The Scottish Parliament
Pàrlamaid na h-Alba

Delegated Powers and Law Reform Committee

Cabinet Secretary for Social Justice

Via email

4 June 2025

Dear Cabinet Secretary,

Public Authorities (Fraud, Error and Recovery) Bill LCM

The Committee considered the above LCM at its meeting of 3 June and agreed it would write to ask questions in relation to two delegated powers conferred on UK Ministers in the Bill which can be exercised within devolved competence. Those questions are below.

The Committee was otherwise content with other delegated powers in principle and the procedures attached.

Clause 74 and Schedule 3 – paragraph 19(2) of Schedule 3B of the Social Security Administration Act 1992 ("SSA Act"): power to alter the list of relevant benefits within the eligibility verification measure

The Bill provides that the eligibility verification measure can be used only in relation to three types of (reserved) benefit: Universal Credit, Pension Credit, and Employment Support Allowance. The power in paragraph 19(2) allows the Secretary of State, by regulations, to add certain other types of benefit to the list or to remove a type of benefit.

The types of benefit that can be added to the list include social security benefits made under specified social security legislation (other than the state pension) and which are administered by, or on behalf of, the Secretary of State.

It appears that this power could be used to bring devolved benefits which are administered by the Secretary of State within the scope of the eligibility verification measure, meaning that the powers to gather information from banks and associated offices could be applied in relation to these devolved benefits. This would be done by an instrument made under the negative procedure and laid in the UK Parliament (only), and without any requirement for the consent of the Scottish Government nor scrutiny by the Scottish Parliament.

The LCM does not mention whether it is anticipated that this power will be used to extend the provision to cover any devolved benefits.

As such, the Committee asks the Scottish Government:

(1) Whether it 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.

(2) 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.

(3) 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.

Clause 91 (numbered 90 at introduction) and Schedule 5 - paragraph 24 of Schedule 3ZA of the SSA Act: powers regarding recovery from a person's bank account

Clause 91 and Schedule 5 of the Bill insert a new Schedule 3ZA into the SSA Act. This schedule will be introduced by section 80B, in Part III (Overpayments etc) of the SSA Act. The new schedule enables debts owed to DWP to be recovered directly from a person's bank account. This would be done by DWP giving the bank a "direct deduction order", under which the bank must make one-off or regular deductions to repay the debt. The Explanatory Notes state that this power is broadly similar to the power to deduct payments for Child Maintenance.

Paragraph 24(1) of new Schedule 3ZA contains a regulation-making power for making "further provision about direct deduction orders".

The powers in paragraph 24 can be used, among other things, to make provision about:

- how notices and orders are to be given by and to the Secretary of State under new Schedule 3ZA. (Paragraph 24(2)(a) and (b))

- the calculation of amounts to be deducted, including:

  - for establishing whether deductions would cause a person to suffer hardship in meeting essential living expenses, which refers to the requirement in paragraph 6(1) that the Secretary of State may make a direct deduction only if satisfied that the terms of the order will not cause such hardship; and

  - amounts which are or are not to be taken into account in calculating the maximum allowable percentage of deductions per month for the purposes of paragraph 6(3). Under paragraph 6(3), the total amount of deductions to be made under a regular direct deduction order must not exceed 40% of the amounts credited to the account in one month. (Paragraph 24(2)(c))

- Setting a maximum percentage that is less than 40% for the purposes of paragraph 6(3) in some or all cases. (Paragraph 24(2)(d))

- Amending the amount of the penalty which the Secretary of State may impose on a bank which fails, without reasonable excuse, to comply with a requirement imposed by the schedule. Paragraph 20(1) fixes the amount at £500. The power may be used only to reflect a change in the value of money. (Paragraph 24(2)(e))

- The duties of banks in relation to direct deduction orders, including before an order is made. (Paragraph 24(2)(f))

- The costs which a bank may deduct from the person's account to meet the administrative costs reasonably incurred by the bank in carrying out the order, or may recover from the Secretary of State. (Paragraph 24(2)(g))

- The interaction between direct deduction orders under the new schedule and similar orders under any other legislation. (Paragraph 24(2)(h))

There are consultation requirements in relation to this power. Before making regulations under sub-paragraphs (a), (b), (f) or (g), the Secretary of State must consult persons who appear to the Secretary of State to represent the interests of banks, and such other persons (if any) as the Secretary of State considers appropriate.

Sub-paragraph (3) also provides that regulations under paragraph 24 may, among other things, apply the Schedule, as it applies to banks, to other types of financial institution. The Secretary of State is required to consult before making the first set of such regulations, or any subsequent regulations which impose new duties on banks or make changes to existing duties or provision which are more than minor. The persons to be consulted are those who appear to the Secretary of State to represent the interests of persons to whom provisions about direct deduction orders would be applied by the regulations, and such other persons (if any) as the Secretary of State considers appropriate.

The LCM states that the Scottish Government considers that these provisions require legislative consent because they will apply to the recovery of overpayments for debts accrued while benefits were delivered by the UK Government on behalf of the Scottish Government by agency agreement, giving the DWP new options for enforcing recovery where other routes of recovery have failed, including recovering direct from a person's bank account. It also states that the new powers can be used in respect of persons in receipt of devolved (legacy) benefits.

The LCM states that the Scottish Government has not yet decided whether to recommend that the Scottish Parliament gives legislative consent for this provision.

The Committee asks the Scottish Government:

(1) 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.

(2) 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.

(3) 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.

The Committee's agreed position in relation to powers exercised by UK Ministers within devolved competence has been that, in general:

a) The Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence.

b) Where such powers are exercised by the Secretary of State in devolved areas, there is no formal means by which the Scottish Parliament can scrutinise such regulations or be notified that they had been laid before the UK Parliament.

c) If such powers contain a requirement for the Scottish Ministers' consent when exercised within devolved competence, the Scottish Parliament can scrutinise the Scottish Ministers' consent decision.

   The Committee will scrutinise powers conferred on UK Ministers not subject to a requirement for Scottish Ministers' consent and may suggest matters for the lead committee to consider.

d) As a minimum, powers when exercised by the Secretary of State in devolved areas should be subject to the process set out in the SI Protocol 2 where the power is within the scope of that protocol.

The Committee requests a response to this letter by **Monday, 9 June 2025**. We are copying this letter to the lead committee for the LCM, the Social Justice and Social Security Committee, and ask that you also copy them into your reply.

Yours sincerely,

Stuart

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Convener of the Delegated Powers and Law Reform Committee

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We welcome calls through Relay UK and in BSL through Contact Scotland BSL.