

## EQUALITY IMPACT ASSESSMENT - RESULTS

<b>Title of policy</b>	Social Security (Investigation of Offences)(Scotland) Regulations 2020  Code of Practice for Investigations
<b>Summary of aims and desired outcomes of policy</b>	The Regulations will ensure that Social Security Scotland has necessary and proportionate powers to gather information relevant to the investigation of an suspected alleged offence under Section 71-73 of the Social Security (Scotland) Act 2018. They also set out who is permitted to use the powers and the circumstances under which they can be used.  The Code of Practice for Investigations sets out how we will use the statutory powers and demonstrates how we will ensure people are treated fairly and with dignity and respect during an investigation.
<b>Directorate:</b> <b>Division:</b> <b>Team:</b>	Social Security Directorate Policy Division Legislation and Operational Policy Unit

### Executive summary

1. The public sector equality duty within the Equality Act 2010 requires the Scottish Government to assess the impact of applying a proposed new or revised policy or practice. Equality legislation covers the protected characteristics of: age, disability, gender reassignment, pregnancy or maternity, race, sex, sexual orientation and religion and belief.
2. The Equality Act 2010 harmonised existing equality legislation and includes a public sector duty ('the Duty') which requires public authorities to pay due regard to the need to:
  - eliminate discrimination, harassment, victimisation or any other prohibited conduct;
  - advance equality of opportunity; and
  - foster good relations between different groups - by tackling prejudice and promoting understanding
3. The Social Security (Scotland) Act 2018 ('The Act') sets out social security offences that may be committed, at sections 71 - 73. These include obtaining social security assistance by deceit and failing (or causing another person to fail) to notify a change of circumstances that might result in the assistance awarded being reduced or ceasing.

4. Social Security Scotland will be responsible for investigating allegations or suspicions of social security offences, and it will be important to do this effectively in a way that is fair, objective, and presumes innocence. Section 75 of the Act gives Scottish Ministers a power to make provision for the investigation of offences through regulations. Section 76 requires that a Code of Practice covering the use of these regulatory powers must be consulted on and published.
5. This Equality Impact Assessment (EQIA) relates to the regulations made under Section 75 the 2018 Act and the Code of Practice for Investigations required under Section 76. The EQIA has considered the potential impacts of the regulations and the Code of Practice on each of the protected characteristics. The provisions and how they impact on people across the protected characteristics are set out below.
6. The regulations will ensure that Social Security Scotland has necessary and proportionate powers to gather information relevant to the investigation of an alleged offence. They set out who is allowed to use these powers and the circumstances under which they can be used.
7. The Code of Practice for Investigations sets out how we will use the statutory powers and demonstrates how we will ensure people are treated fairly and with dignity and respect during an investigation.
8. The regulations do not have direct or indirect, positive or negative impacts upon the elimination of unlawful protected characteristic based discrimination. However, the operation of the Fraud and Error Resolution Division implementing the policy may have an impact, which this EQIA will address.
9. Investigations are most often initiated by a third party allegation. Where this is the case, it is clear that prejudice against particular protected characteristics could be a motivating factor in the allegation.
10. Social Security Scotland is not able to discern or mitigate against this from the outset, however this makes it all the more important that investigations themselves eliminate baseless allegations as quickly as possible, and are sensitive to the varying circumstances and characteristics of those under investigation.
11. While this assessment considers the potential impacts of the regulations and the Code of Practice for Investigations, the implementation of the high level requirements set out in the Code will be dictated by detailed operational procedures which are still subject to service design and will fall under the agency's overarching duties within Part 1 of the Act, our Charter and other legislation and Codes of Practice listed in the annex to the Code of Practice.
12. An individual's protected characteristics will not be a factor in whether an investigation proceeds, rather it will depend on whether there is reasonable evidence that there is substance to an allegation and it is in the public interest.

