

Legislative Consent Memorandum

Public Authorities (Fraud, Error and Recovery) Bill

Background

1. This memorandum has been lodged by Shirely-Anne Somerville MSP, Cabinet Secretary for Social Justice, in accordance with Rule 9B.3.1(a) of the Parliament's standing orders.
2. The Public Authorities (Fraud, Error and Recovery) Bill was introduced by the UK Government in the House of Commons on 22 January 2025. The Bill is available on the UK Parliament website via this link: [Public Authorities \(Fraud, Error and Recovery\) Bill - Parliamentary Bills - UK Parliament](#)

Content of the Bill

3. The overarching policy objective of the Public Authorities (Fraud, Error and Recovery) Bill is to safeguard the public purse against fraud and error. Part 1 of the Bill is intended to help the government address losses due to fraud and error occurring outside the tax and benefits systems. Part 2 would introduce new powers to help the Department for Work and Pensions (DWP) address fraud and error in the social security system, and recover overpayment debt.
4. The Bill contains provisions in the following areas in relation to social security:
 - Data gathering for purposes of investigating suspected fraud
 - Eligibility verification through data from financial institutions
 - Overpayment debt recovery and enforcement
 - Entry, search and seizure to support fraud investigations
 - Changes to administrative penalties
5. The provisions include information gathering powers to support investigation into fraud, from which certain bodies will be exempt i.e. 3rd sector advice, and advocacy services.
6. The Bill contains provisions in relation to Eligibility Verification Measure (EVM), which will allow the DWP to request large datasets from organisations such as banks to identify those in receipt of benefits and who either have capital in excess of the eligibility limits or whose activity indicates that the individual does not meet the relevant eligibility criteria e.g. frequent use of the account from abroad. Similar provisions were included within the UK's Data Protection and Digital Information Bill

of last year, for which legislative consent was sought and agreed in the Scottish Parliament¹, but which fell due to the UK Election.

7. The provisions in relation to overpayment recovery will provide the DWP with new options for enforcing recovery of overpayments when other routes of recovery have failed, including recovering direct from an individual's bank account. The Bill also contains powers to disqualify individuals from driving for a period of up to two years if they have an outstanding overpayment and all other recovery attempts have failed.

8. The proposed search and seizure powers will grant specified DWP staff the ability to obtain a warrant from a Sheriff to enter premises and seize items where they believe it necessary to do so to investigate an offence. Currently, it is the police who would obtain such a warrant. The DWP has emphasised these provisions are focused on tackling more sophisticated forms of fraud, in particular threats from organised crime groups.

9. In relation to administrative penalties, the Bill extends the scope of administrative penalties to include other sources of UK Government funding such as Access to Work grants. Additionally, the DWP can currently place an administrative penalty on an individual, liability to repay the overpayment and a four week 'Loss of Benefit' which means they do not get paid a benefit for a period of four weeks. This Bill will remove the loss of benefit as a measure to reduce hardship.

Provisions which require the consent of the Scottish Parliament

10. Scottish Government analysis has indicated that clauses 72, 73, 74, 75, 77-81, 83-87, 89, 90, 92, 94, 95, 98 and schedules 3-5 within the Bill impact on devolved matters and will require a decision on recommending or withholding legislative consent. Except where noted, the UK Government and the Scottish Government are in agreement around where standing orders in relation to legislative consent are triggered.

11. Clauses 72-75 of the Bill relate to the powers to require information. Scottish Government analysis indicates that clauses 72, 73, 74 and 75 require legislative consent by virtue of applying to Scotland for a purpose within the legislative competence of the Scottish Parliament. In this case the purpose relates to social security eligibility verification and enforcement including in relation to devolved benefits. In practice, it means the DWP will have a new and extended power to gather information in relation to fraud in any benefits still delivered under agency agreement. DWP will also be able to make use of the EVM, which will allow them to request large datasets from organisations such as banks to identify those in receipt of benefits and who either have capital in excess of the eligibility limits or whose

¹ [Data Protection and Digital Information Bill Legislative Consent Memorandum](#)

activity indicates that the individual does not meet the relevant eligibility criteria e.g. frequent use of the account from abroad.

12. Although the UK Government does not consider that clause 73 requires legislative consent, the Scottish Government has concluded that any changes to the Social Security Administration Act 1992 ('the 1992 Act') in relation to relevant social security benefits includes devolved benefits delivered under agency agreement. Clause 74 confers new powers on the Secretary of State to obtain information for the purposes of identifying incorrect payments of certain benefits with a regulation making power to extend these powers. As this power could be exercised in respect of devolved benefits the Scottish Government considers legislative consent is required. Clause 75 relates to independent review of functions that may include devolved benefits and therefore requires legislative consent. The UK Government has indicated that it does not consider that clauses 74 and 75 require legislative consent.

13. Clauses 76-83 relate to the powers of search and seizure, and clause 98 makes consequential amendments in connection with result of clauses 77-80. The Scottish Government considers that clauses 77,78, 79, 80, 81, 83 and 98 require legislative consent. This is by virtue of applying to Scotland for a purpose (in this case social security enforcement) within the legislative competence of the Scottish Parliament. In relation to the benefits delivered under agency agreement, the DWP will have the power to obtain a warrant from a Sheriff and enter premises/seize items where they consider it necessary to investigate an offence.

14. Clauses 84-87 contain further provision in relation to investigative powers and require legislative consent. The Scottish Government considers that they require legislative consent because they amend the 1992 Act in relation to relevant social security benefits including devolved benefits delivered under agency agreement. This applies to Scotland for a purpose within the legislative competence of the Scottish Parliament, in this case social security enforcement.

