

# **PUBLIC AUTHORITIES (FRAUD, ERROR AND RECOVERY) BILL**

## **EXPLANATORY NOTES**

### **What these notes do**

These Explanatory Notes relate to The Public Authorities (Fraud, Error and Recovery) Bill as introduced in the House of Commons on 22 January 2025 (Bill 167).

- These Explanatory Notes have been prepared by the Department for Work and Pensions in order to assist the reader of the Public Authorities (Fraud, Error and Recovery) Bill and to help inform debate on it. They do not form part of the Public Authorities (Fraud, Error and Recovery) Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

- 1 The Public Authorities (Fraud, Error and Recovery) Bill (“the Bill”) is intended to safeguard public money and protect the economic well-being of the country by reducing public sector fraud, error and debt. 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 stolen or overpaid.
- 2 The Bill introduces new powers to enable the Cabinet Office to investigate public sector fraud outside of tax and social security, using its expertise to act on behalf of other parts of government. The Bill also introduces new powers to improve the Department for Work and Pensions’ (“DWP”) ability to address fraud and error in the social security system.
- 3 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 the Cabinet Office and DWP to ensure these are carried out in line with guidance and any relevant codes of practice.
- 4 The Bill is estimated to deliver total benefits of £1.5 billion over the next five years.
- 5 The Bill is in three parts and contains six schedules:

Part	Summary
<b>Part 1: Functions exercisable on behalf of Public Authorities</b>	<p>This Part of the Bill includes provisions relating to the Cabinet Office, covering:</p> <ul style="list-style-type: none"> <li>• Investigatory powers (including an information gathering power and powers of entry, search and seizure)</li> <li>• Rights to recover (including a recoverable amount, a civil penalty and the Minister’s relevant costs)</li> <li>• Powers to recover (including a recoverable amount, a civil penalty and the Minister’s relevant costs)</li> <li>• Civil Penalties</li> <li>• General (including oversight)</li> </ul>
<b>Part 2: Social Security: Fraud, Error and Debt</b>	<p>This Part makes provision relating to the Social Security System, covering:</p> <ul style="list-style-type: none"> <li>• Powers to require information (including Eligibility Verification)</li> <li>• Powers of entry, search and seizure</li> <li>• Further provision relevant to investigatory</li> </ul>

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	<p>powers</p> <ul style="list-style-type: none"> <li>• Overpayments: recovery and enforcement</li> <li>• Offences and penalties</li> </ul>
<b>Part 3: General</b>	<p>This Part covers:</p> <ul style="list-style-type: none"> <li>• Application and limitation</li> <li>• Power to make consequential provision</li> <li>• Financial provision</li> <li>• Extent</li> <li>• Commencement</li> <li>• Short title</li> </ul>
<b>Schedules</b>	<ul style="list-style-type: none"> <li>• Schedule 1 – Fraud against public authorities: Police and Criminal Evidence Act 1984 powers etc</li> <li>• Schedule 2 – The Public Sector Fraud Authority</li> <li>• Schedule 3 – Eligibility verification etc</li> <li>• Schedule 4 – Benefits fraud: search and seizure powers etc</li> <li>• Schedule 5 – Recovery from bank accounts etc</li> <li>• Schedule 6 – Disqualification from driving</li> </ul>

## Policy background

- 6 Fraud against the public sector is a significant and constantly evolving challenge, with public sector losses estimated to be at least £55 billion per year in 2023-24. The Labour Party's manifesto outlined it will not tolerate fraud or waste anywhere in public services and this administration is committed to ensuring that every pound of taxpayers' money is spent responsibly and effectively.
- 7 The public sector response to fraud and error has historically focused on the areas with the highest known losses – generally these have been in tax and social security. This remains a priority. However, this focus has meant that some government departments have limited powers and resources to act on fraud and error. As a result, outside of tax and social security at least £3 billion is being lost to fraud and error per year.
- 8 Losses in the social security system stand at almost £10 billion a year, of which 75% is attributed to fraud. Whilst some of this fraud relates to serious and organised attacks on the welfare system, the

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majority (estimated to be up to 90%) is due to individual claimants. High levels of overpayments have created a significant stock of debt in the social security system, which stood at £9.4 billion in March 2024.

- 9 This Bill is intended to support the delivery of the Labour Party's manifesto commitment to safeguard public money and protect the economic wellbeing of the country. To achieve this, the Government's strategy to reduce fraud and error is twofold. First, to prevent and deter fraud and error from happening at the outset. Second, where it cannot be prevented, to detect, identify and stop those committing fraud and recover the debt owed.

## The Public Sector Fraud Authority (PSFA)

- 10 The PSFA, within the Cabinet Office, was launched in August 2022 to act as the UK government's Centre of Expertise for the management of fraud (and associated error) against the public sector. It is an integrated partnership between the Cabinet Office and His Majesty's Treasury ("HM Treasury") with a mandate to "support... ministerial departments and public bodies by seeking to provide services that will take cases of potential fraud against them, investigate and take action, including applying sanctions and recovering assets." The PSFA reports to the Minister for the Cabinet Office.
- 11 Part 1 of this Bill provides powers for the Cabinet Office 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 provisions in this part of the Bill will result in more money being recovered, more robust action being taken against those who attack the system, and an increased deterrent to potential fraudsters. The Cabinet Office intends to use these powers to undertake cases arising from those departments and other public authorities which do not have a well-resourced fraud response or similar powers of their own. As such, the Minister for the Cabinet Office cannot act at the request of the Secretary of State with responsibility for social security, or for His Majesty's Revenue and Customs ("HMRC") with reference to the powers in Part 1 to investigate fraud or recover amounts. This is because the intent of these measures is to be able take action outside the areas of government where most of the existing counter fraud resource is currently situated.
- 12 The Cabinet Office will implement a 'test and learn' approach when utilising these powers, piloting different approaches to find the best way to tackle public sector fraud. This means the measures in this Bill are expected to deliver an estimated benefit of over £50m in recovered money from public sector fraud over 10 years, with the potential to scale up this in the future.

## Cabinet Office: Investigatory powers

### **Information gathering and sharing powers**

- 13 The PSFA Enforcement Unit in the Cabinet Office currently has no investigative powers provided for in statute. It is therefore reliant on information being available from whomever referred the case i.e., another government department or public body.
- 14 To address this issue, the provisions in this Bill will give authorised officers within the PSFA in the Cabinet Office information sharing and information gathering powers. This includes a power to compel the production of information from information holders and issue a financial civil penalty for failure to comply with the request for information.

