

LEGISLATIVE CONSENT MEMORANDUM

THE PUBLIC AUTHORITIES (FRAUD, ERROR AND RECOVERY) BILL

1. This legislative consent memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales that has regard to devolved matters.
2. The Public Authorities (Fraud, Error and Recovery) Bill (“the Bill”) was introduced in the House of Commons on 22 January 2025. The Bill can be found at: [Public Authorities \(Fraud, Error and Recovery\) Bill](#)

Policy Objectives

3. The Public Authorities (Fraud, Error and Recovery) Bill is a cross-government initiative sponsored by the Cabinet Office’s Public Sector Fraud Authority (PSFA) in Part 1 of the Bill and by the Department for Work and Pensions (DWP) in Part 2 of the Bill.
 - a. The PSFA (within the Cabinet Office) policy objectives are to prevent fraud against public authorities and the making of erroneous payments by public authorities and also the recovery of money paid by public authorities because of fraud and error.
 - b. The DWP policy objectives are to identify and address overpayments arising from fraud and/or error in the social security system and to improve DWP’s recovery of debt from those no longer receiving benefits or in Pay As You Earn (“PAYE”) earnings.

Summary of the Bill

4. The Bill makes provisions to better identify, prevent and deter public sector fraud and error, and enable the better recovery of money (debt) owed to the taxpayer where public money has been fraudulently obtained or overpaid.
5. The Bill includes safeguards, reporting mechanisms and oversight provisions to ensure the appropriate, proportionate and effective use of the powers. The Bill also makes provision for the oversight of investigations conducted by both DWP and PSFA to ensure these are conducted in line with guidance and any relevant codes of practice.
6. The Bill contains:
 - a. measures to provide the PSFA Enforcement Unit with powers to investigate and address fraud against public sector bodies (Part 1);
 - b. measures to support DWP in identifying more incorrect payments to reduce fraud and error and improve the recovery of debt (Part 2);
 - c. general provisions (Part 3).

Summary of the Bill in relation to the PSFA

7. Part 1 of this Bill provides powers for the Minister for the Cabinet Office (“the Minister”) (in practice exercised via the PSFA) to tackle fraud against the public sector and introduces arrangements for the oversight of these powers to drive their effective use and ensure they are not misused. The Cabinet Office will use these powers on behalf of other departments and public bodies. This will result in more money being recovered, more robust action being taken against those who commit fraud against the public sector and an increased deterrent to potential fraudsters.

8. The measures in Part 1 of the Bill will:

- a. Provide for the PSFA becoming a statutory body and the ability for the Minister to transfer functions in the Bill (as per the powers below) to be exercised by the PSFA.
- b. Give Authorised Officers (“AOs”) within PSFA information sharing and gathering powers. This includes: a power to compel the production of information from information holders; issue a financial civil penalty for failure to comply with the request for information; and receive, disseminate, and share criminal offence data between government departments.
- c. Give Authorised Investigators (“AIs”) powers to apply to a court for: search warrants and production orders and powers to seize and retain evidence, such as documents and electronic devices; enter premises with a warrant issued by a court; and search for and seize evidence and deal with the evidential chain thereafter.
- d. Enable the Minister to recover a recoverable loss identified through PSFA investigation. For these purposes a recoverable loss is identified as:
 - i. a payment made because of fraud or error that the Minister has identified or confirmed during an investigation in respect of suspected fraud against a public authority, which a public authority is entitled to recover; or
 - ii. any other amount a public authority is entitled to recover in respect of fraud.

The Minister can exercise the recovery powers to recover a recoverable amount either with the consent of the liable person or following a judgment in the Minister’s favour. The Minister may also use the recovery powers to recover a civil penalty under Chapter 5 but only once the time for appealing the penalty has passed without an appeal being brought or where an appeal against a penalty has been finally determined.

- e. The recovery powers include the ability to recover such an amount directly from an individual’s earnings, via a Deduction from Earnings Order, and directly from bank accounts via Lump Sum Direct Deduction Orders (“LSDDOs”) for specified amounts and Regular Direct Deduction Orders (“RDDOs”) for regular deductions.

