

Supplementary Legislative Consent Memorandum

Public Authorities (Fraud, Error and Recovery) Bill

Background

1. This memorandum has been lodged by Shirley-Anne Somerville MSP, Cabinet Secretary for Social Justice, in accordance with Rule 9B.3.1(c) 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](#).
3. The Scottish Parliament previously agreed on 25 June 2025 to consent to clauses 72, 73, 74, 75, 77 to 81, 83 to 87 and 98, and schedules 3-4 of the Bill. These provisions covered:
 - Entry, search, and seizure to support fraud investigations;
 - Data gathering for purposes of investigating suspected fraud;
 - Eligibility verification through data from financial institutions; and
 - Changes to administrative penalties.
4. Information on the original legislative consent memorandum (LCM) and its passage through Parliament can be found at: [Public Authorities \(Fraud, Error and Recovery\) Bill | Scottish Parliament Website](#).
5. The Scottish Government now considers that amended clauses 78 and schedule 4 in relation to search and seizure, and clauses 90, 98 and 99 (which were clauses 88, 96 and 97, respectively, in the Bill as introduced) in relation to non-benefit payments apply to Scotland for a purpose within the legislative competence of the Scottish Parliament, and therefore also require to be considered for legislative consent.

Content of the Bill

6. The overarching policy objective of the Public Authorities (Fraud, Error and Recovery) Bill is to safeguard the public finances against fraud and error. Part 1 of the Bill is intended to help the UK Government address losses due to fraud and error occurring outside the tax and benefits systems. Part 2 introduces new powers to help the Department for Work and Pensions (DWP) to address fraud and error in the social security system, and to recover overpayment debt.

7. 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; and
- Changes to administrative penalties.

8. The provisions include information gathering powers to support investigation into fraud, from which certain bodies will be exempt, i.e. third sector advice, and advocacy services.

9. 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 previous UK administration's Data Protection and Digital Information Bill, for which legislative consent was agreed in the Scottish Parliament, but which fell due to the UK General Election in 2024.

10. The provisions in relation to overpayment recovery will provide DWP with new options for enforcing recovery of overpayments when other routes of recovery have failed, including recovering directly 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.

11. 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 offences. Currently, it is the police who would obtain such a warrant. The DWP have emphasised that these provisions are focused on tackling more sophisticated forms of fraud, in particular threats from organised crime groups.

12. 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 benefit for a period of four weeks. This Bill will remove the loss of benefit as a measure to reduce hardship.

13. One of the amendments tabled on 3 October 2025 amends the existing provisions in relation to the recovery of overpayments at clause 91 (clause 89 as introduced). The effect of the amendment is to prevent the new methods of recovery from being available in relation to a recoverable amount or a penalty relating to a devolved benefit, i.e. remove devolved assistance from the scope of the provisions.

This amendment means that those provisions now do not require to be included within the motion on legislative consent.

Provisions which require the consent of the Scottish Parliament

14. Scottish Government analysis has indicated that amended clauses 78 and schedule 4 in relation to search and seizure, and clauses 90, 98 and 99 (which were clauses 88, 96 and 97, respectively, in the Bill as introduced) in relation to non-benefit payments, apply to Scotland for a purpose within the legislative competence of the Scottish Parliament.

15. The UK Government and the Scottish Government are in agreement that clause 78 and schedule 4 (relating to search and seizure) require legislative consent. This because these clauses have been amended in the Bill since the original legislative consent was given on 25 June.

16. At the time of the original LCM, no conclusion had been reached by the Scottish Government on the implications of the clauses relating to non-benefit payments for matters of devolved competence because officials were awaiting further information from DWP. The Scottish Government has now come to the view that the definition of “non-benefit payment” is wide enough to potentially include payments which are made for a devolved purpose, and accordingly could apply to Scotland for a purpose within the legislative competence of the Scottish Parliament.

17. The UK Government and the Scottish Government are in disagreement regarding whether the clauses relating to non-benefit payments (clauses 90, 98 and 99, which were clauses 88, 96 and 97, respectively, in the Bill as introduced) apply to Scotland for a purpose within the legislative competence of the Scottish Parliament, and therefore whether they require legislative consent.

18. Although the UK Government has confirmed there was no intention for these powers to apply or be used for any devolved payment, the Scottish Government is of the view that theoretically the provisions could apply where a payment was being paid by the relevant Secretary of State on behalf of Scottish Ministers.

