

Second Reading Briefing

Public Authorities (Fraud, Error and Recovery) Bill

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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Administrative Justice sub-committee welcomes the opportunity to consider and comment on the Public Authorities (Fraud, Error and Recover) Bill¹ (“the Bill”) ahead of the second reading in the House of Commons scheduled for 3 February 2025. The sub-committee has the following comments to put forward for consideration.

General Comments

The Bill contains provisions that relate to the prevention of fraud against public authorities and the making of erroneous payments by public authorities, about the recovery of money paid by public authorities as a result of fraud, error, and for connected purposes. The Bill extends to England and Wales, and Scotland.² It has 104 clauses and 6 schedules.

Part 1 of the Bill extends to England and Wales only. We have no comments on Part 1 of the Bill.

Part 2 of the Bill makes provision relevant to social security system. It includes provision for powers to require information; powers of entry, search and seizure etc; further provision relevant to investigatory powers; overpayments; and offences and penalties. Part 2 extends to Scotland.

Part 3 of the Bill contains general provisions. Part 3 applies to Scotland. We have restricted our comments to those Parts of the Bill which extend to Scotland. We note that the need for a legislative consent motion (LCM) is subject to further consideration and engagement with the Scottish Government.³

We note the overall purpose of the Bill is to prevent fraud against public authorities and to recover money paid by public authorities as a result of fraud and error. Whilst we are aware there are circumstances of abuse, we note that the total rate of benefit expenditure overpaid in FYE 2024 was 3.7%.⁴We would

¹ [Public Authorities \(Fraud, Error and Recovery\) Bill](#)

² Clause 102

³ Explanatory Notes, para 840. See [240167en.pdf](#)

⁴ [Fraud and error in the benefit system, Financial Year Ending \(FYE\) 2024 - GOV.UK](#)



therefore question whether the wide-ranging powers set out within the Bill are necessary to address issues in a small percentage of cases. We also anticipate that a number of cases will be a result of official error- figures for the FYE 2024 indicate that overpayments due to Claimant Error were at 0.6% and overpayments due to Official Error were at 0.3%

Many claimants who will be subject to the legislation, if enacted, may be vulnerable and many may have issues of language, literacy and disability including mental health. These groups may struggle to understand the complex processes provided for in the Bill. Should the Bill become law, we would suggest that claimants will require access to advice to explain the process, support through the process and representation. We question how this will be resourced, given limited resources within both the advice services and legal aid sectors.

Whilst we note the statement which accompanies the Bill regarding compliance with Convention Rights, and the content of the European Convention on Human Rights Memorandum,⁵ we would highlight that claimants must be afforded access to legal advice and legal aid in order to effectively exercise their Convention rights.

If the Bill were to progress, careful consideration must be given to ensuring that the Bill's drafting takes full account of Scotland's distinct legal system and the partial devolution of Social Security in Scotland. Consideration must also be given to the role of the Crown Office and Procurator Fiscal Service in Scotland.

⁵ [ECHR Memo.pdf](#)



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