needed will be explained and they will be asked to provide them voluntarily. A reasonable amount of time will be given to provide it, but if the time given is not long enough, the person under investigation should contact Social Security Scotland to explain how much more time they need and why.
- 68.** If the request is reasonable, more time will be allowed. But if it is not deemed to be reasonable, or more time cannot be given, this will be explained. If the person being investigated has any difficulty getting the information and documents requested, they should make contact immediately to discuss how they will get it.

Chapter 4

Outcome of an investigation

When an investigation is completed there are a number of possible outcomes:

No case to answer

69. Where there is no case to answer and the person under investigation was not aware that an investigation had been taking place, the investigation will be closed down with no further action. If the person was aware of the investigation, or had already been interviewed, this will always be confirmed in writing. The evidence gathered will be kept securely and destroyed according to Social Security Scotland's data retention policy.⁹

Evidence suggests a determination of entitlement is wrong

70. If the gathered evidence shows that a current or past determination of entitlement is likely to be wrong, the 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 incorrectly:

Benefit was paid correctly

71. If the decision maker decides that the benefit was paid correctly, no further action will be taken and the investigation will be closed. Social Security Scotland would then communicate with the person to confirm this.

Benefit was paid incorrectly

72. If benefit was paid incorrectly, the decision maker will also consider whether or not Social Security Scotland should ask for the money to be paid back, in accordance with the relevant overpayment liability provisions in the Social Security (Scotland) Act. The individual would then be notified in writing of the outcome.
73. If the decision maker confirms that the benefit was paid incorrectly and the facts of the case and evidence suggest an offence has been committed, the counter fraud team may also decide that it should be reported to the Procurator Fiscal (PF). The Crown Office and Procurator Fiscal Service (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

⁹ Agency data retention policies are still in development but will be in place by commencement of BSG.

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that an offence has been committed. If so, the PF will decide what action if any it is appropriate to take in the public interest. More information about the role of COPFS can be found here <http://www.copfs.gov.uk>.

74. If a decision is taken to report a case to the PF, Social Security Scotland would then write to the person to confirm this and to let them know that the investigation has concluded. The General Data Protection Regulation Article 5(1)e¹⁰ requires that personal data is not kept longer than is necessary. When the investigation and all related action has ended the documents and evidence gathered will be retained and destroyed in line with Social Security Scotland's data retention policy which will be published separately⁹.

¹⁰ <https://gdpr-info.eu/art-5-gdpr/>

Chapter 5

Complaints

75. 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, a complaint can be made by following the process published at [insert hyperlink] ¹¹.
76. Social Security Scotland processes have been designed to make sure that all feedback will be valued and acted on. Where possible, a complaint will be resolved quickly as soon as contact is made. Complaints will be independently and thoroughly investigated by a separate complaints team for Social Security Scotland without harming any other on-going claim to benefit a person may have.
77. **Stage 1** – Contact can be made by phone, by letter or email. Social Security Scotland will try to resolve complaints within 5 working days if possible. A response may be made by phone or in person to try and resolve things. If the complaint is not resolved through this process, the complaint can be reconsidered at Stage 2.
78. **Stage 2** - At stage 2, an acknowledgement will be sent of the complaint within 3 working days and a decision will be given as soon as possible. This should be after no more than 20 working days unless there is clearly a good reason for needing more time.
79. **Stage 3** - If the complaint is not resolved through this procedure and the person remains unhappy with the response, the complaint can be raised with the [Scottish Public Services Ombudsman](#).
80. All feedback provided to Social Security Scotland will help to improve and learn as an agency, and make the service better.

Complaints about Surveillance

81. If a complaint is about Social Security Scotland's use of surveillance powers, information can be found about how to complain to the Investigatory Powers Tribunal in the RIP(S)A Code of Practice <https://beta.gov.scot/publications/covert-surveillance-property-interference-code-practice/pages/10/>.

For more information about this publication, contact: Stephen Martin
Email: Stephen.Martin@gov.scot

¹¹ The full Social Security Scotland complaints process with relevant contact details is still in development and not available at time of drafting.