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- 15 The Bill makes provision to compel the production of information through an authorised officer issuing an ‘information notice’ to an individual. Amongst other things, the information notice will set out what information is required and the consequences of not complying with the information notice. Individuals will have at least ten working days starting the day after the notice is issued to respond to the request for information.
- 16 The Bill also enables 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, preventing or tackling fraud against public authorities, or for the purpose of taking enforcement action in connection with fraud against public authorities.
- 17 The powers provide for putting in place a robust appeals process, which includes an administrative review conducted by a higher grade official than the original investigator, outside of the original investigation section and management chain. If a financial penalty is issued for failure to comply with an information notice, there would also be the option to appeal the matter to the appropriate court, which would include the ability to challenge the lawfulness of the information notice, as well as the ability to challenge the financial penalty itself.

### **Communications data**

- 18 The Bill includes adding the Cabinet Office to Schedule 4 of the [Investigatory Powers Act 2016](#) (“IPA”) to give the Cabinet Office lawful authority to collect communications data which is an essential tool for investigations and routinely used as evidence. This will enable the Cabinet Office to acquire communications data when it is an absolute necessity to detect and investigate evidence of public sector fraud.

### **Powers of entry, search and seizure**

- 19 The Bill also contains provisions for powers of entry, search and seizure, which will give authorised investigators powers to apply to the Courts for search warrants and production orders. Authorised investigators will have powers to enter premises with a warrant issued by a court, search for and seize evidence (such as documents and electronic devices) and deal with the evidential chain thereafter. By enabling the PSFA to take on these time-intensive activities, this will reduce the burdens and reliance placed on the Police’s involvement in the PSFA’s criminal cases being investigated by authorised officers on behalf of the Minister.
- 20 The Bill does this by extending certain provisions of the Police and Criminal Evidence Act 1984 to investigations of fraud offences against public authorities carried out by authorised investigators. These officers’ functions will be similar to police officers, specifically for such investigations, with some modifications. The powers are the minimum necessary to secure evidence in criminal investigations and bring the PSFA in line with other government departments, including DWP under this Bill and HMRC.

### **Cabinet Office: Rights to recover**

- 21 The PSFA currently has limited civil powers to recover payments made by public authorities as a result of fraud or error. Whilst the PSFA has been granted certain [Proceeds of Crime Act 2002](#) (“POCA”) powers, these can generally only be used to recover assets in a confiscation investigation following a criminal investigation. Although the PSFA can apply to the Courts to freeze funds in bank accounts, it needs approval from the Crown Prosecution Service to make a civil claim for the

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recovery of assets obtained through unlawful conduct under POCA.

- 22 To address this, the Bill contains provisions for the Minister of the Cabinet Office to act on behalf of another public authority in relation to a recoverable amount (see below) by bringing or continuing proceedings in a court or tribunal for recovery and in exercising the recovery powers provided under this Bill.
- 23 The Bill sets out that a 'recoverable amount' is an amount of money that has been paid to a person as a result of fraud or error that: (a) the Minister has identified or confirmed during the course of an investigation into suspected fraud and the public authority is entitled to recover or (b) any amount that a public authority is entitled to recover in respect of fraud. A recoverable amount may also include any interest that may be claimed on that sum.
- 24 The Bill also sets out that the Minister may only act under this part on behalf of a public authority where the recoverable amount has been investigated by the Minister or the public authority's claim to the recoverable amount relates to fraud. Before the Minister is able to bring a claim for a recoverable amount they must first give a recovery notice setting out the Minister's intention to make a claim. The Minister may then only exercise the recovery powers under Chapter 3 of Part 1 of the Bill where the liable person agrees that the amount is recoverable or there has been a determination by a court or tribunal confirming that the Minister is entitled to recover the recoverable amount.
- 25 The Bill also confers powers on the Minister to recover a penalty imposed under Chapter 5, including any late payment interest due in respect of it and any relevant costs. The Minister may only exercise the recovery powers under Chapter 3 in relation to civil penalties where the time for appealing the penalty has passed or where an appeal against the penalty has been abandoned or finally determined.

## **Cabinet Office: Methods of recovery**

- 26 Where the Minister has a right to recover under Chapter 3, the Bill contains provisions to recover the recoverable amount, a civil penalty (including any interest) or the relevant costs. These powers will enable the Minister to seek recovery from an individual's earnings via a Deduction from Earnings Order and directly from bank accounts via Lump Sum Direct Deduction Orders for specified amounts or Regular Direct Deduction Orders for regular deductions, without having to make a separate application via the courts. These will be applied by the Minister after the right to recover the amount specified has been established under Chapter 4 and after ensuring there is sufficient capital for affordable deductions.
- 27 There are alternative routes to recover debts as part of a criminal investigation - the debt recovery powers in this Bill are related to civil investigations only.
- 28 This will bring the Cabinet Office's powers (exercisable by the PSFA) to recover recoverable amounts, civil penalties and relevant costs in line with the powers held by DWP, HMRC, the Child Maintenance Service, and some local authorities, with the aim of reducing the burden on civil and criminal justice systems.

## **Cabinet Office: Civil penalties**

- 29 Criminal investigations leading to prosecution are often resource-heavy, time-intensive and can

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place burdens on the courts. As the scale of public fraud increases, investigative bodies, including the PSFA's Enforcement Unit in the Cabinet Office, requires enforcement powers to act against and prevent fraudulent activity within the public sector.

- 30 Civil penalties offer an alternative to prosecution and help mitigate the burden on the criminal justice system by offering alternative routes for the public sector to manage fraud cases. The Bill introduces a framework of civil penalties for fraud that the Minister can impose, including on behalf of other government departments, serving as an important deterrent against fraud in the public sector.
- 31 The Minister will have the power to impose provided that on the balance of probabilities, the person has carried out, or conspired to carry out fraud in order to receive or help another person to receive a payment that is a recoverable amount, or the fraud has resulted in a loss to a public authority. The Minister will also have the power to impose penalties for non-compliance with certain requirements in the Bill. These requirements include obligations to provide information concerning investigatory powers and requirements related to the recovery of recoverable amounts.

