

# **CHILD SUPPORT, PENSIONS AND SOCIAL SECURITY ACT 2000**

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## **EXPLANATORY NOTES**

### **PART III: SOCIAL SECURITY ADMINISTRATION**

#### ***Investigation Powers***

##### ***Background***

##### ***The current position***

726. Section 110 of the Social Security Administration Act 1992\* (the “Administration Act”) sets out provisions concerning the appointment and powers of social security fraud inspectors. Sections 110A and 110B of that Act set out provisions concerning the appointment and powers of local authority fraud inspectors in relation to Housing Benefit and Council Tax Benefit. Section 33 of the Jobseekers Act 1995\* set out provisions regarding the powers of social security fraud inspectors in relation to Jobseeker’s Allowance\*.
727. These powers allow inspectors to elicit and inspect information. For example, the inspector may ask an employer about his employees in order to establish whether benefit fraud is occurring. The information inspector’s request could include information on earnings, tax and National Insurance and pensions, and in the case of the self-employed or landlords, their business records. Inspectors may visit those from whom they require information, or they may write to them.
728. The legislation governing inspectors’ powers was introduced with the National Insurance system. It has been added to and amended over many years and has now become somewhat piecemeal and inconsistent. This has led to employers, employees and the Data Protection Registrar being unclear as to what inspectors are and are not allowed to do under these powers.

##### ***Recent developments***

729. On 23 March 1999, the Government published its strategy and plans for reducing fraud and error *A new contract for welfare: Safeguarding Social Security* (CM 4276). The need to make effective use of inspectors’ powers is an important part of successfully investigating, detecting and punishing fraud. Fraud officers’ effectiveness could be jeopardised by employers and the Data Protection Registrar continuing to express uncertainty about what the powers allow, as their uncertainties are resulting in some employers refusing to comply with this legislation.
730. Discussions on the broad thrust of these measures have been held with business organisations, the TUC, local authority associations, the Office of the Data Protection Registrar and Liberty. All agreed that there was a need for clearer powers and business organisations in particular supported moves to modernise the legislation – for example, allowing more use of information technology such as e-mail.

### ***The measures in the Act***

731. The measures in the Act clarify and align inspectors' powers in order to remove the uncertainty that currently exists and allow inspectors to operate effectively.
732. The measures are contained in section 67 and Schedule 6. They replace the current legislation.
733. In the new legislation, the term "inspector" is replaced by "authorised officer". The new powers enable the Secretary of State and Local Authorities to authorise officers to use the powers set out in new sections 109B and 109C. Section 109B sets out the powers that authorised officers have to require information by issuing a "written notice". The powers at section 109C set out an authorised officer's powers to enter premises in order to obtain information. The powers do not allow authorised officers to force entry to premises, forcibly search premises or compulsorily detain persons for questioning. The purposes for which the powers can be used are also set out clearly in the legislation in section 109A(2) and 110A(2).
734. If those from whom information has been requested fail to comply with authorised officers' requests they may be prosecuted under the current section 111 of the Administration Act.

### ***Commentary on Sections***

#### ***Section 67: Investigation powers***

735. This section gives effect to Schedule 6 (social security investigation powers).

#### ***Schedule 6***

736. This Schedule contains provisions to replace certain enforcement provisions in Part VI of the Administration Act.
737. Sections 110, 110A and 110B of the Administration Act provide powers for social security fraud "inspectors" to obtain information by either writing to or visiting persons. Typically, the powers would be used to ask an employer for details of his employees in order to obtain information about people who may be committing benefit fraud by working whilst claiming benefit, or to obtain information from a self-employed person who may be working whilst claiming benefit. The powers set out in Paragraphs 2 and 3 of this Schedule replace these provisions. In the new sections, the term "inspector" has been replaced by "authorised officer".

#### ***Paragraph 2: Replacement for inspectors' powers***

738. This paragraph replaces section 110 of the Administration Act with new sections 109A, 109B and 109C. Section 110 sets out the powers of inspectors who are appointed by the Secretary of State – this means those investigating fraud in all social security benefits.
739. The powers in new sections 109A, 109B and 109C can be used in relation to "relevant social security legislation". This is set out in new section 121DA inserted by paragraph 8 of this Schedule. The change to the term "relevant social security legislation" does not expand the scope of inspectors' powers except in so far as Jobseeker's Allowance inspections are now subject only to the new powers. Sections 33 and 34 of the Jobseekers Act 1995 are being repealed.