ANNEX

Relevant Legislation

- [Social Security Scotland Act 2018](#)
- [Criminal Procedure \(Scotland\) Act 1995](#)
- [Criminal Justice \(Scotland\) Act 2016](#)
- [Criminal Justice and Licensing \(Scotland\) Act 2010](#)
 - [Criminal Justice and Licensing \(Scotland\) Act 2010 \(Section 164\) Code of Practice - Disclosure Of Evidence In Criminal Proceedings](#)
- [Regulation of Investigatory Powers Act 2000](#)
 - [Covert surveillance and covert human intelligence sources codes of practice](#)
- [Regulation of Investigatory Powers \(Scotland\) Act 2000 \(“RIP\(S\)A”\)](#)
 - [RIP\(S\)A: Covert Surveillance and Property Interference Code of Practice](#)
 - [RIP\(S\)A Covert Human Intelligence Sources Code of Practice](#)
- [Data Protection Act 2018](#)
- [General Data Protection Regulation](#)
- [Human Rights Act 1998](#)

ANNEX B – DRAFT INVESTIGATION OF OFFENCES REGULATIONS 2018

Draft Regulations laid before the Scottish Parliament under section 96(2) of the Social Security (Scotland) Act 2018, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2018 No.

SOCIAL SECURITY

The Social Security Assistance (Investigation of Offences) (Scotland) Regulations 2018

<i>Made</i>	- - - -	2018
<i>Coming into force</i>	- -	2018

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 75 of the Social Security (Scotland) Act 2018⁽¹²⁾ and all other powers enabling them to do so.

In accordance with section 96(2) of that Act a draft of these Regulations has been laid before and approved by resolution of the Scottish Parliament.

PART 1

Introductory and interpretation

Citation and commencement

1. These Regulations may be cited as the Social Security Assistance (Investigation of Offences) (Scotland) Regulations 2018 and come into force on [].

Interpretation

2. In these Regulations—

“the Act” means the Social Security (Scotland) Act 2018;

“matters that may be investigated” means the matters described in regulation 3(6);

“authorised officer” means a person acting in accordance with any authorisation given by the Scottish Ministers under regulation 3 which is for the time being in force in relation to the authorised officer;

“dwelling-house” means any residential accommodation, whether or not consisting of the whole or part of a building and whether or not comprising separate and self-contained premises;

“premises” includes any building or structure, any land and any means of transport;

“types of assistance” means the types of assistance provided for by Chapter 2 of Part 2 of the Act.

⁽¹²⁾ 2018 asp 9.

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PART 2

Authorisations

Authorisations for investigators

3.—(1) An individual has the authorisation of the Scottish Ministers for the purposes of these Regulations if, and only if, the Scottish Ministers have granted an authorisation for one or more of the matters that may be investigated (see paragraph (5)).

(2) An authorisation may only be granted to an individual who is an employee of a public body, within the meaning of section 12(2) of the Act, and ceases if that individual's employment terminates.

(3) An authorisation granted for the purposes of these Regulations to an individual—

- (a) must be contained in a certificate provided to that individual as evidence of their entitlement to exercise powers conferred by these Regulations;
- (b) may contain provision as to the period for which the authorisation is to have effect; and
- (c) may restrict the powers exercisable under the authorisation so as to limit their exercise to some of the matters that may be investigated, to particular circumstances or in relation to particular types of assistance.

(4) An authorisation granted under these Regulations may be withdrawn at any time by the Scottish Ministers.

(5) An individual who for the time being has the authorisation of the Scottish Ministers for the purposes of these Regulations shall be entitled, in connection with one or more of the matters that may be investigated, to exercise any of the powers which are conferred on an authorised officer by regulations 4, 5 and 6.

(6) The matters that may be investigated are—

- (a) activity related to the possible commission of any of the following offences—
 - (i) trying to obtain assistance by deceit as described in section 71 of the Act;
 - (ii) failing to notify a change in circumstances as described in section 72 of the Act;
 - (iii) causing a failure to notify a change in circumstances as described in section 73 of the Act;
- (b) in relation to the offences described in sub-paragraph (a), where a disease or injury has given rise to, or may give rise to, a claim for assistance under the Act, the circumstances in which that disease or injury—
 - (i) occurred, or may have occurred, or
 - (ii) was, or may have been, received or contracted,

PART 3

Investigatory powers

Power to require information

4.—(1) Subject to paragraph (3), an authorised officer who has grounds for suspecting that a person has or may have possession of or access to any information about any matter that is relevant to one or more of

ANNEX B – DRAFT INVESTIGATION OF OFFENCES REGULATIONS 2018

the matters that may be investigated may, by notice, require that person to provide the information described in paragraph (2).

(2) The information a person may be required to provide is all such information as is described in the notice of which the person is in possession, or to which the person has access, and which it is reasonable for the authorised officer to require in connection with an investigation.

(3) A notice given under paragraph (1) must specify the time period from the date the person receives the notice within which the information is to be provided, which must be no fewer than 10 working days from that date.

(4) An authorised officer may vary a notice, but only to remove a requirement or to extend the time period for compliance.