- f. Introduce a framework of civil penalties for fraud which the PSFA can impose as an alternative mechanism to dealing with fraud cases via criminal prosecution.
- g. Create a new oversight function for use of the powers in the Bill to help build trust in Government and to ensure the correct and appropriate use of the powers.

Summary of the Bill in relation to the DWP

- 9. Part 2 of the Bill makes provision for new powers for DWP to identify and address overpayments arising from fraud and/or error in the social security system. It will also make provision to improve DWP's recovery of debt from those no longer receiving benefits or in Pay As You Earn ("PAYE") earnings. Part 2 of the Bill makes provision to:
 - a. Introduce reforms to existing investigation powers DWP routinely uses. This includes reforms to compel information from all third-party information holders (subject to exemptions) in support of criminal investigations, creating a clear, single, legal framework. The Bill brings any DWP related payment (including grants or National Insurance number related fraud), not just benefit payments, into scope of a criminal investigation. It also makes provision to allow DWP to make and receive requests via a digital portal.
 - b. Require banks and other financial institutions to examine their own data sets to help identify where incorrect benefit payments may be being paid to help establish if eligibility rules are not being met, through the new Eligibility Verification Measure ("EVM"). The Bill makes provision for important safeguards on these powers, including the requirement to consult on and publish a statutory Code of Practice as well as a duty for the Secretary of State to appoint an independent person to provide oversee the use of the powers.
 - c. Provide new powers to DWP's serious and organised fraud investigators when investigating serious and organised crime. These powers make provision for trained and authorised investigators to: apply to a court for warrants of search and seizure and obtain production orders; enter and search premises with a warrant and to seize evidence; use reasonable force, if necessary, in the exercise of such powers; and make an application to the court to deal with seized evidence appropriately.
 - d. Broaden existing debt recovery powers to enable the recovery of debt more effectively and fairly from those who are not in receipt of benefit or PAYE earnings who can, but currently do not, make repayments. This brings DWP's debt recovery powers more in line with those of HMRC 4 and the Child Maintenance Service. The Bill makes provision for debt recovery directly from bank accounts through RDDOs and LSDDOs without a court order. It also makes provision to disqualify a person from holding a driving licence, subject to court approval and where the liable person's licence is not essential to their ability to earn a living or where suspension of a driving licence would not be appropriate.

- e. Change to the Administrative Penalty (“Ad Pen”) regime so it can be offered for a wider range of DWP payments, not just benefit payments, and removal of the loss of benefit when an Ad Pen is accepted by a benefit claimant.
- f. Provide for DWP to appoint an “independent person” to carry out reviews of the functions under sections 109A-G of the Social Security Administration Act 1992, which is amended by this Bill.

Provisions in the Bill for which consent is required

10. I consider the Senedd’s consent is required in relation to the clauses identified below in so far as they make provision with regard to devolved matters.

Clauses 1 and 2:

Clauses 1 and 2 provides for the Minister to investigate, recover and enforce in connection with fraud and support public authorities (including Devolved Welsh Authorities (DWAs)) in relation to fraud against, or errors by, those public authorities (the core functions).

The Minister may exercise the power to provide support at any time but can only exercise the other powers when requested to do so by the relevant public authority on their behalf.

Clause 5

Clause 5 provides public authorities (including DWAs) with a power to share information with the Minister to assist their exercise of the core functions.

Clause 6

Clause 6 enables Senior Executive Officers (or an official of a higher grade) to apply to the Investigatory Powers Commissioner for authorisation to obtain communications data in the course of a criminal investigation conducted in the exercise of the core functions in clause 1 of the Bill. Such an investigation could be conducted to recover money for a DWA.

Clauses 7, 9 and Schedule 1:

Clause 7 and Schedule 1 confer on the Minister various powers contained in the Police and Criminal Evidence Act 1984, including powers of search and seizure, for the purposes of conducting an investigation into suspected fraud as part of the core functions. These powers could be used to recover money owed to a DWA.

Clause 10:

Clause 10 confers on public authorities, including DWAs, the power to agree the Minister retains some, or all, of the money recovered on that authority's behalf.

