



Department for  
Communities and  
Local Government

# Prevention of Social Housing Fraud (Power to Require Information) (England) Regulations 2014

Privacy Impact Assessment

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Department for Communities and Local Government  
Eland House  
Bressenden Place  
London  
SW1E 5DU  
Telephone: 030 3444 0000

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# 1. Proposal

The Prevention of Social Housing Fraud Act 2013 introduced new criminal penalties for sub-letting or parting with possession, without permission, of social housing. It also enabled the Secretary of State to make regulations that would allow local authorities to compel certain private sector organisations to provide them with information for social housing fraud investigation purposes in much the same way they currently can when undertaking social security fraud investigations.

Under the proposed Prevention of Social Housing Fraud (Power to Require Information) Regulations 2014, the private sector organisations that will be required to provide, on request, data to local authorities for housing fraud investigation purposes are: banks, building societies, suppliers of credit, water and sewerage undertakers, providers of gas and electricity services and telecommunications companies.

## 2. Justification

According to the Audit Commission, at least 98,000 council and housing association homes in England are unlawfully occupied. These homes would otherwise be available to people on the housing waiting list, who may be currently housed in temporary accommodation by their local authority, and there are substantial savings to be made by moving people from expensive temporary accommodation into settled social rented housing.

The Government has recently provided around £19 million to local authorities to support their efforts to tackle social housing fraud and is also funding a team of expert practitioners to provide hands-on advice to them. This investment has borne fruit. The number of unlawfully occupied local authority-owned properties recovered each year has increased from around 1000 in 2008/09 to more than 2600 in 2012/13. The number of housing association homes recovered annually is not recorded centrally.

A key factor in the relatively low level of recovery is the limited amount of data that social housing fraud investigators can access.

Successfully obtaining possession of the property usually requires building a dossier of evidence proving that, for example, the named tenant is no longer living in the property. Currently, social landlords may seek relevant information from third parties, relying on section 35 of the Data Protection Act 1998 (because the information is required for the legal proceedings that will enable the landlord to evict the tenant) but have no powers to compel the provision of that information. In practice, this constitutes a significant barrier to the recovery of homes as landlords often cannot access the data that would provide the proof they need.

Social housing fraud is analogous to benefit fraud – both involve claiming a benefit funded by the taxpayer (in the case of tenancy fraud a subsidised rent) to which the individual is not entitled or otherwise profiting from a system designed to help those in need. However, while housing benefit fraud investigators can access a vast amount of data from a wide variety of sources, including being able to compel certain bodies to supply data, social

housing fraud investigators enjoy no such powers. The proposed Prevention of Social Housing Fraud (Power to Require Information) Regulations 2014 would allow similar data to be obtained for investigation purposes.

By introducing these provisions we anticipate creating a significant deterrence effect that will drive down levels of social housing fraud and deliver savings to the public purse by increasing the availability of social homes to those in need on the waiting list.

### 3. Data Protection Issues Arising

Creating a new criminal offence of sub-letting potentially of itself facilitates access to personal data by local authorities. It would clarify that organisations may lawfully disclose information to local authorities because this information would be used for the prevention, detection or prosecution of an offence (section 29 Data Protection Act 1998). However, while section 29 *allows* data to be shared it does not *compel* the data holder to supply the information requested.

Introducing a provision that compels certain private sector organisations to provide data to local authorities for social housing fraud investigation purposes raises important issues around privacy and data protection.

It would mean that more data could be obtained to assist local authorities in building up the dossier of evidence for social housing fraud investigations. Such data would provide valuable evidence that, for example, a tenant had sub-let the property they were allocated, or that they owned a home they had not declared when making an application for social housing.

A key task of a social housing fraud investigator is to link the tenant to another property. Therefore, the key data will be that which provides evidence of the tenant's current address, i.e. where they are actually living rather than where they claim to be living. Also of importance would be evidence of receipt of rental income from a sub-let social home or evidence of mortgage payments being made that would suggest the tenant is also a homeowner – a fact they may have withheld when first applying for a social home. We do not consider that data required for the purposes of a prosecution for social housing fraud would include sensitive personal data – the regulations allow only for the provision of data that it is *reasonable* to request. As mentioned above, the key objective of a social housing fraud investigator is to link the tenant to another property and it is, therefore, very difficult to see how a request for sensitive personal data would help achieve this aim and, therefore, how such a request could be considered reasonable (see text box below on the Data Protection Act 1998). It will be imperative to ensure that requests are focused, there is no scope for 'fishing expeditions' and that proper safeguards are in place.