### **Cabinet Office: Oversight**

- 32 The Bill makes provision to appoint an independent person to carry out reviews of the exercise of the Minister's functions under this part, to help build trust in government and ensure the correct and proper use of powers. This is in addition to both management oversight and provisions to enable the Independent Office for Police Conduct ("IOPC") to carry out the handling of the most serious of complaints in relation to activities when undertaken by a warrant. In addition to external existing oversight bodies, the Cabinet Office intends to create a new Independent Chair, to whom a new internal oversight team will report. In all cases oversight will sit independently to those using powers in the Bill and will be in addition to both management oversight and existing criminal powers oversight, with which the Cabinet Office will comply. Cabinet Office: Statutory Body Provision
- 33 Schedule 2 contains provision for the Minister to establish a statutory body called the Public Sector Fraud Authority – the name of which can be changed by way of regulations. This Schedule will be commenced following a review of the efficiency and impact of the use of powers given to the Minister for the Cabinet Office.

### **Fraud, Error and Debt in the Social Security System**

- 34 DWP's legislative framework requires modernisation to meet the challenges presented by the scale of fraud and error and to deliver the Government's strategy to reduce fraud, error and debt.
- 35 Part 2 of the Bill makes provision for new powers for DWP to reduce fraud, error and debt in the social security system.

### **DWP: Powers to require information**

- 36 This Bill contains provisions that will give DWP the powers to request information in two contexts: first, for the purpose of investigating suspected fraud, and second, for the purpose of verifying eligibility for benefit.

### **Requiring information to investigate suspected fraud through 'Information Notices'**

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- 37 Currently, DWP can request information from a limited number of third parties during investigations into suspected benefit fraud. This can only be done by ‘writing’ or by ‘visit’ with little ability to enforce an electronic response. This leaves the Department unable to compel evidence from a wide range of information holders and unable to compel evidence for investigations into fraud on wider payments made by DWP, such as grants. Furthermore, it often leaves the Department using outdated communication methods when conducting benefit fraud investigations. The nature of fraud has become more sophisticated, meaning that without reform DWP cannot properly keep pace with the changing nature of fraud and is not aligned with other government departments and public bodies in the way it gathers information to prove or disprove suspected fraud.
- 38 The provisions in this Bill create a single approach for gathering information from all information holders, unless exempted, and allow for requests and responses to be received digitally by default. The provisions also allow for these powers to be extended to any payment, credit, or grant, that is administered and investigated by DWP where fraud is suspected.

### **Requiring information to verify eligibility for benefits**

- 39 Benefit claimants have a responsibility to inform DWP of changes in their circumstances that may affect their eligibility for benefit or their level of entitlement. Where possible, DWP uses different sources of data to verify this information. For example, DWP uses income data from HMRC to verify information about employment and income that can affect benefit eligibility and entitlement. However, for some benefit eligibility criteria, such as rules around capital limits (savings) or time spent abroad, DWP is not able to independently verify that these criteria are being met. This means the Department is reliant on individuals self-reporting their circumstances accurately. This can result in overpayments for claimants that are recoverable if DWP later finds out these were not reported accurately. These overpayments also represent a loss to the taxpayer and add to the debt stock.
- 40 The National Audit Office’s (“NAO”) report An Overview of the impact of fraud and error on public funds for the new Parliament 2023-24, made clear that there are advantages to using data to tackle fraud and error and that DWP should better harness and use data to detect fraud and reduce error.
- 41 To better harness data, the Bill makes provision for DWP to require banks and financial institutions to provide information to help verify a claimant’s entitlements to benefits and identify incorrect payments. This will be done through the issuing of “Eligibility Verification Notices” by DWP, which will set out the specific information required from banks and financial institutions. To respond, banks and financial institutions will look at the data they hold on individual claimants against specific eligibility indicators outlined in the notices sent by DWP and highlight if these criteria have been met. The “eligibility indicators” in the notice are the criteria that can help DWP identify whether a specified benefit is/was being incorrectly paid in line with the rules for a benefit. For example, in Universal Credit, an individual cannot hold more than £16,000 in savings (capital) and remain eligible for Universal Credit, unless the capital is a result of a specified exception. DWP will then use the information received, along with other information held on the claimant, to determine whether further inquiry is needed.
- 42 These powers can be used with specific benefits, which are: Universal Credit, Pension Credit and Employment Support Allowance. Where an incorrect payment is found in one of the specified benefits, the power can be used to help find incorrect payments in any associated benefit, for example, if someone is ineligible for Pension Credit, they will also be ineligible for Housing Benefit

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passported from Pension Credit. The Bill makes provision for further benefits to be added; this is with the exception of the State Pension, which is excluded from these powers given its near universality.

- 43 This will help DWP to identify more incorrect payments sooner, meaning more claimants are paid accurately, more errors are found and resolved, individual debt is minimised, and potential fraud can be identified and investigated.
- 44 DWP can only ask banks and financial institutions to provide information on accounts they hold, into which the specified benefit is paid (or accounts linked to the account into which benefit is paid). Data can only be shared and used for the purpose of determining eligibility of benefits received into that account and any other linked accounts. Only limited information required will be shared by banks and financial institutions, and this will only be used by DWP to support further inquiry into a potential overpayment if needed.
- 45 The powers include important safeguards such as limitations on the purpose for which data can be collected and its use and provision for independent oversight. This will enable an independent person, to be appointed by the Secretary of State, to carry out reviews and report on DWP's use of the power in line with the legislation, code of practice and other relevant documents. This report must be published by the Secretary of State and laid in Parliament.
- 46 The powers will not give DWP direct access to any bank accounts, nor any transactional information such as information on how claimants spend their money. As is already the case, a human will always be involved in any further inquiries and any decision taken afterwards that might affect eligibility or benefit awards.

## **DWP: Powers of entry, search and seizure etc**

- 47 The Bill contains provisions to enable DWP investigators, once professionally trained to industry standards (including those set by the College of Policing), to apply to a court for warrants to enter, search for and seize items when investigating the most serious cases of economic and serious organised fraud.
- 48 At present, DWP leads on all aspects of fraud investigations until the Police undertake the entry, search of the premises, and seizure of any items that may support the investigation at DWP's request. As a result, DWP is reliant on the Police to secure entry to a premises and carry out the search and seizure activity in relation to DWP fraud investigations. Modernising these powers will align DWP with other government departments such as the Food Standards Agency, HMRC and the Gangmasters and Labour Abuse Authority, which have staff that are empowered to conduct search and seizures themselves. DWP will not take powers of arrest; DWP will continue to rely on the Police to carry out any arrests for suspected offences.
- 49 The Bill also makes provisions to obtain evidence through a court production order and for the retention and disposal of seized evidence. Independent inspection and a complaints provision are also included in the Bill.

## **DWP: Overpayments – recovery and enforcement**

- 50 At present where a debtor does not repay their debt voluntarily, DWP can only compel recovery of debts from individuals in receipt of benefits or from individuals enrolled in Pay As You Earn

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("PAYE") employment.