Clauses 64 and 65:

Clauses 64 and 65 provide for the independent review of the Minister's exercise of functions under Part 1 of the Bill. Many of those functions are exercisable in relation to public authorities (including DWAs) and some are closely related to functions of public authorities under Part 1.

Clause 67

Clause 67 makes provision in relation to information sharing which supplements any clause in Part 1 of the Bill which relates to the disclosure of information, including clause 5 (see above).

Clause 69 and Schedule 2:

Clause 69 and Schedule 2 put the PSFA on a statutory footing and provide for transfer to the PSFA of the Minister's functions under the Bill. As set out above, some of those functions (particularly the core functions) are exercisable in relation to DWAs.

UK Government view on the need for consent

11. The UK Government identifies clauses 1, 2, 7 (and Schedule 1), 9, 64, 65 and 69 and Schedule 2 as requiring an LCM.
12. However, there is a difference in position in relation to the need for consent for clauses 5, 6 and 67. In my view, these clauses make provision in relation to Wales that have regard to devolved matters, as detailed in paragraph 10 above. As a result, in accordance with Standing Order 29, Senedd consent is required.

Reasons for making these provisions for Wales in The Public Authorities (Fraud, Error and Recovery) Bill

13. The Welsh Government supports the Public Authorities (Fraud, Error and Recovery) Bill. The provisions in the Bill are consistent with the Welsh Government's focus on the protection of public funds from losses of all types. The Bill contributes to a range of Wellbeing and Future Generations Act goals by supporting:
 - A prosperous Wales - helping to safeguard public funds and public bodies in Wales from fraud, error and recovery.
 - Protecting public funds - to ensure current and future generations benefit from public services those funds support to provide a good quality of life in safer communities.

- Supporting each of the public bodies covered by the Act - from central government to Local Authorities and Health bodies - in the prevention of fraud and recovery of funds from fraud and/or error.
14. The 2022-24 UKG Fraud Strategy states fraud is by far the most common crime and now accounts for over 40% of UK crime, as reported by the National Crime Agency. Even so, this is considered an under-reported crime. A UKG PAC Report in 2023 stated that, while fraud made up 41% of all crime in the year to June 2022, only around 1% of police personnel were dedicated to addressing fraud (Forty-Third Report of Session 2022-23). The Crime Survey of England and Wales estimates only 13% of cases are reported to Action Fraud. The PAC Report states less than 1% of cases received by Action Fraud result in a criminal justice outcome where an offender is charged or prosecuted for the crime.
 15. Public bodies are not immune from either fraud or error. Indeed, certain functions of public authorities can make them a target for coordinated fraudulent attack (particularly benefits, services and grant giving authorities). The PSFA estimates losses of between £33bn and £59bn in fraud and error in the public sector per year.
 16. The provision of powers to the PSFA to investigate, recover, enforce in connection with fraud, and support public authorities in relation to fraud against, or errors by, those public authorities is a welcome addition given the limited capacity of Police forces in Wales to address these issues and recover public funds. The provision of powers is advantageous to DWAs as this offers a pragmatic, valuable and cost-effective opportunity to strengthen responses to fraud and error and, thereby, better safeguard Welsh public funds through more effective recovery.
 17. The Bill relates to both devolved matters and reserved matters (most notably the detection, prevention and investigation of crime) and the UK Parliament route is therefore an appropriate way to achieve the desired outcomes most effectively in this area. Not supporting the proposed provisions would disadvantage and deny DWAs additional opportunities to recover public funds.

Financial implications

18. There are negligible financial implications for DWAs in relation to the provisions of the Bill for which consent is required because:
 - a. Funding for the core activities of the PSFA is the responsibility of the Minister; there is no required contribution from the Welsh Government.
 - b. There will be a financial impact on DWAs only to the extent they may agree the Minister may retain a portion of any funds recovered. It will be DWAs to determine what is a proportionate amount to allow the Minister to retain, which offers value for money in terms of the cost of recovery.

Conclusion

In my view, it is appropriate to deal with the provision in this UK Bill. The legislation is consistent with the Welsh Government's focus on safeguarding public funds from fraud and error. Therefore, I recommend the Senedd supports the proposals and gives its consent.

Jane Hutt

Cabinet Secretary for Social Justice, Trefnydd and Chief Whip

February 2025