#### ***New section 109A: Authorisation for investigators***

740. This section provides for the Secretary of State to authorise officers to exercise the powers set out in new sections 109B and 109C. It sets out who may be authorised, the purposes for which authorised officers may use the powers in new sections 109B and 109C and other particulars concerning the authorisations.

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741. *New section 109A(1)* provides that a person who has the Secretary of State's authorisation under section 109A may exercise any of the powers set out in new sections 109B and 109C for the purposes set out in subsection (2).
742. *New section 109A(2)* sets out the purposes for which authorised officers may exercise the powers in new sections 109B and 109C. The purposes are:
- (a) ascertaining whether a social security benefit is or was payable in an individual case;
  - (b) investigating the circumstances of accidents, injuries or diseases giving rise to claims for Industrial Injuries Benefit and other benefits;
  - (c) ascertaining whether the provisions of the relevant social security legislation have been, are being or are likely to be contravened (in cases involving particular individuals as well as more generally);
  - (d) preventing, detecting and securing evidence of the commission of criminal offences in relation to the relevant social security legislation (either by particular individuals or more generally).
743. In paragraph 741 above, (a) and (b) are linked to claims made by particular individuals; (c) and (d) include wider purposes where social security investigators may wish to investigate concerns more generally. They may, for instance, wish to investigate whether there is widespread contravention of the legislation in a particular workplace. In such cases, the investigator may wish to ask for lists of people. For example, they may ask for a list of all employees where an employer has a history of colluding with his staff in order that they can commit benefit fraud. The list would then be cross-referenced against benefit records.
744. *New section 109A(3)* sets out the requirements relating to an authorisation. The Secretary of State must have granted the authorisation for the purposes set out in subsection (2). The person given the authorisation must also fall into one of the categories set out in this subsection. The Secretary of State may authorise persons other than those in his own Department – those working for other Departments and for local authorities and their contractors. This means that the Secretary of State is able to make use of personnel and expertise in other organisations and helps promote closer working across Government and local authorities in anti-fraud work.
745. *New section 109A(4)* sets out further requirements regarding authorisations.
- (a) provides that an individual's authorisation must be contained in a certificate that is given to him as evidence of his entitlement to exercise the powers contained in new sections 109B and 109C.
  - (b) provides that the authorisation may contain provisions regarding the duration for which it may have effect.
  - (c) allows the Secretary of State to restrict the powers exercisable by virtue of the authorisation. He can prohibit the use of the powers except for particular purposes in particular circumstances or in relation to particular benefits or provisions of relevant social security legislation.
- (b) and (c) are discretionary powers.
746. The combination of this subsection and subsection (3) has the effect that the Secretary of State has a range of options open to him when authorising officers. For example, the Secretary of State could authorise a local authority's officers to conduct social security investigations in an area where he wished to promote closer working (subsection (3)). However, he may equally (by using subsection (4)) authorise the local authority's investigators for the duration of only one investigation, or limit the authorisation he

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grants so that local authority investigators may investigate all benefits except for benefits where they may have less expertise.

747. *New section 109A(5)* allows the Secretary of State to withdraw an authorisation at any time.
748. *New section 109A(6)* concerns circumstances where an individual working for a local authority, or a person administering Housing Benefit and/or Council Tax Benefit on behalf of a local authority, is granted an authorisation under this section.
- (a) provides that the Secretary of State and the local authority may enter into such arrangements as they see fit with regard to the exercise of these powers.
  - (b) allows the Secretary of State to make payments to the local authority if he considers it appropriate to do so.
749. *New section 109A(7)* provides that the matters on which an individual is authorised to report under section 139A of the Administration Act shall include work under this section carried out by an individual working for a local authority or for a person administering Housing Benefit and/or Council Tax Benefit on behalf of a local authority – for example, a contractor. This subsection would allow the Secretary of State to authorise the Benefit Fraud Inspectorate to inspect this work as it currently inspects local authority fraud work.
750. *New section 109A(8)* provides that authorised officers may exercise their powers in relation to persons employed by the Crown and conduct enquiries about persons employed by the Crown and in premises owned or occupied by the Crown.

