

Stuart McMillan MSP
The Scottish Parliament
Edinburgh
EH99 1SP

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10 June 2025

Public Authorities (Fraud, Error, and Recovery) Bill 2025

Dear Stuart

Thank you for your letter of 9 June 2025, regarding the Legislative Consent Memorandum (LCM) in relation to the UK Government's Public Authorities (Fraud, Error, and Recovery) Bill 2025.

I note that you and the committee have raised questions to the Scottish Government with regards to the delegated powers within the Bill that relate to the Eligibility Verification Measure (EVM), and overpayment recovery. Please see my responses below.

Eligibility Verification Measure

Question: Whether it (the Scottish Government) anticipates that this power will be used to add any devolved benefits to the types of benefit that are subject to the eligibility verification measure, and what discussions it has had with the UK Government in this regard".

Response: Throughout our discussions on the Bill, the Scottish Ministers have been clear that devolved benefits should not be added to the scope of the Eligibility Verification Measures. The UK Government have confirmed that there is no intention on their part to do so, and have provided written assurance that devolved benefits will not fall within the scope of this power either now or in the future. This letter is included below at Annex A.

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Question: *If the intention is that devolved benefits will be added, for confirmation that, in recommending that the Scottish Parliament gives its consent to this provision, the Scottish Government is recommending that the Scottish Parliament can be content to agree to relevant devolved benefits being added in this way.*

Response: As noted in my previous answer, there is no intention from either the Scottish Ministers, or the UK Government to add devolved benefits to the scope of these powers. The UK Government has provided written reassurance to this effect.

Question: *Whether the Scottish Government considers it appropriate that the provision does not give the Scottish Government or the Scottish Parliament a role in deciding whether the provisions of the Act should be extended to particular devolved benefits, whether it has raised this point with the UK Government, and what discussions, if any, it has had with the UK Government in this regard.*

Response: As I noted previously, the UK Government has provided written reassurance to the effect that devolved benefits will not fall within the scope of these provisions.

Overpayment Recovery

Question: *For further detail on the extent to which the powers in new schedule 3ZA will be exercisable within devolved competence, in particular in relation to the devolved benefits delivered under agency agreement and the devolved (legacy) benefits referred to in paragraph 15 of the LCM.*

Response: The UK Government Minister for Transformation within the Department for Work and Pensions, Andrew Western MP, has confirmed the UK Government's intention to amend the Bill to exempt Scottish devolved benefits from the scope of the new overpayment recovery powers within the Bill. His letter can be found in Annex A below.

Question: *What input, if any, the Scottish Government will have in decisions as to how this power is exercised insofar as it relates to the recovery of devolved benefits, for example in decisions as to the amount that can be deducted from a person's bank account before it amounts to hardship, and the maximum amount that can be deducted per month (paragraph 24(2)(c) and (d)), and whether the Scottish Government considers that such input would be appropriate.*

Response: The Scottish Ministers have engaged extensively upon the overpayment recovery provisions within the Bill and concluded it would not be appropriate to recommend legislative consent for these provisions. As a result, the UK Government has committed to amend the Bill to ensure that the new overpayment recovery powers within the Bill, including direct deductions from bank account, will not impact upon devolved benefits.

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Question: *Whether the Scottish Government considers it appropriate that instruments made under this power, insofar as they may affect the recovery of devolved benefits, will be subject to scrutiny in the UK Parliament only, whether it has raised this point with the UK Government, and what discussions, if any, it has had with the UK Government in this regard.*

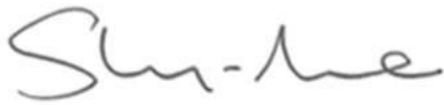
Response: As noted above, the UK Government has committed to amend the Bill to remove any impact upon devolved benefits. As a result, any instruments made under this power should not impact upon devolved benefits.

Other Bill Provisions

I note that the committee are content in principle with all other delegated powers within the Bill in principle.