### 4. Safeguards

DCLG is clear that new powers to investigate and pursue social housing fraud as a criminal offence should be firmly based on the current, well-established procedures for social security fraud.

Many important safeguards will be included. Requests for data could only be made by an authorised officer – someone who is a local authority employee and who has been authorised by the local authority’s Chief Executive or Chief Finance Officer to make requests. A local authority would be able to impose any restrictions it wished on its authorised officer and be able to withdraw authorisation at any time. Importantly, an authorised officer could only seek information where it is reasonable to do so and where that information is of relevance to the case; this will include being satisfied that reasonable efforts have been made to obtain the data by other means.

The recipient of the request would only be compelled to supply data that it held or had access to (as opposed to having to collect new data). There would be a defence of non-compliance with a request on the grounds that the data-holder had made all reasonable efforts to comply with it.

Information can only be requested by an authorised officer where he is satisfied that all reasonable efforts have been made to acquire the data via another route and that there are reasonable grounds for believing that someone is committing, has committed or intends to commit an offence under section 7(7) of the Prevention of Social Housing Fraud Act 2013.

### **Data Protection Act 1998**

Local authorities will be required to act in accordance with the Data Protection Act 1998. The information obtained by them must be necessary for the purpose of the investigation and must be held in accordance with the Data Protection Principles. In particular, the information obtained must be: 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. **The unlawful obtaining or disclosure of personal data is an offence under this Act.**

The list of private sector organisations that will be required to provide data when requested for investigations relating to social housing fraud is based on those required to provide personal data for benefit fraud investigation under section 109B of the Social Security Administration Act 1992. However, while data on a recipient’s income is particularly important for housing benefit investigations (being a means-tested benefit), it is less important for social housing fraud investigations. Therefore, the list of organisations is shorter than for housing benefit fraud and includes only those who hold information relevant to ascertaining a tenant’s address and, as detailed in section 3 of this assessment, any rental income or mortgage payments. The fact that this power is given to local authorities through regulations made by the Government means that there is flexibility to remove and add organisations to the list so that it is no longer or shorter than necessary (as requested by the Information Commissioner’s Office in its response to the Government consultation on tackling social housing fraud).

## Communications Data

Regulation 4(6) of the Prevention of Social Housing Fraud (Power to Require Information) (England) Regulations 2014 enables local authorities to obtain information about the use made by a person of a telecommunications service or any other information held about subscribers to the service. **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.

Rather than allow private registered providers (housing associations) to compel listed bodies to supply information, local authorities would be able to access data when investigating a housing association's stock.

We would expect local authorities who request data under this new power to publish information through their Freedom of Information Act publication scheme about how often they have used the gateway and (where possible) the outcomes that have followed from this use.

One of the central aims of these regulations is to increase the deterrence effect, which evidence suggests is increased where criminal sanctions are accompanied by effective enforcement. In practice, therefore, we would expect social landlords to publicise these new powers to their tenants rather than seeking to use them without a prior awareness campaign.

We suggest that local publicity about new powers to obtain data in relation to social housing fraud and openness about how those powers are used should also act as an important safeguard around their proper use.

## 5. Acceptability of Proposals

Responses to the Government's consultation suggest broad consensus on the case for introducing a mandatory data gateway as set out above. Around 90% of respondents supported these propositions.

It is important to remember that these proposals simply increase the number of issues for which local authorities can demand data; they do not add to the number of bodies who can demand data or increase the level or sensitivity of information that can be received.

## 6. Compliance with the Data Protection Act's Data Protection Principles

We are confident that these proposals can be implemented in compliance with the Data Protection Principles.

Section 7(7) of the Prevention of Social Housing Fraud Act 2013 limits the reasons why such information may be obtained to the prevention, detection or securing of evidence for a conviction under the offences created by that Act or relevant offences under the Fraud Act 2006. As the information is required to prevent or detect crime and the organisation is required by law to provide it to the local authority, disclosure of the information will be in accordance with the Data Protection Principles.

Compliance with data protection principles around processing, handling, the quantity and relevance of data requested and the rights of the data subject is a matter about which the local authority requesting the data for the purposes of prosecuting tenancy fraud must satisfy itself. However, by copying established procedures around social security fraud, we firmly believe that we are putting in place appropriate safeguards to ensure that local authorities act in a way that is compliant with the Data Protection Principles.

The response from the Information Commissioner's Office to the public consultation on these proposals emphasised the important of local authorities taking account of their statutory Data Sharing Code of Practice, notwithstanding the existence of a mandatory gateway, but expressed no concerns that these proposals were, of themselves, at variance with the Data Protection Principles.