**New section 109B: Power to require information**

751. Section 109B sets out powers to allow authorised officers to request information by a written notice for the purposes set out in section 109A(2). A notice shall be taken to be in writing in cases where the notice is transmitted by electronic means (such as fax or e-mail) provided that the notice is received by the recipient in a form which is legible and capable of being recorded for future reference. In this section, the term “document” includes anything in which information is recorded in electronic or any other format (see paragraph 8 of this Schedule).
752. *New section 109B(1)* provides that an authorised officer may request information by written notice. The authorised officer may request information from a person if he has reasonable grounds for suspecting that:
- (a) the person falls into one or more of the categories set out in subsection (2); and
  - (b) the person has, or may have, access to, or possession of, information about a matter which is relevant to at least one of the purposes set out in section 109A(2).
753. The authorised officer may require the person to provide all the information that is set out in the notice which is in the person’s possession or to which the person has access. It must also be reasonable for the officer to require the information for the pursuit of at least one of the purposes outlined in section 109A(2).
754. *New section 109B(2)* sets out the persons who may be required to provide information under this section. These are listed at subsections (a) to (j).
755. *New section 109B(3)* provides that a person has complied with a request when he has provided the required information within the time and in the format specified in the notice. However, the person will not be deemed to have failed to comply if he does not provide information to which he does not have access or which he does not possess (see subsection (1)).

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756. *New section 109B(4)* makes it clear that authorised officers may require the persons in subsection (2) to produce and hand over the information requested, including copies or extracts of it – for example, if an employer of casual labour claims not to keep a record of his staff, the authorised officer could require him to compile one. Authorised officers’ requests must be reasonable (see subsection (1)).
757. *New section 109B(5)* protects people from being required to provide information which may incriminate themselves or their spouse.

**New section 109C: Powers of entry**

758. Section 109C provides an authorised officer’s power to enter premises in order to obtain information for the purposes set out in section 109A(2). As in section 109B, the term “document” should be taken to include anything in which information is stored in electronic or other format (see paragraph 8).
759. *New section 109C(1)* provides that the authorised officer may enter premises if they are liable to inspection under this section and where it is reasonable for him to do so to exercise his powers under the new section 109C. The premises liable to inspection under this section are set out in subsection (4). What is meant by the term “premises” is set out in paragraph 8 of this Schedule. The authorised officer may be accompanied by anyone else he considers it necessary to take with him. He may enter premises only at a reasonable time.
760. *New section 109C(2)* provides that, once an authorised officer has entered any premises liable to inspection under this section, he may look around those premises and conduct any enquiry there that he considers appropriate in his investigation for any of the purposes set out in section 109A(2).
761. *New section 109C(3)* provides that, once an authorised officer has entered any premises liable to inspection under this section, he may question anyone whom he finds on the premises, require them to provide documents that he may reasonably require for the purposes set out in section 109A(2) and take possession of, and remove, these documents. As with section 109B(4), the authorised officer may require the person to produce, hand over and create documents or copies and extracts of documents. Under this section, authorised officers also have the power to make their own copies of documents. What authorised officers do once they have entered the premises must be reasonable.
762. *New section 109C(4)* sets out the premises liable to inspection under this section.
763. *New section 109C(5)* states that where the authorised officer seeks to enter any premises under this section, he must, if requested to do so, produce the certificate containing his authorisation.
764. *New section 109C(6)* protects people from being required to provide information which may incriminate themselves or their spouse.

***Paragraph 3: Exercise of powers on behalf of local authorities***

765. This paragraph replaces sections 110A and 110B of the Administration Act with a new section 110A. Sections 110A and 110B of the Administration Act concern local authority benefit fraud inspectors’ powers. The powers relate to Housing Benefit and Council Tax Benefit only.

**New section 110A: Authorisation by local authorities**

766. *New section 110A(1)* provides that a person who has the authorisation of a local authority administering Housing Benefit and Council Tax Benefit may, subject to subsection (8), exercise any of the powers set out in new sections 109B and 109C for the purposes set out in subsection (2).

