



Factsheet: Oversight, inspections and safeguards in the Public Authorities (Fraud, Error and Recovery) Bill

The Bill includes new and important safeguards, including new reporting mechanisms and independent oversight on the face of the Bill to provide assurance the new powers are used proportionately and effectively.

PSFA Measures

The Bill provides the Cabinet Office with new powers to investigate public sector fraud outside of tax and social security on behalf of other departments and public bodies.

In support of this, the PSFA will commission His Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS), an established independent body, to inspect the use of the new investigative powers listed below which can include the end-to-end investigative process. In addition, the PSFA will also create a new Independent Chair, to whom a new internal oversight team within PSFA will report. These bodies will carry out reviews and report on whether the use of the powers is in keeping with the legislation, codes of practice and relevant guidance, as well as being effective. Ministers will publish these reports and lay them in Parliament.

Information Gathering and Sharing Powers

The Bill gives Authorised Officers in the Cabinet Office information gathering and sharing powers. The information gathering powers enable the PSFA to compel individuals and organisations to provide information for the purposes of a fraud investigation. The information sharing powers also enable other public authorities to be able to share information with the PSFA, and for the PSFA to share information with any other person, where it is for the purpose of investigating or preventing fraud against public authorities, or for the purpose of taking enforcement action in connection with fraud against public authorities.

The Bill also allows the PSFA to collect communications data during investigations into allegations of fraud by amending the Investigatory Powers Act (2016). This is an essential tool for investigations and is used routinely by organisations such as the Police, HMRC and DWP as evidence in suspected fraud offence cases.

The following safeguards apply to these measures:

- **Exemptions** - Information that is legally privileged or could lead to self-incrimination of the subject of the request, or their spouse or civil partner, is exempt from this obligation.

- **Internal review** - A person can request a review of PSFA's decision to issue an information notice. The PSFA can then either revoke, vary or uphold the notice in line with the outcome of that review.
- **Reviews and appeals against penalties for non-compliance** - Should the decision be taken to apply a penalty for failing to comply with an information notice, a letter of intent will be issued offering the information holder 28 days to make representations against the decision. If, after the representation stage, a decision to apply the penalty is upheld, a penalty decision notice is issued. This allows the information holder a further 28 days to request a review of that penalty decision notice. In the instances where the decision is made to uphold the penalty decision notice, the information holder will be informed and have 28 days to appeal to the appropriate court.
- **Restricted use of Information Sharing Powers** - restricts the use of this disclosed information by the Minister strictly for the purpose of exercising those core functions and imposes conditions on any third-party recipient of the information, stipulating that information must only be used for its intended purpose and cannot be further disclosed without the Minister's consent.
- **Investigatory Powers Act** - The PSFA will also be required to follow the rules and regulations contained in the Investigatory Powers Act 2016 when processing any communication data in criminal investigations, which includes all requests for the collection of communications data to be authorised by the Investigatory Powers Commissioner's Office (IPCO). Any incorrect use can be reported to the investigatory Powers Commissioner's Office, who will also carry out inspections of the use of the powers.
- **Code of Practice** - PSFA's Code of Practice for Civil Penalties, will cover penalties for non-compliance, and will be consulted on before being laid before Parliament.

Entry, Search and Seizure Powers

The Bill gives Authorised Investigators in the Cabinet Office the power to apply, under the Police and Criminal Evidence Act 1984 (PACE) for court mandated search warrants and orders, enter premises with a warrant, and search for and seize evidence, as well as deal with the evidential chain thereafter.

The following safeguards apply to these measures:

- **Professional training** - Authorised Investigators will be trained to industry standards to carry out these activities. Only once an Authorised Investigator is fully trained will they be allowed to execute these powers.
- **Grade** - To use these measures a PSFA Authorised Investigator must be a PSFA official, and their grade must be equivalent to, or higher than, that of a Higher Executive Officer.
- **Authorisation of warrants** - All applications for warrants and orders need to be authorised by the courts. Only when these have been granted can PSFA's Authorised Investigators act.
- **PACE Code of Practice** - PSFA's Authorised Investigators exercising Search and Seizure powers will need to comply with the Home Office's PACE Code of Practice B (England and Wales) which governs the exercise of statutory powers of entry, search and seizure for the

Police. This provides a robust safety net to ensure the application of any PACE powers is necessary, proportionate and justified in the circumstances.