(5) Nothing in paragraph (4) restricts the ability of an authorised officer to issue a further notice requiring information.

(6) Where a notice given under paragraph (1) is sent by post or email, the person will be taken to have received the notice 48 hours after it is sent, unless the contrary is shown.

(7) No person may be required under this regulation to provide—

- (a) any information that incriminates, or tends to incriminate, either the person or the person's spouse or civil partner; or
- (b) any information in relation to which a claim for legal professional privilege between client and legal adviser would be successful in any proceedings,

whether that information is in documentary form or not.

Power of Scottish Ministers to require electronic access to information

5.—(1) Where it appears to the Scottish Ministers that—

- (a) a person keeps electronic records;
- (b) those records contain or are likely from time to time to contain information that is relevant to any of the matters that may be investigated; and
- (c) facilities exist under which electronic access to those records is being provided, or is capable of being provided, by that person to other persons,

the Scottish Ministers may require that person to enter into arrangements under which authorised officers are allowed access to such records.

(2) An authorised officer –

- (a) will be entitled to obtain information in accordance with arrangements entered into under paragraph (1) only if the officer's authorisation states that it applies for the purposes of that paragraph;
- (b) may only seek to obtain information in accordance with such arrangements if the information relates to a particular person and could be the subject of a requirement for information under regulation 4(1).

(3) Arrangements under paragraph (1) may include—

- (a) requirements as to the electronic access to records that is to be made available to authorised officers;
- (b) requirements as to the keeping of records of the use that is made of the arrangements;

ANNEX B – DRAFT INVESTIGATION OF OFFENCES REGULATIONS 2018

- (c) requirements restricting the disclosure of information about the use that is made of the arrangements;
- (d) such other requirements as the Scottish Ministers consider appropriate in connection with allowing access to records by authorised officers.

(4) An authorised officer who is allowed access in accordance with arrangements entered into under paragraph (1) is entitled to make copies of, and to take extracts from, any records containing information which the authorised officer would be entitled to require under regulation 4(1).

(5) Any copies or extracts made or taken in accordance with paragraph (4) must be destroyed when they cease to be needed in connection with all of the matters that may be investigated.

Entry and search of premises

6.—(1) Subject to paragraph (2), an authorised officer is entitled to enter any premises to which it is reasonable for the authorised officer to require entry in order to exercise the powers conferred by this regulation, at any reasonable time and either alone or accompanied by such other person or persons as the authorised officer thinks appropriate in the circumstances.

(2) An authorised officer—

- (a) may not search any premises used solely as a private dwelling-house, and
- (b) may enter any premises only with the permission of their owner or occupier.

(3) An authorised officer seeking permission to enter any premises in accordance with this regulation must, if required to do so, produce the certificate containing the person's authorisation for the purposes of these Regulations.

(4) An authorised officer who has entered any premises under this regulation—

- (a) may search the premises, if they are not used solely as a private dwelling-house and
- (b) may carry out any inquiry there,

as appears to the officer to be appropriate in connection with any one or more of the matters that may be investigated.

(5) An authorised officer who has entered any premises may—

- (a) question any person whom the authorised officer finds there;
- (b) require any person whom the authorised officer finds there to do either or both of the following, if reasonably required in connection with one or more of the matters that may be investigated—
 - (i) to provide the authorised officer with information,
 - (ii) to produce documents or, if necessary, create copies of, or extracts from, documents;
- (c) take possession of and remove, or make copies of, any documents which appear to the authorised officer to contain information that is relevant to any of those matters.

(6) Any documents removed in accordance with paragraph (5)(c) must be returned, and any copies that are made destroyed, when they cease to be needed in connection with all of the matters that may be investigated.

(7) No person may be required under this regulation to provide—

- (a) any information that incriminates, or tends to incriminate, either the person or the person's spouse or civil partner; or

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- (b) any information in relation to which a claim for legal professional privilege between client and legal adviser would be successful in any proceedings,

whether that information is in documentary form or not.

PART 4

Offences under these Regulations

Delay, obstruction etc of an investigation

7. A person is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale if the person—

- (a) deliberately delays or obstructs an authorised officer in the exercise of any power under these Regulations;
- (b) fails, without reasonable excuse, to comply with any requirement imposed by or under these Regulations;
- (c) deliberately provides information which the person knows, or ought to know, is false or misleading;
- (d) deliberately destroys information that has been required under regulation 4 or 5, to avoid compliance with the requirement.

ANNEX C – RESPONDING TO THE CONSULTATION

RESPONDING TO CONSULTATION

We are inviting responses to this consultation paper by 29th of October 2018.

