

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

Introduction

The Scottish Government is recommending consent for the Westminster Parliament to legislate on certain devolved aspects of this Bill. There are some provisions where the Scottish Government hasn't yet taken a view.

The Committee will hear from:

- Shirley-Anne Somerville, Cabinet Secretary for Social Justice
- Gemma MacAllister, Lawyer, Legal Directorate; and
- Simon Coote, Head of the Cross Cutting Policy Unit, Scottish Government

Background

The Public Authorities (Fraud, Error and Recovery) Bill was introduced 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.

Devolved aspects of the Bill

The [Legislative Consent Memorandum](#) (LCM) provides a description of the Bill and its devolved aspects. In brief, Part 2 of the Bill would extend powers of the Department of Work and Pensions (DWP) on fraud and error. 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.

The measures would only apply to devolved benefits delivered by DWP under agency agreement.

- Clauses 72 -75 and Schedule 3 give the DWP new and extended powers to gather information including by expanding the range of third parties the DWP can compel to provide information in support of criminal investigations. It also would allow DWP further powers to verify eligibility for certain benefits – including requesting large scale dataset from banks. As drafted these powers do not apply to devolved benefits, although there is a regulation making power

that would enable a government to extend these powers to additional benefits in future.

- Clauses 76-83 and 98 and Schedule 4: gives the DWP 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 on investigative powers, including provision for independent review of the exercise of functions.
- Clauses 98-95 and Schedule 5 give the DWP new powers to enforce recovery of overpayments, when other methods have failed. These include recovering directly from an individual's bank account and banning from driving for up to two years.

Debate on the Bill

A [House of Commons Library briefing](#) and a [House of Lords Library briefing](#) are available providing background on the policy debates relating to this Bill.

The level of fraud and error in DWP social security is higher than before the COVID-19 pandemic. This led to renewed government focus on the issue. The government estimated that new powers could save around £1.5 billion over the five years to 2029/30.

Two areas of debate are eligibility verification and overpayment recovery.

Eligibility verification: The [BBC has reported the banking industry](#) has concerns over the measures on eligibility verification. Policy in Practice – a social policy consultancy – described the eligibility verification powers as “potentially concerning”. Third sector organisations, such as [CPAG have also expressed concerns](#) about these measures (See their [report stage briefing](#)).

Overpayment, debt recovery and enforcement (clauses 88-95 and schedule 5) on which the Scottish Government has yet to set out its view. The UK Government states that the new powers on debt recovery and enforcement will bring the DWP more closely into line with other areas of government, including HMRC and the Child Maintenance Service, which it says are able to recover debts more fairly and effectively across different cohorts. UK Finance – a banking and finance industry body – is reported to have [told the BBC](#) it is concerned the powers to recover overpayments directly from bank account could create risks for vulnerable customers, or conflict with financial institutions' existing regulatory and legal obligations.

CPAG say that:

- Direct deduction orders do not come with sufficient safeguards, meaning more risk of hardship and unfairness for families
- Driving licence disqualifications are disproportionate and carry the risk of unfairness for claimants

The SNP at Westminster oppose the measures on benefit fraud and error. The [House of Lords Library Briefing](#) notes that:

“The SNP chief whip, Kirsty Blackman, set out her party’s opposition to the bill, stating they had “significant problems” with it. These concerns principally related to the provisions in the bill on benefit fraud and error. For example, she criticised the potential impact of the provisions on vulnerable people, the levels of surveillance and the proposals to remove driving licences.”

Scottish Government position

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.

Agency Agreements

The devolved aspects of the Bill will apply to those devolved benefits delivered under Agency Agreement with the DWP. When disability and carer benefits were devolved in April 2020, the Scottish Government set up Agency Agreements for DWP to continue to administer benefits of the Scottish Government’s behalf until Social Security Scotland equivalent benefits had been created and everyone had been transferred across from DWP to Social Security Scotland. The initial Agency Agreements were for three years and have since been extended to April 2026.

The Scottish Government expects to complete case transfer by the end of this year with two exceptions:

- [Severe Disablement Allowance](#)
- [Industrial Injuries Benefits](#)

If the Bill comes into force after the end of this year, it is only these two devolved benefits that its provisions will apply to.

Severe Disablement Allowance was closed to new applicants in 2001. The Scottish Fiscal Commission forecast that caseload will fall from 750 to around 330 people by 2030. A [Scottish Government policy paper in 2019](#) set out that SDA would remain with DWP under Agency Agreement on a permanent basis, saying:

The Scottish Government believe that there is no benefit in transferring SDA, because:

- there will be no new claims for SDA;
- there is a small and declining caseload for SDA;
- the Scottish Government is not proposing to make changes to the benefit and this proposal is largely supported by stakeholders and individuals;

- the interaction with the State Pension could cause unnecessary confusion for clients and;
- transferring the benefit may cause unnecessary disruption to some SDA clients.

Industrial injuries benefits are devolved benefits administered by the DWP and are expected to be replaced at some point by Employment Injury Assistance administered by Social Security Scotland. The timetable for this has been delayed as ideas for reform are developed. In December 2024, the Scottish Government said that EIA would not be delivered in this parliament. In [December 2024](#), the Scottish Government announced that a Steering Group would consider what a fully reformed and modernised Employment Injury Assistance would look like. There are currently around 23,000 people in Scotland in receipt of industrial injuries benefits.

DPLR Committee Consideration

The Delegated Powers and Law Reform Committee wrote to the Scottish Government asking for reply by 9 June on:

- 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 Scottish Parliamentary scrutiny of such decisions.
- requesting further detail on how 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.

Themes for discussion

Members may wish to discuss:

- 1. Legislative consent is needed because the Scottish Government is continuing agency agreements for Severe Disablement Allowance and Industrial Injuries Disablement Benefits. Do the powers sought in this Bill give more urgency to the timescale for developing Employment Injury Assistance or change the balance of argument for leaving SDA under permanent Agency Agreement?**
- 2. Does the Scottish Government expect case transfer for all other 'Agency Agreement' benefits to be completed before the Bill comes into force?**
- 3. Can the Cabinet Secretary update the Committee on whether there will be a further legislative consent memorandum in relation to the Bill provisions on overpayments?**

- 4. The DPLR Committee asked about the involvement of the Scottish Government in decisions about how the measures in the Bill would be applied to devolved benefits. The relevant benefits are subject to Agency Agreement. To what extent is Scottish Government and Scottish Parliament decision making limited by the existence of Agency Agreements?**

**Camilla Kidner,
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Date: 05/06/2025**

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