- 51 Where someone is no longer in receipt of benefit or in PAYE employment but has other income or capital, DWP is unable to recover the debt without court action if the debtor refuses to pay voluntarily. This means that some individuals who can pay deliberately choose not to. This creates an inequity in the approach to DWP debt recovery and results in losses to the taxpayer. This measure will bring greater fairness to the recovery of debt.
- 52 This Bill makes provision for the recovery of these debts and provision for new enforcement powers that are broadly similar to those held by the Child Maintenance Service. These powers will improve fairness in DWP's ability to recover public money that has been overpaid from those who currently have the means to repay but choose not to and refuse to do so. The provisions in the Bill include powers to recover such debt directly from a debtor's bank accounts via Lump Sum Direct Deduction Orders for specified amounts, and Regular Direct Deduction Orders for regular deductions, without having to apply via the courts. These direct recoveries will only happen once affordability and vulnerability checks have been carried out, including through the debtor's bank statements. This will improve the efficiency of the process to recover overpayments and bring greater fairness to the recovery of debt.
- 53 Where all other attempts at recovery have failed, the provisions in the Bill will also enable DWP to apply to the court for a Suspended DWP Disqualification Order to disqualify a debtor from holding a driving licence. Where a suspended disqualification does occur, the debtor can avoid the actual disqualification of their licence by making repayments. If they do not comply with the suspended order, DWP can then apply for an Immediate DWP Disqualification Order. This enforcement mechanism will be used as a last resort, in the most serious cases, where the debtor repeatedly refuses to repay their debt and recovery cannot be made by any other means, including by direct deductions from a debtor's bank account.
- 54 The Bill also allows for these powers, and DWP's existing debt recovery powers, to be extended to any payment, credit, or grant that is administered by DWP where DWP has determined there was an overpayment as a result of fraud, and either the person has been convicted or has accepted a penalty in lieu of prosecution.

## **DWP: Administrative Penalties**

- 55 An Administrative Penalty can be offered as an alternative to prosecution in cases of benefit fraud where there is clear evidence of criminality. It is intended to provide a proportionate and timely consequence for benefit fraud where the pursuit of prosecution in the courts may not be cost or time effective. If the Administrative Penalty is not accepted, DWP will pursue a prosecution through the courts. The Administrative Penalty is 50% of the overpayment value, up to a maximum of £5,000.
- 56 Currently, the Administrative Penalty is confined to use in cases of benefit fraud only. This means that those individuals who commit fraud through non-benefit payments, such as grants, cannot currently be offered an Administrative Penalty.
- 57 This Bill makes provision to extend the Administrative Penalty to non-benefit payments so that anyone found to have committed fraud against the social security system can be subject to proportionate and timely consequence – bringing parity in approach with benefit fraud. For the Administrative Penalty to be offered in these cases, provisions are made in the Bill so that

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fraudulent non-benefit payments can be investigated and recovered through the same framework as benefit payments.

- 58 For benefit claimants, the Bill also makes provision to remove the Loss of Benefit (“LOB”) from cases where the customer chooses to accept an Administrative Penalty. Currently, accepting an Administrative Penalty means that the benefit claimant also loses entitlement to benefit they continue to be eligible for that are disqualifying and sanctionable for four weeks. As a result, in lower value fraud cases, some claimants can find themselves facing a financial penalty and a loss of benefit sanction alongside repaying the overpayment. This may put them at risk of hardship. Furthermore, if deductions from benefit are the only way to recover the debt, the LOB has the effect of making the debt unrecoverable for the period benefit is suspended. Therefore, the LOB will be reserved for the most serious cases of fraud taken to prosecution, so the most serious consequences apply to the most severe crimes.

## **DWP: Inspection**

- 59 As DWP take additional investigation powers it is necessary that there is appropriate inspection of these functions and their investigations. The Bill makes provision to appoint an independent person to inspect and report on DWP’s use of its investigative powers. This independent person will be able to inspect all investigations powers under sections 109A – G of the Social Security Administration Act 1992, this includes the new powers to require information for the purposes of a fraud investigation and new powers of entry, search and seizure in this Bill.
- 60 Separately, the Bill also makes provisions to enable the Independent Office for Police Conduct (“IOPC”) and the Police Investigations and Review Commissioner (“PIRC”) to carry out investigations into the most serious of complaints against DWP in relation to activities when undertaken by a warrant.
- 61 This is additional oversight to that already included in the powers for requiring information to verify a person’s eligibility for benefit.

## **Legal background**

### **Part 1: Functions exercisable on behalf of Public Authorities**

- 62 The Cabinet Office does not have any existing statutory powers to investigate suspected fraud and overpayments, seek recovery or impose penalties.
- 63 The PSFA investigates instances of suspected fraud and refers such matters back to other departments and bodies. It relies on common law powers to do this and, where applicable, certain statutory gateways for data sharing, such as Schedule 9(4) of the Local Audit and Accountability Act 2014 or Section 68 of the Serious Crime Act 2007 for data matching exercises.
- 64 Currently, for example, the PSFA can only request that a person provide them with information, but there are no statutory powers to compel the provision of information. The PSFA also has no powers of entry, search or seizure, and would be reliant on the civil courts to secure repayments of debts. This Bill gives the PSFA new powers, amongst others, to require information in relation to fraud, the ability to impose a penalty for fraudulent activities or for failure to comply with the requirements in

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the Bill, the power to recover debt directly from a bank account or from earnings and the ability to establish the PSFA as a statutory body in due course.

## Part 2: Social Security Fraud, Error and Debt

- 65 DWP's legislative framework in relation to fraud, debt and error is governed by several different pieces of legislation, several of which are amended by this Act. The principal pieces of legislation, and a brief description of the main changes relevant to each, is listed below to assist the reading of these Explanatory Notes and to place some of the details described in these Explanatory Notes in context.

