

## **POLICY NOTE**

### **THE REGULATION OF INVESTIGATORY POWERS (PRESCRIPTION OF OFFICES, ETC. AND SPECIFICATION OF PUBLIC AUTHORITIES) (SCOTLAND) AMENDMENT ORDER 2018**

#### **SSI 2018/218**

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

#### **Policy Objectives**

2. The Scotland Act 2016 gave the Scottish Parliament new powers relating to social security, including responsibility over certain types of benefit. Scottish Ministers are using these powers to create a Scottish social security system based on dignity, fairness and respect, which will help to support those who need it, when they need it. The Scottish social security system will be directly delivered by a new executive agency, to be known as Social Security Scotland. This agency will be part of the Scottish Administration.
3. Delivering this new public service is the most complex change programme since devolution itself - once in steady state operations, Social Security Scotland will be making regular payments to some 1.4 million citizens in Scotland, with a value in excess of £3 billion. The right payments must be made to the right people at the right time, but as a new service, we can anticipate that attempts will be made to defraud the social security system.
4. The Social Security (Scotland) Act 2018 sets the framework for delivering devolved benefits. For those engaged in fraudulent activity relating to claims for social security assistance, it sets out the social security offences that may be committed by individuals and organisations. Social Security Scotland will have a fraud investigation function, namely to gather information in the event of an allegation or suspicion that a fraud offence has been committed. In line with a number of other public agencies in Scotland, the ability to authorise surveillance in a proportionate and limited way will be an essential tool in gathering evidence of wrong-doing.
5. This Order follows the approach taken by other Scottish public sector organisations within the Scottish Administration. Under the terms of the 2000 Act, the power to grant authorisations rests only with individuals holding prescribed offices, ranks and positions within a “relevant public authority”. As noted, Social Security Scotland is part of the Scottish Administration, which is a relevant public authority for the purposes of the 2000 Act. This Order prescribes the Chief Executive as the individual who can grant authorisations.
6. The exercise of the power to make authorisations under the 2000 Act is overseen by the Investigatory Powers Commissioner’s Office.

## **Consultation**

7. This instrument was made as a consequence of the Social Security (Scotland) Act 2018 and the requirement for Social Security Scotland to have the ability to investigate fraud offences. A wide-ranging consultation on the new social security powers being devolved was undertaken between July and October 2016 and considered the issue of fraud investigations. The responses and the Scottish Government response are published here: <https://consult.gov.scot/social-security/social-security-in-scotland/>. As there is no statutory requirement for consultation prior to making this Order, no additional consultation for this instrument was required.

## **Impact Assessments and Financial Effects**

8. It is not anticipated there will be any impact on business or other regulatory impacts and, therefore, a Business and Regulatory Impact Assessment is not required for this instrument. Costs associated with authorisations under the 2000 Act will be factored into the budget of Social Security Scotland.

The Scottish Government  
27 June 2018