

# Social Security Assistance (Investigation of Offences) (Scotland) Regulations 2020 and the Code of Practice for Investigations

## Islands Communities Screening Assessment

### Introduction

1. The importance of island-proofing was recognised in the “*Empowering Scotland’s Island Communities prospectus*”<sup>1</sup> published in June 2014. The principle of island-proofing is one of building a broad-based islands awareness into the decision making process of all parts of the public sector.
2. The Islands (Scotland) Act 2018 places a duty on the Scottish Ministers and other relevant authorities, including a number of public authorities, to have regard to island communities in exercising their functions, and for the Scottish Ministers this will also include the development of legislation. This duty is often referred to as ‘island-proofing’.
3. The Scottish Government recognises the importance of island-proofing and committed to island-proofing the Social Security (Scotland) Act 2018 Act (the Act), in advance of the Islands Act placing a formal requirement. The Scottish Government is also committed to island-proofing the secondary legislation required in fraud investigations carried out by the Social Security Scotland.
4. While this assessment considers the potential impacts of the Social Security Assistance (Investigation of Offences) (Scotland) Regulations 2020 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. These 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.

### Background

5. 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.
6. Sections 71 to 73 of the 2018 Act provides that it is an offence to obtain social security assistance by deceit and to fail, or cause another person to fail, to notify a change of circumstances which would result in entitlement to assistance being reduced or ceasing.
7. Social Security Scotland will be responsible for investigating allegations or suspicions of these new statutory offences, and it important to do this effectively in a way that is fair, objective, and presumes innocence. Section 75 of the Act

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<sup>1</sup> <https://www.gov.scot/publications/empowering-scotlands-island-communities/>

gives Scottish Ministers a power to make provision in regulations about the investigation of offences and section 76 requires that a Code of Practice covering the use of these regulatory powers must be consulted on and published.

### **Consultation process**

8. The Scottish Government's full public consultation in relation to the Investigation of Offences Regulations and Code of Practice for Investigations was undertaken between 6 August and 29 October 2018.
9. A total of 18 written responses to the consultation were received, 6 from individuals and 12 from organisations. The independent analysis of the responses was undertaken by KSO Research. Respondents represented a range of individuals and organisations with knowledge and experience of, or an interest in, social security matters. These included:
  - Eight third sector organisations;
    - Inclusion Scotland
    - Scottish Independent Advocacy Alliance
    - Shelter Scotland
    - Citizens Advice Scotland
    - Child Poverty Action Group in Scotland
    - Scottish Women's Aid
    - Poverty Alliance
    - One Parent Family Scotland
  - Local authorities (Aberdeenshire and Aberdeen City);
  - Six individuals;
  - NHS National Services Scotland; and
  - The Information Commissioner's Office
10. The Scottish Parliament's Social Security Committee sought written views on 27 September 2018 and received a response from Inclusion Scotland.
11. There were no issues raised specific to islands or rural communities in relation to accessibility, however it is recognised that attendance at interviews may be an issue due to the distance between someone's home and an interview location. Travel can be time consuming, expensive and difficult for people living in rural and island communities.

### **Issues identified**

12. In line with the principles outlined in the Social Security (Scotland) Act 2018 and our Charter, all investigations in relation to social security offences will be undertaken discreetly with regard to privacy and confidentiality.
13. The Scottish Government recognises that people living in small island communities may have particular concerns in relation to this. For example, these may relate to issues such as the visibility of Counter-Fraud Officers in remote locations, the booking of venues for interviews, witnesses, and how interviews are managed.

14. There may also be concerns about accessibility of interview venues, the distance that individuals may have to travel and expenses incurred.
15. The Code of Practice for Investigations sets out the high level requirement that 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 any reasonable adjustments that are required. As set out above, the low level operational detail of these processes are yet to be determined. It may on some occasions be appropriate to conduct an interview in a person's home, or somewhere local to their place of residence.
16. The Scottish Government recognises that some individuals may also be concerned about attending at a public building where they could be easily identified and will aim to be as flexible as possible in relation to this.
17. As with every other aspect of the work to develop the new social security system, the Scottish Government has sought to involve expert organisations and people outside of government in the development of the secondary legislation. This builds on the earlier work and commitment to work with people through the earlier consultation exercise and in the development of the Act.
18. The Scottish Government is keen to ensure that as much information as possible will be online including rules around entitlement and information about reporting any changes. We are aware however that some remote island communities may not have access to digital services nor is it everyone's preferred choice of communication.
19. The Scottish Government is aware that people want tailored solutions to suit their different preferences and needs, and will therefore work to ensure the availability of digital, telephone and face to face communication channels where possible.

## **Conclusions**

20. Investigations for suspected social security offences will involve a very small minority of people. The regulations and Code of Practice are not considered to have an impact on the Islands Communities demographic or population numbers.
21. The Scottish Government is not aware of any evidence that the regulations and Code of Practice will have an impact on the key island industries, infrastructure or natural environment.
22. There is a cost attached to welfare groups who assist people with benefits as they will be required to upskill staff in the new devolved assistance however that is not a cost specific to offences investigations.
23. It is also not anticipated that levels of suspected offences will vary significantly so existing demand for legal services in relation to representation for an investigation should also not vary significantly.

24. Scottish Ministers are aware of the duty to consult island communities before making a material change to any policy, strategy or service which, in the Scottish Ministers' opinion, is likely to have an effect on an island community which is significantly different from its effect on other communities.

### Reporting

25. The Act proposes a duty on the Scottish Ministers to publish an annual report on the performance of the Scottish social security system, which will include information on the impact of island-proofing.

26. Scottish Ministers have also committed to engaging with, and reporting regular progress to the Islands Strategic Group, to ensure that those representing the interests of island communities and others with experience of the current system, are fairly represented in the development and delivery of the Scottish social security system.

### Social Security Policy Directorate November 2019

<b>Social Security Directorate Authorisation</b>	
<b>Policy lead</b> Paul Curtis Social Security Directorate, Policy Division, Legislation and Operational Policy Unit	<b>Date 15 November 2019</b>
<b>Deputy Director or equivalent</b> Ann McVie Deputy Director Social Security Policy Division	<b>Date 15 November 2019</b>