### Powers to require information

- 66 Benefit fraud is committed when an individual(s) deliberately claims benefits that they are not entitled to. They may do this by not alerting DWP to a change in circumstance or providing false information. When there is a suspicion of fraud, cross-checking the information that claimants provide against independent sources of information helps to prove or disprove that suspicion of benefit fraud. DWP currently has powers to obtain information from certain third parties listed in section 109B of the Social Security Administration Act 1992. The third-party information holders are listed in section 109B(2) and section 109B(2A) of the Act as well as in The Social Security (Persons Required to Provide Information) Regulations 2013 and include organisations such as employers and banks. It can also ask for information under the Data Protection Act 2018, but cannot compel it under this provision. This Bill amends the Social Security Administration Act 1992 to widen the scope of information holders that can be compelled to provide information to DWP as part of a criminal investigation and allows information requests to be made digitally. Amendments are also made to allow DWP to obtain information in relation to every type of DWP-led criminal investigation, including payment, credit or grant fraud and National Insurance Number related offences. The Social Security Fraud Act 2001 is amended to require DWP to prepare and publish a new Code of Practice.
- 67 Clause 72 amends Section 109B of the Social Security Administration Act 1992 by inserting a new section 109BZA which makes provision for when an "authorised officer" may give a person an "information notice" requiring them to give specified information. Clause 84 establishes a definition of a "DWP offence" so that any offence relating to a benefit, payment, credit or grant in relation to which the Secretary of State with responsibility for social security can be included in the new information gathering powers. Clause 85 introduces a new section 109H which provides exemption for specific types of information, as well as organisations from whom information requests are not permitted.

### Eligibility Verification Measure

- 68 This Bill amends the Social Security Administration Act 1992 by inserting a new section 121DB and Schedule 3B into that Act. Schedule 3B makes detailed provision regarding the power of the Secretary of State to require persons (Banks and other financial institutions) to provide information to DWP for the purposes of identifying or helping identify incorrect payments of certain benefits by checking against specified eligibility criteria.
- 69 This Bill also amends sections 330 and 331 of the Proceeds of Crime Act 2002 to introduce exemptions for offences relating to failure to disclose knowledge or suspicion of money laundering

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in the regulated sector, when such knowledge or suspicion only arises due to information that came to them in consequence of compliance with an Eligibility Verification Notice under the new Schedule 3B.

## **Powers of entry, search and seizure etc**

- 70 Current DWP investigations relating to serious and organised fraud are reliant on the Police to exercise powers of entry, conduct searches and seize evidence. These powers exercised by the Police are mainly provided for under the Police and Criminal Evidence Act 1984 in England and Wales. In Scotland, Police Scotland conduct these matters under a mix of statute and common law. This Bill grants DWP authorised investigators, investigating serious and organised fraud, specific powers under the Police and Criminal Evidence Act 1984 and the Criminal Justice and Police Act 2001 for matters relating to England and Wales.
- 71 This Bill amends the Social Security Administration Act 1992 by inserting a new section 109D which specifies the applicable provisions of the 1984 Act. These are new powers conferred on DWP authorised investigators.
- 72 This Bill inserts a new section 109E into the Social Security Administration Act 1992 which confers a similar set of powers to Section 109D on DWP authorised investigators in relation to Scotland. The details of these new powers in relation to Scotland are in Schedule 3ZD.
- 73 This Bill inserts a new section 109F into the Social Security Administration Act 1992. This allows the new powers set out in Section 109D, Section 109E and Schedule 3ZD to be exercised in relation to Crown premises.
- 74 This Bill inserts a new section 109G into the Social Security Administration Act 1992. This will allow DWP authorised investigators to apply to the appropriate Court for an order permitting specific seized property to be disposed of. This Bill amends Part 2 of the Police Reform Act 2002 to allow the Independent Office for Police Conduct to handle serious complaints relating to the use of the section 109D powers by DWP authorised investigators. The Bill inserts a new section 26H into the Police Reform Act 2002 which permits the Secretary of State to make regulations conferring functions on the Director General of the Independent Office for Police Conduct.
- 75 This Bill permits the Police Investigations and Review Commissioner to enter into an arrangement with the Secretary of State to handle serious complaints relating to the use of the Schedule 3ZD powers by DWP authorised investigators in Scotland.

## **Overpayments: recovery and enforcement**

- 76 The Bill amends the Social Security Administration Act 1992 to introduce two further methods of recovery, adding a section 80B and Schedule 3ZA into the Act, which will allow DWP to give direct deduction orders to Banks, requiring the Bank to make one-off or regular deductions from a liable person's bank account to pay some or all of the debt owed to DWP. It also requires that the Bank provides the necessary information about the account to allow DWP to determine if a deduction is possible and ensure any deduction will be fair and not cause the liable person hardship in meeting essential living expenses. It also provides safeguards for joint account holders and allows any account holder to appeal the order to the First-tier Tribunal after either making representations to DWP before the order was made, or after seeking a review of the order. This power is broadly similar to the Child Maintenance Service's power, under section 32A of the Finance (No. 2) Act

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2015.

- 77 The Bill also inserts new section 80C and Schedule 3ZB into the Social Security Administration Act 1992, which allows the Secretary of State to seek a court order which would require the liable person to make affordable payments, with a potential penalty of disqualification from driving for up to two years if they do not. This is similar to the Child Maintenance Service provisions under sections 39A and 40B of the [Child Support Act 1991](#) (as amended), although disqualification must always be suspended in the first instance in DWP orders.
- 78 The Bill inserts a new Section 81F, which makes clearer that where the law permits DWP to recover the cost of recovery action (such as court enforcement or deduction from benefits) from the liable person, it can recover this through any available power. The Bill inserts a new Section 80E, which gives lay DWP officials rights to oversee civil debt recovery claims and appear in court on behalf of the Secretary of State.

## Offences and penalties

- 79 Chapter 5 of the Bill amends the [Social Security Act 1992](#) to extend the Administrative Penalty regime to non-benefit payments (an example of which might be a grant). There is also provision to amend the [Social Security Fraud Act 2001](#) to remove the loss of benefit sanction where a person accepts an Administrative Penalty.

## Territorial extent and application

- 80 Clause 102 sets out the territorial extent of the Bill, that is the jurisdictions which the Bill forms part of the law of. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect. The territorial extent and application of the Bill measures are summarised below.
- 81 Part 1 (Functions exercisable on behalf of Public Authorities) extends to England and Wales only. Part 2 (Social Security) extends to England, Wales and Scotland. Part 2 does not apply to Northern Ireland as Social Security is wholly devolved (transferred) to Northern Ireland.
- 82 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

## Commentary on provisions of Bill

### Part 1: Functions exercisable on behalf of Public Authorities

#### Chapter 1: Key Concepts

##### Clause 1: Core functions of the Minister for the Cabinet Office

- 83 Subsection (1) specifies the Minister's core functions: investigating suspected fraud against public authorities, recovering the amounts mentioned in subsection (2), taking enforcement actions related to fraud against public authorities, and supporting public authorities to prevent and address fraud against them.

