

Social Justice and Social Security Committee  
Thursday 12 June 2025  
18th Meeting, 2025 (Session 6)

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

### Purpose

1. This paper invites the Committee to consider a Legislative Consent Memorandum (“LCM”), LCM-S6-55, lodged by the Scottish Government in relation to the Public Authorities (Fraud, Error and Recovery) Bill which is currently before the UK Parliament.
2. The Social Justice and Social Security Committee is the lead committee for the consideration of the policy content of the LCM. The Delegated Powers and Law Reform Committee is also considering the LCM, as the provisions that require legislative consent include delegated powers.
3. At this meeting, the Committee will take oral evidence from Shirley-Anne Somerville, Cabinet Secretary for Social Justice and Scottish Government officials.
4. The LCM has been lodged by the Cabinet Secretary for Social Justice under Rule 9B.3.1(a) of the Parliament’s Standing Orders.

### Background

5. The [Public Authorities \(Fraud, Error and Recovery\) Bill \(“the Bill”\)](#) was introduced by the UK Government in the House of Commons on 22 January 2025. It completed its House of Commons stages on 29 April and began committee stage in the House of Lords on 4 June.
6. The UK Government has set out that the Bill makes provisions to identify, prevent and deter fraud and error, and enable the recovery of debt, both in the public sector and in the benefits system.
7. A detailed description of the provisions of the Bill is available in the following briefing published by the House of Lords library: [Public Authorities \(Fraud, Error and Recovery\) Bill: Briefing for Lords stages](#).

## LCM-S6-55

8. The Bill contains provisions that apply to Scotland. The LCM states 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.
9. Clauses 88-95 and Schedule 5 relate to overpayment, debt recovery and enforcement. The Scottish Government has yet to set out its view on these provisions and has indicated that these provisions are subject to ongoing discussion and will be the subject of a supplementary legislative consent motion.
- 10. 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.**
11. Details of LCM-S6-55 and the provisions of the Bill for which the consent of the Scottish Parliament is required are set out in Annex A of this paper. The full details of the LCM can be accessed [here](#).
12. 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.

## Other committees' scrutiny

13. The Delegated Powers and Law Reform (DPLR) Committee considered the LCM at its meeting on 3 June. The Committee agreed to write to the Scottish Government. The letter can be accessed [here](#).
14. The DPLR Committee has requested further information on the following provisions, by Monday, 9 June:
  - whether the Scottish Government anticipates that devolved benefits would be brought into scope of the eligibility verification measures, and if so, what discussions have been had on this, and whether the Scottish Government is content with the lack of scrutiny by the Scottish Parliament of such decisions.
  - requesting further detail on how the provisions on overpayments might apply to devolved benefits, the input the Scottish Government would have to decisions

about how the new powers would be used and whether the Scottish Government is content that there is no Scottish Parliament scrutiny of regulations under these provisions in so far as they would affect devolved benefits.

## Timing

15. The lead committee on an LCM is normally expected to await the publication of the DPLR Committee's report prior to considering and reporting on an LCM, so that the DPLR Committee's views can be taken into consideration. At the time of writing this paper, the date when the DPLR Committee will publish its report is not known.
16. As noted above, the Scottish Government anticipates lodging a further LCM. Normally, where it is known that a further LCM is expected, it makes sense for the lead committee (and the DPLR Committee, if involved) to report just once on both memorandums. However, at present, the timescale for lodging of the supplementary LCM is not known.
17. As the Bill is currently at the committee stage in the House of Lords, which could make further progress on its consideration prior to Westminster breaking for summer recess on 22 July, it may be better for the Committee to consider and report on the current LCM ahead of recess. This would be on the understanding that a further report, at a later date, on the supplementary LCM may be required.
18. At today's meeting Members will be able to put questions to the Cabinet Secretary for Social Justice and Scottish Government officials.
19. The Committee will be invited to consider a draft report on the LCM at a future meeting.
20. The Committee will be invited to consider any supplementary LCM, once lodged.

## Next steps

- 21. The Committee is invited to put questions to the Cabinet Secretary for Social Justice and consider LCM-S6-55 at this meeting.**
- 22. The Committee will consider a draft report at a future meeting.**

**Clerks to the Committee**  
**June 2025**

# Annex A

## Provisions which require the consent of the Scottish Parliament

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.

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

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.

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.

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.

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.

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**

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).

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.

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.

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.

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.

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**

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**

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**

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**

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.

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

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.

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**

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