Reasons for recommending legislative consent

19. The Scottish Government recommends that the Scottish Parliament consent to the relevant provisions in the Public Authorities (Fraud, Error, and Recovery) Bill, namely amended clause 78 and schedule 4 in relation to search and seizure, and clauses 90, 98 and 99 (which were clauses 88, 96 and 97, respectively, in the Bill as introduced) in relation to non-benefit payments.

20. The new amendments to the search and seizure provisions will allow for the preservation of evidence by a DWP-authorized person of criminality unrelated to the

purpose of the search. The amendments provide clarity on how the evidence must be handled and transferred to the most appropriate law enforcement agency.

21. These limited powers allow for this only if the relevant DWP authorised person assesses it as necessary to prevent, for example, evidence being lost, and to ensure steps can be taken that are proportionate to the situation in which a DWP authorised person may find themselves when uncovering unexpected criminality.

22. There is existing precedent for this approach. Immigration legislation similarly provides a power for immigration officers to seize evidence of non-immigration offences in order to ensure evidence is not lost and pass it to relevant law enforcement. As such, the approach in the Bill for DWP authorised persons is not breaking new ground for Scotland.

23. The Scottish Ministers are therefore content that it is appropriate to recommend consent to these provisions.

24. With regards to the provisions on non-benefit payments (clauses 90, 98 and 99 which were clauses 88, 96 and 97, respectively, in the Bill as introduced), the UK Government has confirmed that there is no intent to use these powers in relation to devolved payments.

25. In practice, the UK Government confirmed its position on 10 April 2025 that the provisions are not intended to interact with devolved functions and would relate to payments for which UK Government has responsibility. Any new primary legislation introducing devolved non-benefit payments that could fall within the scope of the power would itself be subject to an LCM process.

26. The Scottish Ministers are therefore content that any risk is theoretical and consider that it is appropriate to recommend consent to these provisions.

Relevant provisions that have now been amended, and no longer require legislative consent

27. In its original LCM lodged on 21 March 2025, the Scottish Government indicated that clauses 89-96 and schedule 5 of the Bill as introduced, in relation to the recovery of overpayments, triggered the legislative consent process in that they applied to Scotland for a purpose within the legislative competence of the Scottish Parliament.

28. However, the LCM noted that the Scottish Government had not at that time reached a position on consent in relation to clauses 89, 90, 91, 92, 94 and 95 and schedule 5 (as introduced), and that the provisions were subject to ongoing discussion with the DWP.

29. Further discussions between Scottish and UK government officials and ministers to discuss these provisions were not able to ensure that the powers were not applied to devolved debt accrued under Agency Agreement. The Cabinet Secretary for Social Justice remained concerned, and confirmed to the Scottish Parliament on 25 June that she did not consider it appropriate to recommend consent to these particular provisions.

30. The UK Government has therefore amended the Bill to remove devolved assistance from the scope of these provisions. As a result, legislative consent for the recovery of overpayment provisions is no longer required as the draft provisions no longer apply to Scotland for a purpose within the legislative competence of the Scottish Parliament.

Post-EU scrutiny

31. To the extent that the Bill's 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' (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 to be consistent with the Scottish Government's commitment to align with EU law.

Conclusion

32. As noted above, the Scottish Government considers that clauses 90, 98 and 99 and amended clause 78 and schedule 4 within the Bill in relation to non-benefit payments and search and seizure apply to Scotland for a purpose within the legislative competence of the Scottish Parliament.

33. While the Parliament has already provided consent to schedule 4 and clause 78, this provision has been subsequently amended to widen the scope of the power beyond what had been considered by the Scottish Parliament. Accordingly, the amended provision is included in this supplementary LCM.

34. In relation to clauses 90, 98 and 99, the Scottish Government had sought clarification from the UK Government in respect of the intended scope of these provisions. The Scottish Government is now of the view that these provisions should be included in this supplementary LCM.

35. The Scottish Government recommends that the Scottish Parliament consents to these provisions for the reasons outlined in this memorandum.

Draft motion on legislative consent

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

That the Parliament agrees that clauses 78, 90, 98 and 99, and schedule 4 of the Public Authorities (Fraud, Error and Recovery) Bill, introduced in the House of Commons on 22 January 2025, and subsequently amended, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.

Scottish Government
October 2025

This Supplementary Legislative Consent Memorandum relates to the Public Authorities (Fraud, Error and Recovery) Bill (UK legislation) and was lodged with the Scottish Parliament on 3 October 2025

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