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- 84 Subsection (2) defines the amounts recoverable under subsection (1) as being either an amount that has been investigated as being suspected fraud against a public authority, or any other amount which a public authority is entitled to recover in respect of fraud, and any interest the public authority is entitled to recover. These are called “recoverable amounts”.

## Clause 2: Interaction with other public authorities etc

- 85 This clause sets out specific conditions under which the functions conferred on the Minister and their authorised officers by this Part may be exercised, as well as detailing what remains unaffected by this Part.
- 86 Subsection (1) provides that the Minister of the Cabinet Office is to exercise the investigation, enforcement and recovery powers in Part 1 on behalf of another public authority only at the request of that public authority.
- 87 Subsection (2) states that the Minister may not act at the request of the Secretary of State with responsibility for social security, or for HMRC. This is because the intent of these measures is to be able take action outside the areas of government where most of the existing counter fraud resource is currently situated.
- 88 Subsection (3) allows the Minister to charge a fee for exercising functions under the Bill.
- 89 Subsection (4) states that “a public authority” includes the Minister of the Cabinet Office in cases of suspected fraud and recovery of money. This means that the powers in Part 1 can be used in cases of fraud arising in the Cabinet Office.
- 90 Subsection (5) provides that the enactment of this Part does not impact existing counter fraud investigation and enforcement functions of other public authorities. Specifically, it does not affect the entitlement of a public authority to recover an amount by means other than those provided for in this Part, nor does it replace or supersede the functions concerning fraud and the recovery of losses specific to a public authority other than the Minister.

## Chapter 2: Investigatory Powers

### Clause 3: Information Notices

- 91 This clause outlines the power of the Minister to require a person (which includes a body of persons corporate or unincorporate) to provide information deemed necessary for investigating suspected fraud against public authorities.
- 92 Subsection (1) grants the Minister the power to demand specified information from a person, if it is necessary and proportionate for investigating potential fraud and if there are reasonable grounds to suspect fraud has been committed against a public authority.
- 93 Subsection (2) explains that this power is exercised through the issuing of an “information notice”.
- 94 Subsection (3) requires the information notice to identify the person suspected of committing fraud.
- 95 Subsection (4) details the requirements of the information notice, including the format, timeline for compliance, location for submission, and the consequences of non-compliance.
- 96 Subsection (5) mandates that the compliance period must be a minimum of 10 working days after

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the notice is issued.

- 97 Subsection (6) extends the Minister’s power to include taking copies of information, requiring the individual to provide information in a specified form, imposing duties on the individual to retain information they already hold for longer than they would normally be required to, and explaining any failure to supply specified information.
- 98 Subsection (7) restricts the information notice from demanding “excluded material” or “special procedure material”, as defined under the [Police and Criminal Evidence Act 1984](#).
- 99 Subsection (8) clarifies that “specified” means as detailed in the notice or falling within a described category therein.

#### Clause 4: Reviews

- 100 This section provides a mechanism to request a review of a decision to issue an information notice.
- 101 Subsection (1) allows the person receiving the information notice under clause 3 to apply for a review by the Minister.
- 102 Subsection (2) sets a 7day time limit for making such an application, starting from the day after the notice is given.
- 103 Subsection (3) mandates that where such an application has been made, the decision to give the notice must be reviewed by the Minister.
- 104 Subsection (4) allows the reviewing officer to either revoke, uphold, or vary the notice.
- 105 Subsection (5) requires the Minister to notify the applicant of the review outcome and provide a varied notice if applicable.
- 106 Subsection (6) specifies that the time period for complying with the information notice will start again in the event that the notice is upheld or varied on a review.

#### Clause 5: Information Sharing

- 107 This clause outlines the conditions under which information held by a public authority can be disclosed to the Minister and how information held by the Minister can be shared.
- 108 Subsection (1) permits a public authority to disclose information to the Minister relevant to the exercise of the Minister’s core functions.
- 109 Subsection (2) restricts the use of this disclosed information by the Minister strictly for the purpose of exercising those core functions.
- 110 Under subsection (3), the Minister may disclose the information to another party if it is for the purpose of exercising the core functions.
- 111 Subsection (4) imposes conditions on any third-party recipient of the information, stipulating that said information must only be used for its intended purpose and cannot be further disclosed without the Minister’s consent.

#### Clause 6: Amendment of the Investigatory Powers Act 2016

- 112 This clause amends Schedule 4 to the [Investigatory Powers Act 2016](#), which lists relevant public

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authorities and designated senior officers. The amendment empowers a Senior Executive Officer (or higher grade) within the PSFA's Enforcement Unit to be able to apply to the Investigatory Powers Commissioner for authorisation to obtain communications data in the course of a criminal investigation.

## Clause 7: Police and Criminal Evidence Act 1984 etc powers

- 113 This clause extends certain provisions of the [Police and Criminal Evidence Act 1984](#) ("PACE") to criminal investigations of fraud offences against public authorities carried out by authorised investigators, authorised by the Minister. These officers may use the PACE powers in the same way as police officers, with some modifications detailed in Schedule 1.
- 114 Subsection (1) provides that the listed provisions of the PACE Act apply to investigations of fraud against public authorities by authorised investigators. The specific Sections of the PACE Act that are applicable to the PSFA are summarised in the table below.
- 115 Subsection (2) sets out the particular provisions of PACE that the "authorised investigator" can access in criminal investigations. These are: to seek authorisation from a court (a warrant) to enter and search premises, and to execute the warrant; to apply to a court to obtain access to certain excluded material or special procedure material; to seize evidence, including computerised information, and provisions for access, copying and the retention of materials. The provisions include the safeguards for the use of these powers already in PACE and several sections of PACE which are necessary to ensure the above provisions can be applied.
- 116 Subsection (3) defines an authorised investigator as an individual authorised by the Minister to execute the powers granted in this clause.
- 117 Subsection (4) sets out that authorised investigators must be employed within the Civil Service in the Minister's Department, which is the Cabinet Office. The authorised investigators will sit within the Public Sector Fraud Authority. Authorised investigators must also be at the grade of at least Higher Executive Officer, or a grade equivalent to Higher Executive Officer.
- 118 The following table summarises the PACE measures which are listed in clause 7:

Provision	What it means
<a href="#">PACE – Section 8</a> – (1) to (5) (power of justice of the peace to authorise entry and search of premises).	This section makes provision for an authorised investigator to apply to a court to issue a warrant that will allow for lawful entry into a premise, and search and seizure of anything for which the search has been authorised.
<a href="#">PACE – Section 9</a> – (1) and Schedule 1 (special provision as to access)	Section 9(1) allows an authorised investigator to obtain access to excluded or special procedure material by making an application under Schedule 1 for a judge to issue a search warrant or a production order. Any application must demonstrate that the access conditions have been met.
<a href="#">PACE – Section 15</a> (search warrants - safeguards)	This section outlines the information that an authorised investigator must provide to the court when applying for a warrant under Section 8. It also specifies the required level of information that must be included on the warrant.

