EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (LOCAL AUTHORITY INVESTIGATIONS AND PROSECUTIONS) REGULATIONS 2008

2008 No. 463

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

2. Description

2.1 This instrument imposes conditions and limitations on the power of local authorities to investigate and prosecute offences in relation to national benefits administered by the Department for Work and Pensions ("the Department") where they already have the power to investigate and prosecute offences concerning housing and council tax benefit ("local benefits").

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

3.1 None

4. Legislative Background

4.1 When in force, section 46 and 47 of the Welfare Reform Act 2007 (c. 5) ("the 2007 Act") will provide local authorities with clear powers to investigate and prosecute offences in relation to national benefits where they already have power to investigate and prosecute offences concerning local benefits. The 2007 Act gives Scottish local authorities powers to investigate offences relating to national benefits, but the power to prosecute does not apply in Scotland, where the Procurator Fiscal is responsible for the prosecution of all criminal offences.

4.2 It is intended that local authorities' powers under section 46 and 47 of the 2007 Act will come into force on 7th April 2008.

4.3 Currently, section 110A of the Social Security Administration Act 1992 ("the 1992 Act") allows local authorities to investigate fraud against local benefits (i.e. housing benefit and council tax benefit).

4.4 Subject to conditions and restrictions imposed in regulations, section 110A of the 1992 Act (when amended by section 46 of the 2007 Act will give local authorities administering housing benefit or council tax benefit a wider power to investigate national benefit fraud. Local authority authorised officers will be able to obtain information for purposes relating to the investigation of national benefits administered by the Department

4.5 Section 116A of the 1992 Act (inserted by section 47 of the 2007 Act) will enable local authorities in England and Wales administering housing benefit or council tax benefit to prosecute offences relating to national benefits administered by the Department. But, section 116A(2) of the 1992 Act enables the Secretary of State

to specify in regulations that local authorities may not prosecute certain national benefits.

5. Territorial Extent and Application

5.1 This instrument applies to all of Great Britain.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

Policy

7.1 Sections 46 and 47 of the 2007 Act are intended to remove any doubt as to whether local authorities are empowered to investigate and prosecute fraud in connection with national benefits administered by the Department, for example, where entitlement to a national benefit means that a claimant automatically satisfies some eligibility conditions to a local one.

7.2 The policy objective of those provisions is also to extend the powers of local authorities to investigate and prosecute national benefit offences, alongside their existing powers with regard to housing benefit and council tax benefit offences, so increasing efficiency and effectiveness in combating benefit fraud.

7.3 This instrument imposes certain conditions and restrictions on the exercise of these powers.

7.4 A local authority must not use their powers to authorise officers to investigate a national benefit unless it relates to income support, a jobseeker's allowance, incapacity benefit, state pension credit or employment and support allowance. This instrument also provides that an authorisation granted by a local authority for these purposes only applies where an authorised officer has also begun an investigation relating to housing or council tax benefit in the same case. This means local authority authorised officers can not, at the outset, use their new powers to investigate a national benefit only, but would be able to continue to exercise them if the housing or council tax element of the investigation is not proceeded with.

7.5 This instrument also provides that local authorities in England and Wales may not prosecute fraud against national benefits administered by the Department unless the proceedings relate to: income support, a jobseeker's allowance, incapacity benefit, state pension credit or an employment and support allowance. In such cases, proceedings can commence regardless of whether the local authority begin proceedings against housing or council tax benefit.

7.6 It will be up to the individual local authority to determine whether to bring proceedings where there is no housing or council tax benefit offence.

7.7 In order to ensure that prosecution decisions relating to national benefit offences continue to have the evidential and public interest tests applied, local authorities will be required, under the newly amended s116A(5) of the 1992 Act, to have regard to the Code for Crown Prosecutors when making use of the new powers.

7.8 In appropriate cases the Secretary of State has powers to withdraw any authorisation granted by a local authority (s110A(5). He can also make directions (s110A(7)) and may direct that a local authority cannot bring a prosecution (s116A(2)(b) and he may take over proceedings or he can discontinue them (s116A(4)).

Consultation

7.9 The Department formally consulted, for a period of six weeks, with the Local Government Association, London Councils and the Convention of Scottish Local Authorities in accordance with section 176(1) of the Social Security Administration Act 1992 concerning these Regulations.

7.10 The responses received were supportive of the measure but raised a number of operational issues which are currently being addressed by the implementation group set up to deal with all aspects of the practical implementation of these regulations.

Guidance

7.11 The implementation group will also be producing guidance to local authority and DWP fraud investigators and staff concerning the use of these new powers and the administrative procedures that accompany their use.

8. Impact

8.1 A full impact assessment has not been produced for this instrument as it has no impact on the private or voluntary sectors.

8.2 The impact on the public sector is that the Regulations are intended to produce modest administrative savings in the medium term by reducing the need to duplicate work associated with investigating and prosecuting the same person in relation to local and national benefits offences.

9. Contact

Graham Dove at the Department for Work and Pensions Tel: 0207 712 2128 or e-mail: graham.dove@dwp.gsi.gov.uk can answer any queries regarding the instrument.