13. The benefits delivered by Social Security Scotland with the largest monetary value, all have disability as a primary qualifying criteria. This means that every client investigated in relation to those benefits has at some time stated that he have some form of disability, however they may have multiple protected characteristics.
14. The Scottish Government recognises that there will be a need to provide additional support to people, perhaps due to a protected characteristic, so specific provisions such as the right to be accompanied by a supporter, the availability of interpreters, disability accessible locations, or interviews at home will ensure people are treated with dignity and respect and fully able to participate in an interview under caution.
15. Investigating officers will adhere to the Code of Practice which sets out not only the power to investigate also sets out the standards of conduct to be employed during investigations, and how people will be treated with dignity and respect.
16. The development of an EQIA is an ongoing process and this document will be updated as we learn more about how the Social Security Scotland's fraud service is operating in practice. As part of our commitment to continuous improvement with the clients of the system, steps will be taken to collect data as the rollout of devolved benefits proceeds.
17. This EQIA also builds on the previous partial EQIA<sup>1</sup> which was completed and published alongside the Consultation on Social Security in Scotland<sup>2</sup> that ran from the 29 July 2016 until 30 October 2016 and the full EQIA for the Social Security (Scotland) Bill<sup>3</sup> published 20 June 2017.
18. Social Security Scotland began administering social security benefits in September 2018, and has since started paying Carer's Allowance Supplement, Pregnancy and Baby, Early Learning and School Age Payments, Best Start Foods, Funeral Support Payments and the Young Carer Grant.

## **Drafting & Consultations**

19. In July 2016 a full public consultation<sup>4</sup> was undertaken to inform the content of the Social Security (Scotland) Bill. Following this initial consultation, a focused consultation<sup>5</sup> on the draft regulations and the Code of Practice for Investigations ran from 6 August until 29 October 2018 and over 200 individuals and organisations were directly invited to respond. As part of that consultation, the question below was asked:

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<sup>1</sup> <https://www.gov.scot/publications/social-security-scotland-bill-equality-impact-assessment/>

<sup>2</sup> [https://consult.gov.scot/social-security/social-security-in-scotland/user\\_uploads/consultation-on-social-security-in-scotland---full-version.pdf](https://consult.gov.scot/social-security/social-security-in-scotland/user_uploads/consultation-on-social-security-in-scotland---full-version.pdf)

<sup>3</sup> <https://www.gov.scot/publications/social-security-scotland-bill-equality-impact-assessment/>

***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?***

20. A total of 18 written responses to the full public consultation were received, from individuals and from organisations. The independent analysis of the responses was undertaken by KSO Research<sup>6</sup>. Respondents represented a range of individuals and organisations with knowledge and experience of, or an interest in, social security matters
21. Respondent organisations included:
- Eight NGOs (Inclusion Scotland, Scottish Independent Advocacy Alliance, Shelter Scotland, Citizens Advice Scotland, Child Poverty Action Group, Scottish Women's Aid, Poverty Alliance, One Parent Family Scotland);
  - Six individuals;
  - Two local authorities Aberdeen City and Aberdeenshire Council ;
  - NHS National Services Scotland; and
  - the Information Commissioner's Office
22. In addition, a consultation event held on 2 October 2018 was attended by several key stakeholders from welfare rights organisations, One Parent Families Scotland, Money Matters, Citizens Advice Scotland and Govanhill Housing Association. Their views along with those obtained from the August 2018 online consultation have identified concerns and potential impacts.

## **The Scope of the EQIA**

23. The scope of this EQIA is restricted to the impact of the regulations and Code of Practice, on those who find themselves under investigation by Social Security Scotland. The EQIA therefore seeks to identify impacts of the following on the protected characteristics:

### **The investigatory powers**

- Authorisations for investigators
- Power to require information
- Restrictions on power to require information and on requirements to provide it
- Notices requiring information
- Power of Scottish Ministers to require electronic access to information
- Entry and search of premises
- Offence of obstruction etc. of an investigation

### **The application of the Code of Practice**

- 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

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<sup>6</sup> <https://consult.gov.scot/social-security/fraud-investigations/>

- Chapter 5 Complaints

## Data Gaps

24. DWP does not hold administrative data on gender re-assignment, marital status, religion or sexual orientation. Pregnancy data is only held where this is the main reason for incapacity.
25. We are aware that there are significant gaps in our data. There is no robust data relating to the proportion of people of any age in Scotland to whom the gender reassignment protected characteristic would apply. The available data in relation to religion and belief is also very limited: 48.7% Scots over 16 in 2016 identified as having "no religion" and 47.3 % were Christians (Church Scotland, Roman Catholic or "Other Christian").