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<a href="#">PACE - Section 16</a> (execution of warrants)	This section details requirements for the execution of warrants. A warrant may authorise other persons to accompany the authorised investigator when executing the warrant. Those persons will have the same powers as the authorised investigator in respect of executing the warrant and seizing anything the warrant relates to. This is as long as those powers are used under the supervision, and in the company, of an authorised investigator.
<a href="#">PACE - Section 19</a> (general power of seizure)	This section articulates what an authorised investigator can lawfully seize when conducting a search. Authorised investigators may seize anything on the premises if they have reasonable grounds for believing that it has been obtained through the commission of an offence or that it is necessary to seize it to prevent the evidence from being concealed, lost, damaged, altered or destroyed.
<a href="#">PACE – Section 20</a> (extension of powers of seizure to computerised information)	This section allows for an authorised investigator who is lawfully on a premises to require any accessible electronic information to be provided in a form in which it can be taken away.
<a href="#">PACE – Section 21</a> (access and copying)	This section describes the circumstances under which an authorised investigator is required to: provide a record of what was seized; allow access to seized material under the supervision of an authorised investigator; or provide a photograph or copy of the seized material.  Authorised investigators can also photograph or copy anything which they have the power to seize.
<a href="#">PACE – Section 22</a> (retention)	This section outlines the conditions which apply to seized material and its retention.
<a href="#">PACE</a> – Sections 10 to 14, 23 and 118 (interpretation provisions)	These sections define the terms “items subject to legal privilege”, “excluded material”, “personal records”, “journalistic material”, “special procedure material”, “premises” and further general interpretation for PACE.

## Clause 8: Disposal of property

- 119 It may not be possible or appropriate to return property to its legal owner which has come into the possession of the PSFA through the exercise of its functions under Part 1 of the Bill. This may be because the rightful owner cannot be identified or because there is no surviving owner. In some cases, it may not be appropriate to return property as it contains illicit content or could be used in the commission of an offence if it was returned. The PSFA requires a lawful way to either dispose of these kinds of property or make changes to the property to remove illicit content before it is returned to its legal owner. This will usually apply to property which had been obtained in the process of collecting evidence, but may also be property obtained by other means, including voluntary surrender by a person.
- 120 Subsection (1) allows a magistrates’ court to order the delivery of relevant property to its rightful owner or to make other appropriate orders if the owner cannot be identified such as giving the PSFA permission to make arrangements for its destruction, subject to safeguards.
- 121 Subsection (2) permits the court to include in its order provisions for the minister to make necessary

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changes to the seized property to prevent its use in future offences.

- 122 Subsection (3) prohibits the destruction or disposal of property under subsection (1)(b) for a period of six months from the date of the order.
- 123 Subsection (4) clarifies that a first order does not forbid further applications for orders regarding the same property.
- 124 Subsection (5) allows the court to include provisions on when the property can be destroyed or disposed of in subsequent orders so long as this is not before the end of the period of six-months from the date of the first order.
- 125 Subsection (6) defines the "relevant property" as tangible property, meaning physical property, not digital property, which has come into the possession of the Minister in the course of fulfilling one of the functions under Part 1.

### Clause 9: Incidents etc

- 126 This clause provides for the Independent Office for Police Conduct ("IOPC") to review serious complaints that could arise from PSFA's use of the [PACE](#) powers. Specifically, it amends the [Police Reform Act 2002](#) to extend the IOPC Director General's functions to include oversight of public sector fraud investigators in respect of this Act. These amendments include allowing the Minister to issue regulations conferring functions on the Director General in relation to these investigators.
- 127 Additionally, it permits the sharing of information between the Director General, the relevant Minister and those who act on their behalf, and the Parliamentary Commissioner for Administration to facilitate collaborative investigations, while ensuring that the sharing of such information complies with existing data protection and investigatory powers legislation. This clause also contains definitions relevant to these new provisions, such as "public sector fraud investigators" and "data protection legislation".

## Chapter 3: Rights to recover

### Clause 10: Acting for another public authority

- 128 This clause outlines the powers granted to the Minister to act on behalf of a public authority in recovering the 'recoverable amount' as defined in clause 1(3).
- 129 Subsection (1) authorises the Minister to take actions such as initiating or continuing legal proceedings and exercising the specific powers in Chapter 3 to recover the recoverable amount.
- 130 Subsection (2) requires that any amounts recovered by the Minister are remitted back to the appropriate public authority. Where it is not clear who the funds should be returned to or the recoverable account does not belong to any one authority, the funds shall be placed in the consolidated fund. This subsection also provides that the Minister can come to an agreement with the relevant public authority that the Minister may retain some or all of the recovered amount.

### Clause 11: Recovery Notices

- 131 This clause outlines the procedure for issuing a recovery notice before bringing a claim for a recoverable amount on behalf of a public authority.
- 132 Subsection (1) requires that the Minister issues a recovery notice to the person responsible for the

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recoverable amount before initiating a claim. This person is referred to as the “liable person”.

133 Subsection (2) details the requirements of a recovery notice. It must state the intention to bring a claim on behalf of the public authority, the amount regarded as the recoverable amount, the reasons for these decisions, and invite the liable person to settle the amount and set out how this can be done by agreement. It also outlines further actions if the loss isn’t settled and identifies a period after which a claim may proceed.

134 Subsection (3) mandates that the period stipulated in the recovery notice, after which the Minister can initiate a claim if not settled, must be a minimum of 28 days from the notice delivery.

135 Subsection (4) sets out that issuing a recovery notice counts as initiating an action for recovering the loss concerning any relevant time limits. For these purposes, the recovery notice will have the effect of issuing a ‘letter before action’ under the standard civil court processes.

#### Clause 12: Restriction on availability of powers

136 This clause limits the exercise of powers by a Minister regarding the recovery of a recoverable loss from a liable person. The Minister may only exercise these powers when the liable person consents to it (i.e., agrees that the recoverable loss is recoverable) or when a court or tribunal has made a final determination that a public authority, on whose behalf the Minister is acting, is entitled to the recoverable loss in question. This provision is intended to prevent arbitrary recovery efforts and to ensure that such actions are legally justified or mutually agreed upon.