I hope this information is helpful.

Yours sincerely,



SHIRLEY-ANNE SOMERVILLE

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9 June 2025

Dear Shirley-Anne,

Public Authorities (Fraud, Error and Recovery) Bill

Thank you for your letter on 4 June, setting out your intention to recommend that the Scottish Parliament should provide consent on the Information Gathering powers and withhold consent on the Debt Recovery Powers. I am grateful for the clarity on both these points.

As per my letter on 2 May, this will mean that DWP will not be able to continue to recover devolved debt on behalf of the Scottish Government under any new long-term agreement or further extensions to the current Agency Agreements due to end by Spring 2026. The Scottish Government will need to consider whether these debt records should be transferred for further action or the remaining debt balances be written off. I can also confirm that your assessment of the split in value of these debt records is correct, and that the devolved debt stock that will be transferred is currently around £35 million; with the overall debt value, including non-devolved debt not to be transferred, totalling £63 million. My officials will be in touch to discuss next steps.

Amendments to the Bill

Based on your response of 4th June, I will now seek to amend the Bill so that devolved benefits are removed from the scope of the debt recovery provisions (amendment to Clause 90, new section 80A, subsection (3)(b)), which will mean that Clauses 90 to 93 and Schedules 5 and 6 will not apply to the recovery of devolved debt.

However, this has raised an issue which I wanted to confirm your position on as a matter of urgency.

As per the Legislative Consent Motion tabled 21 March, a position was yet to be reached on consent in relation to the debt recovery clauses, including Clauses 94 to 95 of the Bill. These clauses have now been renumbered to Clauses 95 and 96 in the current version of the Bill, as introduced to the House of Lords ([Public Authorities \(Fraud, Error and Recovery\) Bill](#)).

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Clauses 95 and 96 apply to both the existing and the new debt recovery powers. I consider them to be straightforward, non-controversial provisions and given the nature of these clauses, I would ask that you confirm as a matter of urgency your position on consent for these two particular clauses as follows:

- Clause 95 replaces Section 71ZE(3) of the Social Security Administration 1992 Act with a new section 80F and broadens the cost recovery regime so that “any costs” reasonably incurred in relation to debt recovery (i.e. court costs and administrative costs) can be recovered (whereas, at present, the only express provision for reasonable costs is in Section 71ZE(3), which is limited to court costs for recovery of Universal Credit and new-style benefits only).
- Clause 96 contains general provisions to the effect that Part III of the Social Security Administration Act 1992, including powers of recovery, must be read in a way that is compatible with (and adheres to) relevant data protection legislation. This would apply equally to the powers exercised by Scottish Ministers under that Part.

I understand our officials are working at pace to discuss this, however, given the urgency, I wanted to raise it in parallel to ensure there is absolute clarity on your position with respect to these two clauses.

Additional assurance

Separately, you raised three specific points where you would be grateful for further assurance:

1. Extending the scope of the Eligibility Verification Measure (EVM) to include devolved benefits.
2. Confirmation that the UK Government will not seek to use the non-benefit payment provisions for any devolved payments.
3. Confirmation that the UK Government will not seek to use new information gathering and search and seizure for any devolved payments (with the exception of benefit administered on behalf of Scottish Ministers under agency agreements).

I can confirm that there is no intention to extend the list of benefits that EVM can be applied to, to capture any of the Scottish Government’s devolved benefits and payments. I can also confirm that the UK Government will not seek to use the non-benefit payment administrative penalty provisions for devolved benefits and will not seek to use the new Information Gathering or Search and Seizure powers for any the Scottish Government’s devolved payments (unless DWP is administering those matters under Agency Agreements).

I would be grateful if you could confirm your position by **13 June** with respect to Clauses 95 and 96 and, subject to that position, that you will recommend Scottish Parliament consents to the Bill once amended with respect to the Information Gathering and Debt clauses.

Yours sincerely,

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Andrew Western, MP

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