## Key Findings

26. Although the key findings are presented under each of the protected characteristics, an issue identified for one group may be relevant for other protected characteristics.

## Age:

27. Data from the 2011 Census shows that, in the general population in Scotland, 16% are aged 0-14; 13% are aged 15-24; 13% are aged 25-34; 14% were aged 35-44; 15% were aged 45-54; 13% were aged 55 to 64; and 17% were aged 65 or above. The census also showed that 48.5% of the Scottish population were male and 51.5% were female.
28. The regulations and Code of Practice for investigations do not have direct, positive or negative impacts upon the elimination of unlawful age based discrimination, harassment and victimisation. They do however have some potentially negative indirect impacts.
29. Data from the Office for National Statistics<sup>7</sup> shows that people aged 16 to 44 years use social networking sites significantly more than those aged 45 and over.
30. From an investigatory perspective, this may mean for younger clients evidence is more readily available from open sources such as social media. However Scottish Government does not propose to monitor social media indiscriminately for the detection of offences, or to carry out targeted trawls for information via this method.
31. The Code of Practice for Investigations set outs that information should only be sought where there is good cause, and that use of open sources will comply with relevant guidance in relation to online covert activity set out in the Regulation of

Investigatory Powers (Scotland) Act 2000(RIPSA) and its associated Code of Practice<sup>8</sup>. Therefore while it is more likely that information from online sources would be available in investigations of younger clients, safeguards are in place to ensure that where this is done it is always compliant with legislation.

### **Disability:**

32. In relation to the protected characteristic of disability, the EQIA identified no direct positive or negative impacts from the regulations. It did identify some possible indirect negative impacts within the Code of Practice relating to the direct touchpoints between Social Security Scotland and either those being investigated or witnesses in the process of the investigation.
33. Based on forecasts by the Scottish Fiscal Commission<sup>9</sup> by 2023/24 an estimated 80% of Social Security Scotland's expenditure will be on disability benefits, recipients of which have reported incapacity. It is therefore important that these are taken into account in any interactions with the agency.
34. Stakeholder cited issues such as learning disability, hearing impairment, mental health issues cognitive impairments, memory problems as examples of disability that may significantly disadvantage disabled clients during an investigation. The main aspects of an investigation where this will have significant impact are likely to be written correspondence, interviews and witness statements.

### *Correspondence*

35. As investigation processes are still subject to service design, the Code of Practice itself does not set out the specifics of letters that will be sent but gives a general overview of the what should be communicated and when.
36. In sections 4 and 5 of the Act, the Scottish Government has committed to: communicating in a way that ensures individuals who have difficulty communicating can receive information and express themselves in ways that best meet each individual's needs; and providing information in a way that is accessible for individuals who have a sensory, physical or mental disability.
37. Social Security Scotland is working to embed an inclusive communication approach across everything that it does, working with stakeholders, using their expertise, insight and experience to continue to improve the services it delivers. Its approach will be to make the service inclusive by design, with specialist support such as interpretation available where necessary for those who need it.
38. It has already taken the following steps to make its service inclusive:
- letters, forms, online guidance and communication materials are written for a reading age of nine;

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<sup>8</sup> <https://www.gov.scot/publications/covert-surveillance-property-interference-code-practice/>

<sup>9</sup> <http://www.fiscalcommission.scot/publications/scotlands-economic-and-fiscal-forecasts/scotlands-economic-and-fiscal-forecasts-may-2019/>

- online content is compatible with screen reader software on Jaws, Voiceover and Non Visual Desktop Access (NVDA) platforms
- interpretation, translation and transcription services are able to support over 100 languages
- a British Sign Language (BSL) video relay service is available through Contact Scotland
- deafblind interpreters, Text Relay and electronic note taker services can be provided
- letters, information and guidance are available in braille, large print, easy read and various audio formats

39. Work will continue as the agency evolves to continuously improve its understanding of the needs of service users.

40. In addition the Act recognises the important role played by advocates and advice workers. While these processes are still in the design phase, it is intended that procedures will be in place to allow 3rd parties to engage with Social Security Scotland on behalf of clients in order to provide support and assistance with their benefits.

