

REVISED CODE OF PRACTICE ON OBTAINING INFORMATION

THE GOVERNMENT RESPONSE

November 2016

1. Introduction

1.1 Background

The DWP consultation, Revised Code of Practice on Obtaining Information, was published on 18 February 2016. Its main purpose was to consider amendments to the Social Security Fraud Act 2001, Code of Practice on Obtaining Information.

1.2. The rationale for change

Section 3 of the Social Security Fraud Act 2001 (SSFA) includes a requirement for the Secretary of State to issue a Code of Practice relating to the exercise of powers under section 109B(2A) and 110AA of the Social Security Administration Act 1992 (SSAA), which provide for authorised officers to obtain information from specified organisations about the Department's customers in order to investigate benefit fraud.

The current Code of Practice on Obtaining Information (version 2) was laid before Parliament and published in April 2002. Since then there have been a number of legislative and administrative changes and consequently the published Code no longer reflects the current legislative powers (for example, the current Code does not refer to Working Tax Credits and Child Tax Credits, however changes brought about by the Welfare Reform Act 2012 means these tax credits are now treated as social security benefits for the purposes of section 109B of SSAA). The Code has therefore been reviewed and brought up to date.

2. Consultation

2.1 Background

A consultation paper was published on 18 February 2016 asking for views on a revised SSFA, Code of Practice on Obtaining Information (draft version 3). The consultation sought comments on the changes made to the Code and to ensure that it was clear and simple to understand. The consultation specifically asked for views on the timescales for providing information and the format in which information must be provided.

The consultation ended on 31 March 2016. The Department received 5 responses from individuals, Other Government Departments, firms and representative bodies from the insurance and banking communities. A list of respondents can be found at **Annex A**. DWP would like to thank all those who responded to the consultation document.

2.2 What this report does

Part 3 of this report provides a general summary of the issues raised by respondents during the consultation period. We have considered every contribution and this report is intended to reflect a fair and balanced summary representation of the responses received.

Part 4 summarises the conclusions and the Government's response to the consultation.

3. Summary of responses

3.1 Overview

There were five responses to the consultation, from Government, representatives from the banking and insurance industries, firms and private individuals. All respondents were broadly content with the revisions to the Code of Practice; some made suggestions for further improvement.

Respondents generally agreed that the draft Code was clear and no comments were made on the amendments made as a consequence of legislative or administrative changes. A point was raised that the draft Code did not reflect, going forward, the potential impact of the Investigatory Powers Bill (IP Bill); namely that DWP's existing powers to obtain communications data under the SSAA may be repealed following the introduction of new proposed powers set out in the IP Bill. It was also suggested that the Code should be clear about provisions in the SSAA (see Section 109B(2E)) which prevent it from being used to obtain traffic data.

One respondent asked if all authorised officer's powers remain the same following the introduction of single fraud investigations and for the Code to be clearer in either confirming if this is the case or not.

With regard to the timescales for providing information, respondents were largely content although some were concerned that they may not be realistic in certain circumstances; for example, if DWP undertakes any exercises that might result in significant increases in the volume of requests being made. They suggested that, in these situations the Code needs to be able to reflect that timescales need to be flexible to take into account the additional work involved and where information providers receive large volumes of requests for information they should not be required to negotiate the additional time required with each Authorised Officer on a case by case basis.

Several other suggestions were made including; if an example of an authorised officers certificate could be included in the Code to provide clarity on the format of the certificate, if the claimants National Insurance number could be included when requesting information, if more emphasis could be placed on the safeguards in place associated with requests to obtain communications data and for further improvements in communications between DWP and information providers, including better use of secure electronic communications.

A question was also raised on whether the provisions for making payment for providing information should be extended to other financial institutions, in recognition of the burden of requests made to the private sector.

3.2 Responses to specific questions

A summary of responses to the consultation questions can be found at **Annex B**.

4. Conclusion

The Government is determined to do all it can to tackle fraud and error in the benefits system and to support this aim Authorised Officers have significant powers, enabling them to obtain information from specified persons and organisations about the Department's customers to investigate benefit fraud. It is therefore only right that appropriate governance is in place to ensure those powers are only used where it is necessary and proportionate to do so. This Code of Practice provides such

governance and as a statutory code Authorised Officers must have regard to it when exercising the powers contained in section 109BA or 110AA of SSAA.

The responses we received to this consultation have been helpful in enabling us to produce a revised Code of Practice that is up to date and fit for purpose. Ensuring it clearly sets out the statutory requirements for Authorised Officers to follow as well as the people and organisations that are required to provide information under section 109B or 110AA of SSAA.

There were a number of comments about the potential impact of the IP Bill on this Code of Practice, particularly around the acquisition of communications data. We agree that the revised Code should prepare for any changes that may arise as a consequence of this legislation, as it is currently going through Parliament. Appendix One of the Code of Practice has therefore been amended to make it clear that this Code of Practice only applies to the acquisition of communications data while DWP has powers under Section 109B(2A)(j) of SSAA, to do so. The Code has not been amended to include references to the provision at Section 109B(2E) SSAA, as this provision is due to be repealed under the IP Bill.

