EXPLANATORY MEMORANDUM TO

THE PREVENTION OF SOCIAL HOUSING FRAUD (POWER TO REQUIRE INFORMATION) (ENGLAND) REGULATIONS 2014

2014 No. 899

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Prevention of Social Housing Fraud (Power to Require Information) (England) Regulations 2014 ("the Regulations") make provision for investigations into social housing fraud offences, such as making fraudulent applications for social housing or unlawfully sub-letting social housing. The Regulations enable local authorities to require the provision of information in relation to those offences. They also create offences and enable penalties to be imposed in connection with these requests for data.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The Regulations are made under the powers in sections 7, 8, and 9(2)(b) and (c) of the Prevention of Social Housing Fraud Act 2013. They are modelled on the existing provisions in Part 6 of the Social Security Administration Act 1992 which make provision for investigatory powers, offences and penalties in relation to social security benefits.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 Kris Hopkins, Parliamentary Under Secretary of State for the Department for Communities and Local Government, has made the following statement regarding Human Rights:
"In my view the provisions of the Prevention of Social Housing Fraud (Power to Require Information) (England) Regulations 2014 are compatible with the Convention rights."

7. Policy background

7.1 This instrument provides powers required for local authorities to be able to compel certain listed bodies to provide them with information for social housing fraud investigation purposes.

7.2 The Prevention of Social Housing Fraud Act 2013 ("the Act") is intended to help reduce the number of social homes that are unlawfully occupied (currently estimated at 98,000 for England). Previously the law enabled social landlords to recover properties that were unlawfully sub-let but this proved to be an inadequate deterrent to tenants, who only risked losing the tenancy of a property they did not occupy. The Act creates additional deterrents, including introducing new offences for unlawful sub-letting and creating orders that will enable landlords to recover any profit the tenant has made.

7.3. Social housing fraud investigators often cite their lack of access to data as a significant obstacle that prevents them detecting as many unlawfully occupied social homes as they otherwise could. The Act gives the Secretary of State the power to make regulations that give local authorities the power to require organisations to provide information that relates to social housing fraud investigations. Currently, they are able to *ask* data-holders for information they hold, but they cannot compel it to be provided to them; this often means holders of key data refuse such requests. By compelling compliance with such requests, these Regulations will enable social housing fraud investigators to obtain more information to help them investigate and prosecute the offences under the Act and other acts of fraud, such as fraudulent applications for social housing, and will bring the powers they have more into line with those currently enjoyed by investigators of social security and council tax reduction scheme fraud. The powers for social security fraud have been in place for more than a decade and have proved to be invaluable in detecting fraud.

7.4 Regulation 3 enables local authorities to authorise individuals to exercise the powers in regulation 4. Under regulation 4, the authorised officer has the power to require banks, building societies and other providers of credit, telecommunications providers and utilities companies to provide such information as is reasonably required for the purpose of preventing, detecting or securing evidence for the conviction of an offence under section 7(7) of the Act. When conducting social housing fraud investigations, it is important to be able to link the tenant to another address, which can provide evidence that, for example, the tenant is sub-letting the social home they have been allocated, or that they own a home that they did not declare when applying for social housing. The organisations captured by regulation 4 hold information that can indicate that the named tenant has an account registered at another address, and in the case of banks and building societies, account statements can provide evidence of receipt of payments suggesting they are sub-letting for money, and of expenditure suggesting the tenant is making monthly mortgage payments, thereby denoting they own a property.

7.5 Regulation 5 creates an offence relating to the delay or obstruction of authorised officers in exercising their powers to require information, or a failure or refusal to provide information when required to do so. Regulation 6 makes provision for the liability of directors etc where an offence under regulation 5 has been committed by a body corporate. Regulation 7 sets out the time limit for commencing proceedings for an offence under regulation 5.

8. Consultation outcome

8.1 There has not been a consultation on these Regulations. However, there was a 12 week public consultation on social housing fraud from 11 January 2012 to 4 April 2012. There were 188 responses, around 75% of which came from social landlords. Around 90% of respondents were in favour of new arrangements that would increase landlords' access to key data. The consultation paper is available at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8407/2064044.pdf

8.2 The Government response to the consultation acknowledged both the level of support for increased access to data and the important role it would play in helping the detection and prosecution of cases of social housing fraud. The fact that the power is to be introduced through regulations (rather than set out on the face of the Act) has allowed further consideration of the wider issue of data access for public bodies, the importance of which was recognised at paragraph 4.6 of the Government response. The response itself is available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8408/2179472.pdf

9. Guidance

9.1 The Department is not intending to issue a guidance note on the powers provided by this instrument. Local authorities already enjoy very similar investigatory powers (for example, those given by the Social Security Administration Act 1992 and the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013) and it is not felt that the powers conferred by these Regulations are sufficiently different to warrant new guidance regarding their use. All the bodies that will be compelled to supply information under these Regulations are already obliged to do so for social security fraud or council tax reduction scheme fraud investigations, therefore they will have systems in place.

10. Impact

10.1 There is an impact on business, which is to be required to assist in the detection and prevention of crime through the provision of relevant information held by them. These regulations represent an impact only on those businesses that already have to supply data to local authorities and so who will be familiar with the process and have the appropriate systems and protocols in place.

10.2 The impact on the public sector is to provide powers for local authorities to authorise individuals to require information for the purpose of investigating offences of social housing fraud. They already enjoy similar powers in relation to other types of fraud.

10.3 An Impact Assessment has not been prepared specifically for this instrument, but one is available in relation to the Prevention of Social Housing Fraud Act 2013, and can be found at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/249632/Prevention_of_Social_Housing_Fraud_Act_2013_-_Impact_Assessment.pdf.
Paragraph 68 of the impact assessment estimates that there will be around 40,000 requests per year and that each request will cost the provider of the information an average of £5. The total annual cost to data-holders will therefore be around £200,000.

10.4 The Government considers that these regulations strike a balance between helping local authorities tackle fraud effectively and preserving the privacy of individuals. With regard to the power to access information held by telecommunications companies, these regulations do not give the power to obtain information about the contents of the communication, nor do they give the power to obtain information identifying the person, apparatus or the location to or from which a communication is sent. In this respect**,** the type of 'communications data' accessible under these regulations is significantly less than that which may be obtained under the Regulation of Investigatory Powers Act 2000.

10.5 A Privacy Impact Assessment has been prepared alongside these regulations and is available at: https://www.gov.uk/government/publications/prevention-of-social-housing-fraud-power-to-require-information-england-regulations-2014. It sets out, among other things, the justification for the new power to require information, how the power complies with existing data protection principles, the safeguards in place (including those contained in the Data Protection Act 1998 – namely that the information obtained must be, among other things: necessary for the purpose of the investigation and held in accordance with the Data Protection Principles; fairly and lawfully processed; processed for limited purposes; adequate; relevant and not excessive; accurate; not kept longer than necessary; processed in accordance with the

individual's rights and kept secure) and underlines the fact that the unlawful obtaining or disclosure of personal data is an offence under the Data Protection Act 1998.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 Some organisations, such as credit providers, may be small businesses, and could be required to provide information under the Regulations. However, the impact on these businesses will be minimal (see paragraphs 90 and 91 of the Impact Assessment).

12. Monitoring & review

12.1 The objective is to help local authorities detect (and, where appropriate, prosecute) cases of social housing fraud. The degree to which these Regulations assist local authorities in this way will be reviewed after 5 years.

13. Contact

13.1 Graham Knapper at the Department for Communities and Local Government Tel: 0303 444 3667 or email: graham.knapper@communities.gsi.gov.uk can answer any queries regarding the instrument.