#### *Interviews Under Caution*

41. An interview under caution is an important opportunity for anyone under investigation to provide clarification and further evidence that may be relevant to the interpretation of the facts surrounding an allegation. While the Code is not prescriptive about all of the procedures, interviews must comply with the standards required by Crown Office and Procurator Fiscal Service (COPFS) and the Act which, as previously discussed, is clear that individuals must have the opportunity to receive information and express themselves in a way that meets their needs.

42. The Code sets out the high level requirements for an interview under caution in terms of timing, accommodation, attendance of supporters, solicitors, advocates or advisers, and the information that must be provided to the parties involved before during and after the interview. There is an expectation that this information will be provided in an accessible format taking account of any disabling condition of the person being interviewed.

43. Recognising that hidden disabilities such as mental health problems or learning disabilities may not be immediately obvious, an interviewing officer will take into consideration the impact of the person's disability at whatever stage in proceedings it becomes known, and consider any adjustments or additional support that may be necessary.

44. While it is not anticipated that adults with incapacity within the definition of the Adults with Incapacity (Scotland) Act 2000 would be called to an interview under caution, the Act provides for the appointment of another person to Act on their behalf in relation to their benefits. Where someone doesn't fall under the

definition of the Adults with Incapacity (Scotland) Act 2000, but because of a disability they appear to be unable to understand sufficiently what is happening or to communicate effectively with the investigators, arrangements must be made to ensure that a suitable person is present at the interview to provide support

### *Witnesses*

45. Another anticipated touchpoint for Social Security Scotland with members of the public, is when they are approached in the course of an investigation to provide a witness testimony. According to the Scottish Health Survey 2018<sup>10</sup>, 32% of adults in the Scottish population had a long-term limiting mental or physical health condition or disability in 2017. It is therefore likely that, as with those under investigation, adjustments will at times need to be taken when arranging to take and record oral evidence.
46. Witness testimony can be a key component of a decision to remove benefit or in the prosecution case where a report is made to the procurator fiscal. It is vital therefore to ensure that the implications of giving evidence are fully understood by the witness i.e. that there may be a requirement to attend a tribunal or court in future and that they are not led or influenced in the evidence they supply. Likewise any written correspondence or documents that need to be signed must be fully understood.
47. While the Code of Practice does not set out explicitly how this should be done, it is underpinned by the Act and the Charter and will be further supported by Social Security Scotland's inclusive and accessible communications standard as previously described above.
48. A number of respondents to the consultation felt that Counter Fraud Officers should have specific training in a number of subject areas including mental health. While Chapter 2 of the Code "Standards for Counter Fraud Officers" does refer to training, and it is intended that training of this type is routinely provided, the types of training counter fraud officers will receive are not yet specified in the Code. This is because the agency is still in its nascent stages and options for particular subject specific awareness training are still being explored.

### **Gender Reassignment:**

49. The regulations are neutral with regard to gender reassignment. No concerns were raised during the consultation regarding gender reassignment.
50. However, a number of potential risks have been identified for the future operational procedures of the agency. It is important that where the agency knows about it, a person is not misgendered and their wishes about how they should be addressed are reflected in: correspondence; face to face interactions; and papers that may be passed to other authorities including COPFS.