While respondents were generally content with the ten day timescale for providing information some were concerned that there will be some situations where this may not be practicable and the Code needs to allow for exceptions to be made. We accept there may be some occasions where the timescale for providing information cannot be met and have amended the Code of Practice to make it clear that, whilst we require requests for information to be replied to within ten days there will be some situations where this may not be practicable and information providers may renegotiate timescales. We also accept that, where information providers need to request an extended timescale on a large volume of requests for information it will not be necessary to renegotiate timescales on a case by case basis.

Although generally content with the format for providing information some respondents believed that DWP needs to improve its methods of communicating with information providers, in particular the use of electronic methods for requesting and providing information. The electronic communications landscape is rapidly evolving and unfortunately cybercriminals evolve their techniques with equal rapidity to exploit weaknesses. We must maintain our reputation for security as well as comply with the Data Protection Act 1998. The number of threats to the use of email is still increasing. The two that are of the most concern to DWP are:

- that the email communication may not reach its intended recipient. (e.g. incorrect address used, email address re-allocated following a period of inactivity, falsified address opened by someone other than the person who it was intended for)
- Phishing attacks attempt to mislead our staff and claimants into providing personal details, for example (full name, address, bank details) by sending emails from addresses that appear to be legitimate. The concern for DWP is the public at large are not equipped to deal with the threat from phishing attacks. These emails often contain a link to a fake website set up by often criminal organisations, for the purposes of identify and financial fraud.

The consequences to DWP of not adequately protecting its data, doesn't stop at disciplinary action against individuals. Information Commissioner's Office action and the loss of reputation and public trust must also be considered.

We have considered the request to include a copy of an Authorised Officers certificate in the Code of Practice and believe that the current arrangements for checking Authorised Officer details are adequate and to reproduce a copy of an Authorised Officers certificate is not without some risk to security. For these reasons we have decided not to include a copy of the Authorised Officer certificate in the Code. We have also considered the request to include the customer's National Insurance number when making requests for information to enable Information Providers to identify their customers more easily but we believe the potential security implications outweigh the benefits of this proposal and accordingly have not made this change to the Code.

The levels of authorisation required to obtain information under sections 109B(2) and 109B(2A) of SSAA remain unchanged, since the introduction of single fraud investigations, where one investigation now covers all the benefit fraud around Housing Benefit and residual Council Tax Benefit (previously investigated by local authorities), Tax credits (previously managed by HMRC) and all welfare benefits, which were already delivered in DWP. Revisions have been made to make it clearer how the Code applies to information required under sections 109B and 110AA of SSAA.

A question was asked as to whether payments to Information Providers should be extended to other financial institutions. Payments are only made in very specific circumstances and we do not believe that it would be appropriate to further extend the list of organisations to which payments are made for providing information.

Annex A: Consultation respondents

Association of British Insurers
BBA (British Banking Industry Body)
Home Office
Pheonix Group
Richard Greenhill

Annex B: Responses to questions

Question 1: Does the draft Code adequately reflect the changes introduced by the Civil Partnership Act 2004, the Welfare Reform Acts 2007 and 2012, the Marriage (Same Sex Couples) Act 2013, the Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014?

Question 2: Does the draft Code adequately reflect changes required by the introduction of single fraud investigations?

We were asked if the introduction of single fraud investigations would have any effect on the information which can be requested by an Authorised Officer and if all Authorised Officers can have the same level of information accessibility. It was suggested that the Code could be clearer in either confirming if this is the case, or if there is a difference to explain what these are and how information providers can verify the level of authorisation an Authorised Officer has.

Question 3: Is the draft Code sufficiently clear about the timescales for providing information and the action that may be taken against information providers for failing to provide information?

Although it was agreed that the Code is clear in this regard there was concern about the impact of DWP undertaking an exercise that increases the volume of requests being made. It was suggested that the code needs to be able to reflect additional timescales where large volumes of information are being requested. It was also suggested that in these situations Information Providers should not need to negotiate additional time on a case by case basis.

Question 4: Is the draft Code sufficiently clear about the format in which information should be provided?

Whilst pleased to see a requirement that DWPs requests for information should include sufficient information to ensure that the customer can be identified one respondent felt that the process could be improved if the claimants National Insurance number was provided when making requests to information providers.

Some respondents have asked for improved electronic methods for requesting and providing information. It was suggested that DWP implements a consistent and secure method of correspondence to reduce the risk of disclosure of information sources.

Question 5: Is the draft Code clear and simple to understand? If not, how could it be improved?

Whilst generally accepted that the Code is clear there were some comments made on the drafting of the document and suggestions to improve its clarity. There were also comments on the format of Authorised Officers certificates and a request was made to include a copy of an Authorised Officers certificate in the Code.

Question 6: Do you have any other comments about the draft Code?

There were a number of comments about the Code and how it will work alongside other existing legislation on obtaining information (the Regulation of Investigatory Powers Act 2000) and proposed new legislation (the Investigatory Powers Bill).

One respondent asked if financial institutions would receive payment for the production of information, in the same way as credit reference agencies do, and consideration should be given to making payments given the increasing burden on the private sector.