15. Clauses 89-95, and schedule 5 relate to the powers of recovery for overpayments. Clauses 89, 90, 92, 94 and 95 require legislative consent. The Scottish Government considers that they require legislative consent because they amend the 1992 Act in relation to relevant social security benefits including devolved benefits delivered under agency agreement. This applies to Scotland for a purpose within the legislative competence of the Scottish Parliament, in this case social security enforcement. When dealing with recovery of overpayments for debt accrued while benefits were delivered under agency agreement, the DWP will have new options for enforcing recovery when other routes of recovery have failed, including recovering direct from an individual's bank account. The DWP will have powers to disqualify individuals from driving for a period of up to two years if they have an outstanding overpayment and all other recovery options have failed. The UK Government's devolution analysis concluded that clause 92 regarding a Code of Practice and schedule 5 in relation to recovery from bank accounts do not require legislative consent. However, clause 92 relates to creating a code of practice for provisions that fall within the legislative competence of the Scottish Parliament, and within schedule 5 the powers can be used in respect of persons in receipt of

devolved (legacy) benefits. Legislative consent is therefore being sought for these clauses.

16. Schedules 3 and 4 require consent because they make provision in relation to relevant social security benefits, including devolved benefits delivered under agency agreement. This applies to Scotland for a purpose within the legislative competence of the Scottish Parliament, in this case social security enforcement.

Reasons for recommending consent

17. As the Bill will bring those benefits delivered under agency agreement within scope and will provide the DWP with powers in relation to fraud and overpayments, the Scottish Government considers that the Scottish Ministers should seek the Scottish Parliament's consent to the relevant provisions in the Bill (with the exception of the provisions in relation to overpayment recovery, namely clauses 89, 90, 92, 94 and 95 and schedule 5. These provisions are subject to ongoing discussion with the DWP, and the Scottish Government has therefore not come to a view on consent for these provisions).

18. Since executive competence for benefits was devolved, the safe and secure transfer of benefits that prevents any break in payment and protects vulnerable clients has been the key priority for the Scottish Ministers.

19. Although there is no legal necessity for the UK Government to terminate the agency agreements if a decision was made to withhold legislative consent, it is possible that they would do so given the requirements of such agreements that DWP business as usual arrangements apply.

20. Consenting to the provisions will ensure that where the DWP is still administering devolved social security assistance on behalf of Scottish Ministers under agency agreement, they are able to do so under their business as usual arrangements.

21. Were the agency agreements to end, Social Security Scotland would be required to take on the caseload for Industrial Injuries Disablement Benefit and Severe Disablement Allowance. This would not be achievable within the current Social Security Programme.

22. It is likely that ending the agreements would therefore impact all workstreams in the current Social Security Programme and lead to significantly increased costs and delay for both the Programme and Social Security Scotland.

Post EU scrutiny

23. To the extent that the Bill provisions relate to the accessing of personal data, they relate to matters covered by the EU Regulation on the protection of natural persons with regard to the processing of personal data and on the free movement of

such data (the GDPR). The Bill provisions include safeguards in relation to accessing of information, including provisions preventing disclosure that would contravene data protection legislation. The Scottish Government considers the provisions are consistent with the Scottish Government's commitment to align with EU law.

Financial implications

24. The Scottish Government has not identified any financial implications associated with legislative consent for the specific parts of the Bill for which this motion recommends consent.

Consultation

25. The Scottish Government is not aware of any public consultation which has been carried out in relation to this Bill specifically. However, there are commitments in the Bill to consult on Codes of Practice which the provisions require around some the measures, notably powers to verify eligibility with financial institutions, overpayment debt recovery and enforcement and data gathering.

Conclusion

26. As noted above, the Scottish Government considers that clauses 72, 73, 74, 75, 77- 81, 83- 87 and 98, and schedules 3-4 in the Bill will bring those benefits delivered under agency agreement within scope and will provide the DWP with powers in relation to fraud and overpayments in these benefits. As a result, the Scottish Government considers that the Scottish Parliament should provide legislative consent for these relevant provisions in Public Authorities (Fraud, Error and Recovery) Bill.

27. The Scottish Government is still to reach a position on consent in relation to clauses 89, 90, 92, 94 and 95 and schedule 5.

28. The Scottish Government has assessed the potential impacts of ending the agreements and considers that the implications would be contrary to the stated priority of ensuring the safe and secure transfer of benefits.

29. Consequently, the Scottish Government recommends that the Scottish Parliament consents to the Bill, with the exception at this time of the provisions in relation to overpayment recovery. These provisions are subject to ongoing discussion and will be the subject of a supplementary legislative consent motion.

Draft motion on legislative consent

30. The draft motion, which will be lodged by the Cabinet Secretary for Social Justice, is:

That the Parliament agrees that clauses 72, 73, 74, 75, 77- 81, 83- 87 and 98, and schedules 3-4 of the Public Authorities (Fraud, Error And Recovery) Bill 2025, introduced to the House of Commons on 22 January 2025, so far as these matters fall within the legislative competence of the Scottish Parliament and alter the executive competence of the Scottish Ministers, should be considered by UK Parliament.

Scottish Government
March 2025

This Legislative Consent Memorandum relates to the Public Authorities (Fraud, Error and Recovery) Bill (UK legislation) and was lodged with the Scottish Parliament on 21 March 2025

Public Authorities (Fraud, Error and Recovery) Bill – Legislative Consent Memorandum

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