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<sup>10</sup> <https://www.gov.scot/publications/scottish-health-survey-2018-volume-1-main-report/>



51. It will also be important that questioning as part of an interview under caution is not based around gendered assumptions. Care must be taken in any interactions with third parties that personal information is not disclosed either intentionally or unintentionally that is not relevant to the investigation as per paragraph 45 of the Code of Practice.
52. The regulations and Code of Practice themselves do not have direct or indirect, positive or negative impacts upon the elimination of unlawful gender based discrimination, harassment and victimisation

**Maternity/ Paternity status:**

53. The Scottish Government's Pregnancy and Parenthood in Young People Strategy highlights that young mothers are considerably more reliant on state benefits and tax credits than older mothers – a position that remains the case as the child ages.
54. No concerns or impacts were identified or raised throughout the consultation process. The regulations and Code of Practice for investigations are neutral with regard to Maternity/ Paternity status. An individual's Maternity/ Paternity status is not relevant to investigations.
55. The regulations and the Code of Practice do not have direct or indirect, positive or negative impacts upon the elimination of unlawful maternity/ paternity based discrimination, harassment and victimisation

**Race:**

56. Data from the 2011 Census relating to ethnicity in the Scottish population shows the proportion of the population identifying with various ethnicity as: All people 5,295,403 of which White 96.0%; Mixed or multiple ethnic groups 0.4%; Asian, Asian Scottish or Asian British 2.7%; African 0.6%; Caribbean or Black 0.1%; Other ethnic groups 0.3%
57. The investigation of offences regulations are neutral with regard to race however, it is recognised that clients whose first language is not English, may experience barriers to participation in an investigation, again these would be relevant to written and verbal communications surrounding the interview under caution and potentially to witness statements.
58. Our commitment to accessible communication includes making sure that we do not create language barriers for people who communicate in languages other than English, who make up 7% of the Scottish population.
59. It is anticipated that, consistent with sections 4 & 5 of the Act, where there is a requirement to communicate in another language, this information will already have been captured through the original application process. However, as reflected in Chapter 3 of the Code, another opportunity will be afforded in advance of any interview to tell Social Security Scotland about this requirement, and provision of written materials in the required language and an interpreter will

ensure that they can fully participate in an interview and express themselves meaningfully.

60. Beyond the potential impact above relating to communications the regulations and the Code of Practice do not have direct or indirect, positive or negative impacts upon the elimination of unlawful race based discrimination, harassment and victimisation.

## **Sex:**

61. Data from the 2011 Census shows that 48.5% of the Scottish population were male and 51.5% were female. Respondents to the consultation raised concerns that fraud investigations might unfairly target women who receive a higher proportion of some disability related benefits.
62. Figures extracted from the Consultation on Social Security in Scotland, Annex A: Partial Equality Impact Assessment (EQIA) show the gender split for each of the disability related benefit circa 2015/16.

	Disability Living Allowance	Personal Independence Payment	Attendance Allowance	Carer's Allowance
Female	51%	55%	65%	68%
Male	49%	45%	35%	32%

63. While it is true that a higher proportion of women receive disability related benefits than men, DWP estimate<sup>11</sup> that of the £166 million of Personal Independence payment known to be lost to fraud at GB level in 2018/19, £71 million (43%) is associated with female claimants and £95 million (57%) with male claimants.
64. The Scottish Government does not have statistics to support the assertion that women are disproportionately subject to fraud investigation, however in the event they are, the following potential impacts have been considered.

### *Domestic Abuse*

65. It is known that where gender information was recorded, around four out of every five incidents of domestic abuse in 2017-18 had a female victim and a male accused<sup>12</sup>.
66. In response to the consultation a number of stakeholders raised concern about the interactions between domestic abuse and fraud investigations. Scottish Women's Aid and One Parent Families Scotland highlighted a number of issues regarding the requirement upon them to provide information and the visiting/searching of their premises. The regulations have now been amended to address these concerns.

<sup>11</sup> Statistics extracted from <https://stat-xplore.dwp.gov.uk/> on 7 November 2019

<sup>12</sup> <https://www.gov.scot/publications/domestic-abuse-recorded-police-scotland-2017-18/>