To submit your response online please visit: <https://consult.gov.scot/social-security/fraud-investigations>

If you would prefer, you can email your response to:
fraudregulationssocialsecurity@gov.scot

or you can send it to us by post to:

Cross Cutting Policy Team (Fraud)
Social Security Directorate
Scottish Government
5th Floor
5 Atlantic Quay
Glasgow
G2 8LU

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public.

If you are emailing or posting your response to us please complete the **Respondent Information Form** as this will ensure that we treat your response appropriately. If you are completing your response online you will be asked how you would like your response to be handled. More information can be found on the Respondent Information Form itself.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to in under the Act for information relating to responses made to this consultation exercise.

Comments and concerns

If you have any comments about how this consultation exercise has been conducted please send them by email or post using the details provided above.



Consultation on the Code of Practice for Investigations and Investigation of Offences Regulations

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

- Individual
- Organisation

Full name or Organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. **Please indicate your publishing preference:**

- Publish response with name**
- Publish response only (without name)***
- Do not publish response**

***Information for organisations:**

The option 'Publish response only (without name)' is available for **individual respondents only**. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes**
- No**

Consultation Questions

Question 1a

Do you agree with our approach to requesting information in [regulation 4](#) of the Investigation of Offences regulations, as shown in Box 1 and outlined in paragraphs 26 to 30?

Yes / No

Question 1b If No, please explain why.

Question 2a

Do you agree with our approach to obtaining electronic information under [regulation 5](#) shown in Box 2 and outlined in paragraph 31?

Yes / No

Question 2b If No, please explain why.

Question 3a

Do you agree with our approach to entry and search of premises for the purposes of a fraud investigation under [regulation 6](#), shown in Box 3 and outlined in paragraphs 32 to 34?

Yes / No

Question 3b If No, please explain why.

Question 4a

Do you agree with our proposal for new offences relating to delay or obstruction of an investigation, as outlined in paragraphs 35 to 36 and in [regulation 7](#) shown in Box 4?

Yes / No

Question 4b If No, please explain why.

Question 5

Do you have any other comments about [Chapter 1](#) of the Code of Practice for Investigations?

Question 6a

Do you agree with our approach to authorising a person to use the information gathering powers set out in the Investigation of Offences regulations, as shown in [regulation 3](#) in Box 5 and outlined in paragraph 38?

Yes / No

Question 6b If No, please explain why?

Question 7a

Do you think the restrictions placed on authorised officers are correct as shown in [regulation 3](#) in Box 5 and outlined in paragraphs 39 and 40?

Yes / No

Question 7b. If No, what other restrictions do you feel are required?

Question 8

Do you have any other comments about the contents of [Chapter 2](#) of the Code of Practice for Investigations?

Question 9a

Does [Chapter 3](#) of the Code of Practice provide sufficient detail to explain how a person will be treated with fairness, dignity and respect during a fraud investigation?

Yes / No

Question 9b. If No, please explain what else you think could be added to ensure this.

Question 10

Do you have any other comments about the contents of [Chapter 3](#) of the Code of Practice for Investigations?

Question 11a.

Does [Chapter 4](#) of the Code of Practice clearly set out how the potential outcome of an investigation will be explained to an individual?

Yes / No

Q11b. If No, what else should this chapter explain?

Question 12a

Do you believe that our approach set out in [Chapter 4](#) of the Code of Practice will help to ensure a person is treated fairly, with dignity and respect?

Yes / No

Question 12b If No, please indicate what else you think we might do to ensure this.

Question 13a.

Do you agree with our approach to complaints in [Chapter 5](#) of the Code of Practice for Investigations?

Yes / No

Question 13b. If No, please tell us what else you would like to see included.

Question 14a.

Do you believe we have identified the correct legislation and Codes of Practice that will be relevant to fraud investigations for devolved benefits?

Yes / No

Question 14b. If No, what else do you think should have been included?

Question 15a.

Is the content of the Codes of Practice for Investigations right?

Yes / No

Question 15b. If No, what else do you think should have been included?

General Questions

Question 16.

Is there anything else you would like to tell us about the Code of Practice for Investigations?

Question 17.

Is there anything else you would like to tell us about the Investigation of Offences regulations?

REGULATIONS - BUSINESS AND REGULATORY IMPACT ASSESSMENT

Question 18a.

Have we identified all of the business related impacts?

Yes / No

Question 18b. If No, what other impacts do you think should have been included?

REGULATIONS - EQUALITY IMPACT ASSESSMENT

Question 19a.

Are you aware of any equality issues we have not identified in terms of introduction of the Investigation of Offences regulations?

Yes / No

Question 19b. If yes, what other impacts do you think should have been included?



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