- **Independent serious complaints process** - The Independent Office for Police Conduct (IOPC) will investigate the most serious complaints into PSFA's use of Entry, Search and Seizure powers.

Debt Recovery Powers

The Bill will allow the PSFA to recover public money that has been obtained through fraud or error on behalf of other public bodies following an investigation by the PSFA into suspected fraud. The PSFA can recover public money from those who can afford to pay but who refuse to do so, by recovering debt from a person's bank account via Direct Deduction Orders (DDOs), or from earnings via Deduction from Earnings Orders. Deduction orders will only be applied by Authorised Officers after efforts to agree voluntary repayment with the debtor have failed.

The following safeguards apply to these measures:

- **Debt established via a court** - Where the debtor disagrees that an amount is recoverable, PSFA will need to bring a claim through the courts in the first instance to determine that the amount is recoverable before exercising the recovery powers.
- **Affordability checks** - Affordability and vulnerability checks will be carried out before any deductions are made. This is to ensure that deductions are affordable and will not cause undue hardship in meeting essential living expenses to the debtor, those in their household or those financially dependent on them. The Bill limits the total amount of deductions that can be made under a regular direct deduction order to protect debtors from excessive deductions.
- **Rights to representations, reviews and appeals** - Debtors will be informed of the proposed deductions before any recovery action takes place and will be invited to make representations to the PSFA before any deduction is made. They can request a review of a deduction order and following a review, if a deduction order is upheld, the debtor will also have the right to appeal to the First-tier Tribunal.
- **Rights to request variation** - During the lifetime of a deduction order, the debtor (and where relevant a joint account holder) has the right to apply for the order to be varied. This is to ensure that where the person's financial circumstances change, the PSFA can make the relevant changes where necessary.

Civil Penalties Powers

This will provide the PSFA with the ability to issue a Civil Penalty Notice as an alternative route to a criminal prosecution when public sector fraud has occurred and for non-compliance with certain requirements in the Bill.

The following safeguards apply to these measures:

- **Representation** - A notice of intent will include the proposed amount owed and how to make representations to PSFA.
- **Internal review** - Once a penalty decision notice is finalised, individuals and businesses will be informed of the amount owed and information on how to request an internal review by PSFA. Recipients have 28 days to request a review of the decision to issue the penalty decision notice.
- **Appeal** - Following an internal review of the penalty decision notice a person can also appeal to the appropriate court who will then either vary, uphold, or revoke a penalty notice.
- **Code of Practice** - Ahead of the powers being used, the PSFA will publish a code of practice setting out how penalties will be determined and administered, including the circumstances in which discounts will be applied. This Code of Practice will be laid before Parliament.
- **A person cannot be penalised twice** - The Bill prohibits issuing a penalty notice if a person has been found guilty of an offence related to the same act or omission. It also prevents a person from being found guilty of an offence if a penalty has already been paid in response to a penalty notice given in relation to the same act or omission.

DWP Measures

The Bill builds upon DWP's existing social security legislation to modernise and strengthen the Department's response to fraud and error in the social security system.

The new oversight and safeguards will build upon the significant measures already in-place across the Department as part of business-as-usual processes. This includes training and support for all DWP frontline operations staff to identify and support our most vulnerable customers, and Advanced Customer Support teams to support those with more complex requirements.

The Bill includes new independent oversight to provide further assurance. DWP will commission His Majesty's Inspectorate of Constabulary Fire & Rescue Services (HMICFRS) and His Majesty's Inspectorate of Constabulary in Scotland, to inspect the use of the new investigative powers which can include the end-to-end investigation process. These bodies will carry out reviews and report on whether the use of powers is in keeping with the legislation, codes of practice and relevant guidance, as well as being effective. Ministers will publish that report and lay it in Parliament.

Information Gathering Powers

The Bill modernises the DWPs approach to information gathering – aligning with those held by other government departments and to help prove or disprove a suspicion of fraud. It creates a single, legal framework compelling information from all information holders, unless exempted, and allows for requests and responses to be received digitally.

