These notes refer to the Social Security Fraud Act 2001 (c.11) which received Royal Assent on 11 May 2001

SOCIAL SECURITY FRAUD ACT 2001

EXPLANATORY NOTES

INFORMATION SHARING

Obtaining information

Background

The current position

10. Benefit fraud occurs because people lie about their circumstances, or deliberately fail to tell DSS or authorities administering Housing Benefit or Council Tax Benefit about a relevant change. Cross-checking the information that claimants provide against independent sources of information helps to detect benefit fraud.

11. DSS already has powers to check information against that held by other Government Departments - for example, the Inland Revenue - to detect fraud committed by people working whilst claiming means-tested benefits. DSS also has powers to obtain information from employers. However, if a person is working and claiming benefit, he may wish to conceal his earnings from the Inland Revenue as well as DSS, or his employer may be colluding in his benefit fraud. Hence, we need the ability to cross-check information with additional independent sources - for example, with banks.

12. Information can be obtained from independent sources with a claimant's consent but people who lie to obtain benefit are unlikely to give this. Where benefit fraud is suspected, investigating officers can also ask organisations to provide them with any information for the purpose of the prevention and detection of crime under an exemption to data protection legislation set out in section 29 of the Data Protection Act 1998. However, they cannot compel organisations to provide information under the exemption. Many organisations are bound by a duty of confidentiality to their customers and are therefore uncertain whether they should provide information on this basis. Consequently, investigating officers obtain very little information in this way.

Recent developments

13. DSS distributed over 800 copies of the consultation document “Safeguarding Social Security: Getting the information we need” in July 2000 to major utility companies, authorities administering Housing Benefit or Council Tax Benefit, major trade associations, the insurance and banking sectors, claimants' and civil liberties groups, the Information Commissioner and other potentially interested parties including members of the public. The document was also available on the DSS website. DSS received 65 responses to the consultation document. A summary of responses was placed in the libraries of both Houses of Parliament.

The measures in the Act

14. The measures in the Act amend and build upon current legislation in sections 109B and 110A of the Social Security Administration Act 1992 as inserted by the Child Support, Pensions and Social Security Act 2000. Section 109B provides for officers authorised

under sections 109A and 110A to obtain information in relation to employment and pensions.

Clause 1: Additional powers to obtain information

15. The measures in the Act will provide for officers authorised under sections 109A and 110A of the Social Security Administration Act 1992 to require information about individuals from specified private and public sector organisations. Information may be obtained, about persons identified by name or description, where it is reasonable for the purposes set out at section 109A(2) and 110A(2). The list of specified private and public sector organisations that can be required to provide information can be extended by an order with the affirmative resolution of both Houses of Parliament and amended by an order with a negative resolution.

16. The measures also provide for specifically authorised officers to require general information from utility companies about the quantity of services supplied to residential properties. DSS intends to match this information electronically with benefit records in order to detect fraud. For example, if a person was claiming Income Support at a particular address and was consuming no electricity at that address this could indicate that he does not, in fact, live there and that his claim may be fraudulent. The measures do not provide for the bulk acquisition of individuals' names, only details of utilities supplied to residential addresses.

17. If those from whom information has been requested fail to comply with authorised officers' requests they can be prosecuted under the current section 111 of the Social Security Administration Act 1992. They may be fined up to £1,000 plus £40 for each day after this that they continue to fail to provide the information requested.

Clause 2: Electronic access to information

18. This clause provides that the Secretary of State and authorities administering Housing Benefit or Council Tax Benefit can require organisations to enter into arrangements so that the information can be provided electronically on-line where facilities exist to provide such access. For example, credit reference agencies provide direct on-line access to their databases instead of processing enquiries in writing. The clause provides that only those officers especially authorised can use such on-line facilities. This clause enables the Secretary of State and authorities administering Housing Benefit or Council Tax Benefit to require the provision of audit trail information in the arrangements in order to ensure that officers' use of the system can be thoroughly monitored. Authorities administering Housing Benefit or Council Tax Benefit are prevented from requiring an organisation to provide on-line facilities without the consent of the Secretary of State. They are also prevented from entering into a voluntary arrangement for on-line access to private information without the Secretary of State's consent.

Clause 3: Code of practice about use of information powers

19. This clause provides for the issue and revision of a statutory code of practice relating to the exercise of powers which would be provided for by clause 1 and 2 of the Act. That is powers to obtain information from independent sources of information such as banks and building societies. It requires the Secretary of State to publish a draft of the code before issuing or revising it and to consider any representation made to him about the draft. It also enables him to incorporate any proposed modifications to the draft. The Secretary of State must lay the code and any revisions of it before both Houses of Parliament. The code of practice will come into force when it is issued by the Secretary of State, as will any revised codes of practice. The clause requires authorised officers to have regard to the code of practice when exercising powers that would be provided for by clauses 1 and 2 and would make the code admissible as evidence in any civil or criminal proceedings. Failure to comply with any of the provisions of the code would

not of itself render the authorised officer liable to prosecution or to any penalty or damages in civil proceedings.

Clause 4: Arrangements for payments in respect of information

20. The measures allow the Secretary of State to make payments for the information obtained from credit reference agencies and telecommunications providers. Payments may also be made to utility companies but only for the information they provide about the quantities of services supplied to residential properties. The Secretary of State may make payments where he considers this reasonable, and need not make any payments if he does not think that this is appropriate. Any organisation that is added to the list of those who can be required to provide information may also be paid under the same terms.