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767. *New section 110A(2)* sets out the purposes for which a person authorised by a local authority may use the powers set out in new sections 109B and 109C. The purposes are:
- (a) ascertaining whether housing benefit or council tax benefit is or was payable in an individual case;
  - (b) ascertaining whether the provisions of the relevant social security legislation regarding Housing Benefit and Council Tax Benefit have been, are being or are likely to be contravened (in cases involving particular individuals as well as more generally);
  - (c) preventing, detecting and securing evidence of the commission of criminal offences in relation to Housing Benefit and Council Tax Benefit (either by particular individuals or more generally).
768. In paragraph 766 above, (a) is linked to claims made by particular individuals; (b) and (c) include wider purposes where investigators may wish to investigate concerns more generally. They may, for instance, wish to investigate whether there is widespread contravention of the legislation in a particular workplace. In such cases, the investigator may wish to ask for lists of people. For example, they may ask for a list of all employees where an employer has a history of colluding with his staff in order that they can commit benefit fraud. The list would then be cross-referenced against benefit records.
769. *New section 110A(3)* sets out the requirements for the local authority's authorisation. The local authority must have granted the individual an authorisation for the purposes set out in subsection (2). The person given the authorisation must also fall into one of the categories set out in this subsection.
770. *New section 110A(4)* provides that the provisions in section 109A(4) also apply to local authority authorisations. An authorisation must be contained in a certificate and a local authority may restrict the extent of an authorisation (see section 109A(4)).
771. *New section 110A(5)* allows the Secretary of State to withdraw the authorisation at any time.
772. *New section 110A(6)* provides that certificates of authorisation, and withdrawals of authorisations by local authorities, must be signed by the head of paid services or the chief finance officer.
773. *New section 110A(7)* provides that local authorities have a duty to comply with directions given by the Secretary of State. These directions may relate to:
- (a) whether or not the local authority may make any authorisations for the purposes of subsection (2);
  - (b) the period for which authorisations granted by the local authority shall have effect;
  - (c) the number of authorisations a local authority may make;
  - (d) how they should use the power to restrict authorisations in section 109A(4)(c) (applied by subsection (4)).
774. *New section 110A(8)* provides that officers authorised under this section may use the powers set out in sections 109B and 109C, with the following differences:
- (a) provides that the purposes for which these powers may be used are those set out in subsection (2) of this section, not section 109A(2), and
  - (b) provides that the powers may be used in relation to the relevant social security legislation only in so far as it relates to Housing Benefit and Council Tax Benefit.
775. *New section 110A(9)* provides that an authorised officer is not restricted to enquiring about benefits administered by the local authority who has appointed him. Thus, one

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local authority can conduct an inspection on behalf of another – for example, if one has greater expertise or was visiting the employer anyway.

**Paragraphs 4 to 9: Consequential amendments**

776. These paragraphs make consequential amendments to the Administration Act.
777. **Paragraph 4** provides for consequential amendments to section 111 of the Administration Act to ensure it applies to the relevant new sections as it currently applies to section 110.
778. **Paragraph 5** ensures consistency in references to the legislation to which new sections 109A, 109B, 109C and 100A apply and to which section 111A applies.
779. **Paragraph 6** ensures consistency in references to the legislation to which new sections 109A, 109B, 109C and 100A apply and to which section 112 applies.
780. **Paragraph 7** provides for section 113 of the Administration Act to apply in relation to the relevant social security legislation covered in the new sections, and to legislation concerning National Insurance contributions, Statutory Sick Pay and Statutory Maternity Pay.
781. **Paragraph 8** inserts a new interpretation section 121DA in Part VI of the Administration Act.

**New section 121DA: Interpretation of Part VI**

782. *New section 121DA(1)* sets out what is meant by the term “relevant social security legislation”.
783. *New section 121DA(2)* sets out the definition of an “authorised officer”.
784. *New section 121DA(3)* sets out what is meant by references to “document” and what is meant by notices being given in writing (see explanation of section 109B above).
785. *New section 121DA(4)* sets out the meaning of “premises”. Premises liable to inspection under section 109C must fall within the new section 109C(4) and this section. This makes clear that premises include moveable structures, vehicles, offshore installations and places of any other description whether or not they are occupied as land and anyone present there is regarded as an occupier. This provision is similar to the definition of premises in the current section 33 of the Jobseekers Act 1995.
786. *New section 121DA(5)* sets out what is meant by the terms “benefit”, “benefit offence” and “compensation payment”.
787. *New section 121DA(6)* makes clear that where a local authority has contracted out some of its Housing Benefit and Council Tax Benefit work, those working for the contractor or a sub-contractor can be authorised to act in accordance with the provisions in Part VI of the Administration Act.
788. *New section 121DA(7)* sets out that “subordinate legislation” has the same meaning in this section as the Interpretation Act 1978 (which means Orders in Council, orders, rules, regulations, schemes, warrants, bylaws and any other instruments made under an Act, see section 21).
789. **Paragraph 9** makes a consequential amendment to Schedule 10 to the Administration Act.