The following safeguards apply to this measure:

- **Exemptions** - Information that is legally privileged or could lead to self-incrimination of the subject of the request, or their spouse or civil partner, is exempt from this obligation. Further exemptions will also apply in relation to very sensitive information such as medical records, and information that could cause potential endangerment to the subject of those requests.
- **Non-compliance with an information notice** - For DWP information notices, if an information holder does not have, or cannot provide the information requested, they must provide an explanation to the department. If the explanation is reasonable, no further action will be taken. However, in cases where an information provider fails to comply with their obligations without good reason, DWP will consider prosecution as a last resort.
- **Investigatory Powers Act** - The DWP will continue to be required to follow the rules and regulations contained in the Investigatory Powers Act 2016 when processing any communication data, which includes all requests for the collection of communications data to be authorised by the Investigatory Powers Commissioner's Office (IPCO). Any incorrect use can be reported to the investigatory Powers Commissioner's Office, who will also carry out inspections of the use of the powers.

- **Code of Practice** - A new Code of Practice will be published which will be consulted upon before being laid in Parliament. This will govern DWP's updated information gathering powers and appropriate training will be provided for Authorised Officers who will be accredited to use them.
- **Digital Portal** - DWP will establish a digital portal for information holders to use to share information with DWP. The digital portal will make it simpler and safer for information providers to comply with their obligations. It will provide a route for making and receiving responses, allowing governance and audit of information notices issued.

Powers to require information for the purpose of verifying eligibility for benefits (Eligibility Verification Measure)

The Eligibility Verification Measure will help DWP to identify incorrect payments in the social security system sooner by requiring banks and financial institutions to examine their own datasets to highlight where someone may not be meeting the specific eligibility criteria of a benefit.

The following safeguards apply to this measure:

- **Independent Oversight** - There will be independent oversight and reporting of Eligibility Verification powers to Parliament. The Secretary of State will appoint an independent body or person, following an open selection process, to review and report annually on how the powers have been exercised in line with the legislation, the actions banks and other financial institutions have taken, and whether the power has been effective in identifying incorrect payments.
- **Code of Practice** - DWP must introduce and consult on a Code of Practice regarding Eligibility Verification Notices, and this will be laid before Parliament prior to the first Eligibility Verification Notice being issued.
- **Limitations on purpose** - An Eligibility Verification Notice may only be issued for the purpose of identifying or helping identify incorrect payments of relevant benefits.
- **Limited to certain organisations** - The power can only be used to request information from persons defined in primary legislation. In practice, this means banks and other financial institutions (as opposed to **any** third party).
- **Limited to certain benefits** - An Eligibility Verification Notice can only request information about accounts in receipt of the specified benefits set out in legislation. These are Universal Credit, Pension Credit and Employment and Support Allowance. If the Secretary of State wishes to expand the range of benefits covered, it will require a debate and approval by Parliament. This is except for the State Pension which is excluded from being added by the legislation.
- **Limitations on the types of data** - The legislation only allows banks and other financial institutions to share limited data and excludes the sharing of transaction data e.g. what someone has spent their money on or special category data e.g. data about an individual's health, ethnic origin or political opinion (although this does not prevent Banks and other financial institutions confirming that individuals are in receipt of the benefit specified in the notice, for example where this is a benefit relating to ill-health).

- **Relevant accounts** - This power can only be used on accounts which receive a relevant DWP benefit payment and accounts linked to that account.
- **Penalties for wrongdoing** - Banks and other financial institutions can be issued penalty notices for non-compliance with Eligibility Verification Notices. This includes if they fail to respond within the timeframe or if they share information that must not be shared under the measure (such as transaction information and special category data).
- **Review and appeals process** - Banks and other financial institutions will be able to request that DWP review an Eligibility Verification Notice or penalty and appeal any decision to the Tribunal, if needed.
- **Human intervention** - A human will always be involved in any further inquiries or investigations, and any decision taken afterwards which may affect benefit awards or eligibility, as they are now.
- **Data Protection** - Data will always be held securely and in compliance with UK GDPR and the Data Protection Act 2018 and used only for intended, limited purposes.
- **Test and Learn approach** - DWP will be gradually rolling out the use of the Eligibility Verification Measure in a test and learn environment to allow for sufficient time for business to establish best processes.

Entry, Search and Seizure Powers

The Bill gives Economic and Serious Organised Crime (ESOC) Authorised Investigators in DWP the power to apply, under the Police and Criminal Evidence Act 1984 (PACE), for court mandated search warrants and orders, enter premises with a warrant, and search for and seize evidence, as well as deal with the evidential chain thereafter. It also mirrors powers of entry, search and seizure for Scotland with some modifications to ensure the powers operate appropriately for the territorial extent.