67. They also highlighted broader concerns that some women may be forced to claim benefits fraudulently and that others may have repeated malicious false accusations made about them by an abusive partner either as a form of control or in retribution.
68. While it is not possible for Social Security Scotland to prevent either of these, we have engaged with stakeholders and have agreed that while information about unfounded allegations should only be held as long as it is needed, we will retain some information long enough to detect patterns which may suggest vexatious intent and as far as possible prevent repeated reinvestigation of baseless allegations.
69. Where an investigation does take place, the Code of Practice reflects that the minimum distress should be caused to those under investigation, and where an allegation has no substance to it, the investigation should not continue. This will be detailed in operational guidance for Counter Fraud Officers.
70. In addition to this, and as previously highlighted it was suggested that specific training be given to Counter Fraud Officers to raise awareness of issues relating to domestic abuse. As discussed in paragraph 38, the Code of Practice does not specify the training that staff will receive, but Social Security Scotland agrees that this is needed and is exploring options for its delivery.
71. While this impact was raised in relation to women, men are also subject to domestic abuse and it is important to acknowledge that this can also occur across a range of familial and other relationship types.
72. The regulations and the Code of Practice do not have direct or indirect, positive or negative impacts upon the elimination of unlawful sex based discrimination, harassment and victimisation

### **Sexual Orientation:**

73. There is limited data available from the Scottish Surveys Core Questions (SSCQ) 2018 which was published in 2019 showing the self-identified sexual orientation percentages to be: Heterosexual 95%; LGB & other 2%. It is felt that the figures are likely to under-report the percentage of lesbian, gay or bisexual or other (LGBQ) people within society due to a number of reasons. These may include that some people will not have told friends and family about their sexual identity and may not want to be open with an interviewer. There could also be significant distrust as to what the interviewer would use this information for.
74. There is no available data regarding the sexual orientation of people who are investigated for benefit fraud and no concerns or impacts were identified or raised throughout the consultation process. However, it is likely that some of the same impacts highlighted around gender reassignment might also apply in terms of use of correct terminology and avoidance of stereotyping or false assumptions about relationships and family structures.

75. The regulations and the Code of Practice do not have direct or indirect, positive or negative impacts upon the elimination of unlawful discrimination, harassment and victimisation based on sexual orientation.

### **Religion and Belief:**

76. The analysis of religion in the 2011 Census shows the proportion of the population identifying with various religions as: 32.4% Church of Scotland; 15.9% Roman Catholic; 5.5% Other Christian; 0.2% Buddhist; 0.3% Hindu; 0.1% Jewish; 1.4% Muslim; 0.2% Sikh; 0.3% Another Religion; 36.7% No Religion; 7.0% Not Answered.
77. There were no religious or faith related concerns expressed in the consultations. The objective of ensuring full and fair representation would be expected to cover any scenario where particular timings of interviews or personnel were requested on account of religion.
78. The regulations and Code of Practice policy have no direct or indirect positive or negative impacts upon the elimination of unlawful religion and belief based discrimination

### **Recommendations and Conclusion**

79. The EQIA process has evidenced that the regulations and Code of Practice have been subject to scrutiny by public consultation, as well as targeted consultation with relevant stakeholders. This reflects Scottish Ministers' aim of designing a system centred on dignity and respect, with a rights based approach at its core.
80. A number of significant issues have already been addressed as a result of the consultation process through amendments to the regulations and Code of Practice that have removed potential impacts on clients.
81. The overall conclusion of the EQIA, at this stage, is that the regulations themselves will have no significant impact on people with protected characteristics. The Code of Practice sets out high level requirements but it is the detailed operational procedures, still under design that will have most impact.
82. Monitoring the impact of social security offences Investigations on people with protected characteristics will be a continuous process. If and when any unintended consequences are identified steps will be taken to rectify them. On-going stakeholder engagement will be an important part of this monitoring. The Charter reflects the requirements set out in the Act that the Scottish social security system advances equality and non-discrimination.
83. The stated aim of the Scottish Government is to ensure the system remains fit for purpose and will report to Parliament how well the service is operating and whether any changes are required. It will collect and monitor data in order to make evidence based decisions and changes to policy should those be required.

## Authorisation

Authorisation I confirm that the impact of the Young Carer Grant has been sufficiently assessed against the needs of the equality duty:

Name and job title of policy lead:  Paul Curtis, Fraud, Error and Overpayments Policy, Social Security.  Name and job title of a Deputy Director or equivalent:  Ann McVie Deputy Director Social Security Policy Division	Date this version authorised:  15 November 2019
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