The following safeguards apply to this measure:

- **Professional training** - Only once an Authorised Investigator is fully trained will they be allowed to exercise these powers.
- **Grade** - To use these measures a DWP Authorised Investigator must be a DWP government official, and their grade must be equivalent to, or higher than, that of a Higher Executive Officer.
- **Authorisation of warrants** - All applications for warrants and orders must relate to social security fraud offences and need to be authorised by the courts. Only when these have been granted can DWP's Authorised Investigators act.
- **PACE Code of Practice** - DWP's ESOC Authorised Investigators will be bound by PACE and PACE Code of Practice B 2023 (England and Wales) which governs the exercise of statutory powers of entry, search and seizure for the Police. This provides a robust safety net to ensure the application of any PACE powers is necessary, proportionate and justified in the circumstances.
- **Independent serious complaints procedure** - The Independent Office for Police Conduct (IOPC) will investigate the most serious complaints into DWP's use of Entry, Search and Seizure powers. In Scotland the Police Investigations and Review

Commissioner (PIRC) will carry out this function. DWP will handle less serious complaints and incidents using existing processes, including complaints made to them about matters unrelated to the exercise of these new powers.

- **DWP Serious Case Panel** - This can continue to consider serious issues arising from cases and other insight that affect the DWP customer experience. The panel makes recommendations to address issues to help reduce such cases in future.

Debt Recovery Powers

DWP is broadening its debt recovery and enforcement powers to more effectively pursue recovery from those no longer on benefits or in PAYE employment with other sources of income or capital, who repeatedly refuse to pay money owed. This will remove the disparity with DWP's ability to recover debt from those on benefits or on PAYE. Powers to recover debt from bank accounts through lump sum or regular deduction orders and to seek from the court temporary disqualification from holding a driving licence broadly mirror arrangements in the Child Maintenance Service (CMS) which have proved effective in debt recovery.

The following safeguards apply to this measure:

- **Last resort options** - DWP will only be able to use the new powers as a last resort where all other attempts to negotiate an affordable and sustainable repayment plan have not been successful and recovery by existing methods is not possible.
- **Affordability checks** - Affordability and vulnerability checks will be carried out before any deductions are made. This is to ensure that deductions are affordable and will not cause undue hardship in meeting essential living expenses to the debtor, those in their household or those financially dependent on them. The Bill limits the total amount of deductions that can be made under a regular direct deduction order to protect debtors from excessive deductions.
- **Rights to representations, reviews and appeals** - Debtors will be informed of the proposed deductions before any recovery action takes place and will be invited to make representations to DWP before any deduction is made. They also have the right to appeal to the First-Tier Tribunal.
- **Right to request variation** - During the lifetime of a deduction order, the debtor (and where relevant a joint account holder) has the right to apply for the order to be varied. This is to ensure that where the person's financial circumstances change, DWP can make the relevant changes where necessary.
- **Code of Practice** - DWP will consult on and publish a Code of Practice which will govern the application of these powers.
- **Disqualifications are assessed by a court** - For driving disqualification orders, the court decides whether to make the order and its terms. The individual has the right to make representations to the court, including about the repayment terms and whether they have an essential need for a licence. The individual has the ability to ask the court to vary the terms at a later stage. They could also appeal the court's decision, if there was an arguable error of law.

- **Independent complaints procedures** - An individual can also use well-established complaint procedures including the Independent Case Examiner and Parliamentary and Health Services Ombudsman.

Administrative Penalties

DWP is extending the types of payments an Administrative Penalty (Ad Pen) can be applied to, so they include non-social security payments, such as grants.

The following safeguards apply to this measure:

- **Criminal investigations** - The Ad Pen can only be offered after a criminal investigation has taken place and DWP has sufficient evidence to afford a realistic prospect of conviction. This includes pursuing all reasonable lines of enquiry to prove that fraud has occurred. In addition, the characteristics of claimants which might make them vulnerable, such as mental health difficulties, disabilities and other mitigating circumstances will always be factored in when deciding whether an Ad Pen should be offered.
- **Individual choice** - There is no obligation to accept an Ad Pen, the individual will always have the choice to accept or decline. If the claimant declines an Ad Pen, the case will be referred for prosecution and the claimant may challenge the prosecution (DWP) evidence before the courts.
- **Mandatory reconsideration and First Tier Tribunal** - Individuals can request a mandatory reconsideration of the overpayment decision. If they disagree with the overpayment decision following mandatory reconsideration, they can appeal to the First Tier Tribunal against the overpayment decision.