#### Clause 13: Penalties etc

137 This clause grants the Minister the authority to recover other amounts using the powers outlined in Chapter 3 concerning penalties stipulated in Chapter 5 and associated relevant costs.

138 Subsection (1) specifies that the Minister can recover penalties and relevant costs through the powers outlined.

139 Subsection (2) clarifies the terminology used within this Part: the term “amount due in respect of a penalty under Chapter 5” includes penalty-related late payment interest (as further detailed in clause 57), while “relevant costs” include court-awarded costs in claims for recoverable amounts and costs reasonably incurred by the Minister in enforcing recovery powers.

#### Clause 14: Restriction on availability of powers

140 This clause outlines the conditions under which the Minister can exercise the power to recover an amount due concerning a penalty. The Minister may only do so if either the timeframe for appealing the penalty has expired without an appeal being made, or if any appeal has been abandoned or reached a final determination. In the case of reaching a final determination, this determination must be in favour of the Minister.

### Chapter 4: Methods of Recovery

#### Clause 15: Payable amounts

141 This clause defines “payable amount” as either a “recoverable amount” (as defined in clause 1(3)), or an amount specified in clause 13(1) (i.e., a civil penalty or relevant costs). This definition serves to establish the scope of what can be considered recoverable under the provisions outlined in the Bill.

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## Clause 16: Recovery Orders

- 142 This clause outlines the Minister's authority to seek a recovery order from the county court concerning a recoverable amount.
- 143 Subsection (1) allows the Minister to apply for such an order.
- 144 Subsection (2) clarifies that a recovery order serves to make the recoverable amount treated as equivalent to payments enforceable under Section 85 of the [County Courts Act 1984](#), or to be considered as if they were ordered by the court. This ensures that recoverable amounts are enforceable through established legal channels, providing a clear route for enforcement and collection.

## Clause 17: Direct deduction orders

- 145 Subsection (1) authorises the Minister to make such an order if a liable person owes an amount and holds a bank account.
- 146 Subsection (2) mandates that the order be communicated to the bank holding the account.
- 147 Subsections (3)-(5) define types of orders: regular—requiring regular deductions, and lump sum—requiring a specified amount to be deducted, and subsection (6) allows both to be issued for the same account.
- 148 Subsection (7) requires copies of the order to be sent to the liable person and co-holders in the case of joint accounts.
- 149 Subsection (8) references clauses 19-21, detailing preparatory steps before making the order. For example, the requirement to obtain information from banks, assessing the beneficial interest of monies held in a joint account (where applicable) and further considerations before making an order.

## Clause 18: Accounts which may be subject to direct deduction order

- 150 This clause clarifies which accounts may be subject to an order.
- 151 Subsection (1) permits the Minister to make an order on an account which is held by the liable person and contains an amount which the Minister considers the liable person has a beneficial interest. The question of 'beneficial interest' is more important in the context of 'joint accounts' where it may be less obvious where the beneficial interest in any amount lies.
- 152 Subsection (2) allows orders on joint accounts only if the liable person does not hold a sole account that could cover the recoverable amount within a reasonable period of time.
- 153 Subsection (3) makes an exception to subsection (2) if all joint account holders are liable for the recoverable amount.

## Clause 19: Requirement for banks to provide information

- 154 Clause 19, subsection (1) mandates that before issuing an order, the Minister must obtain and consider bank statements of the liable person's account covering a period of at least three months. The purpose of doing so is to ensure that the liable person holds an account in which a direct deduction order can be made; to determine what deductions should be made; and to determine whether the deduction would cause the liable person hardship in meeting essential living expenses.

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- 155 Subsection (2) specifies that the Minister must issue an account information notice to the bank to obtain these statements covering a period of 3 months before the notice is given, or such longer period as may be specified in the notice.
- 156 Subsection (3) specifies details to include in this notice, such as the name of the liable person and the identifying details of the account (for example, account number and sort code).
- 157 Subsections (4) states that the Minister may only issue an 'account information notice' for the purpose of determining whether to issue a direct deduction order in respect of the account.
- 158 Subsection (5) outlines that the Minister may also issue a general information notice to a bank for the purpose of determining whether to issue a direct deduction order. The general information notice requires the bank to provide information on all of the bank accounts held by the liable person, including the type of account (for example, a savings account), the identifying information for them (for example, account number and sort code) and the correspondence address of the liable person. For individual accounts, the bank must also provide a balance. For joint accounts, the bank must provide the name(s) and correspondence address(es) of each account holder.
- 159 Subsection (6) allows more than one account information notice, or general information notice, to be given in relation to the same recoverable amount. It also allows for the Minister to give more than one account information notice in respect of the same account.
- 160 Subsection (7) sets out that, in both the account information notice and general information notice, the notice must set out how and when the bank is to comply with the notice; and explain that the bank may be subject to a penalty under clause 53 if it fails to do so without reasonable excuse.
- 161 Subsection (8) stipulates banks must comply with a notice given under this section.
- 162 Subsection (9) prohibits banks from notifying account holders upon receiving such notice. This is to avoid forewarning the liable person that a deduction order may be imposed and therefore to prevent them from being able to move the money out of the account.
- 163 Subsection (10) restricts use of the information obtained under this section for the purposes of exercising the Minister's core functions only (i.e., in the investigation of suspected fraud).
- 164 The later regulation making power under clause 37 will enable the Minister to set out in further detail the duties of banks in complying with a request for information, including the length of time in which the bank must respond to a request etc. This is to allow ongoing engagement with banks to incorporate ongoing feedback as powers under this section are operationalised.

## Clause 20: Joint Accounts

- 165 This clause focuses on joint accounts, requiring the Minister to assess the liable person's beneficial interest to any amount of money held in the account.
- 166 Subsection (2) presumes equal share unless other evidence exists as per subsection (3).
- 167 Subsection (4) mandates that when the Minister is making an assessment as to the liable person's beneficial interest, the Minister must have regard to the bank statements obtained for the account in clause 19, and any response (i.e., representations from the liable person or joint account holder) to a notice under clause 21. For the purposes of the bank statements obtained, the Minister must have regard to the most recent bank statements obtained, i.e., in the case where multiple bank

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statements may have been obtained in respect of the account.

## Clause 21: Further requirements before making a direct deduction order

- 168 This clause details the further prerequisites and considerations that must be taken into account before such an order is made.
- 169 Subsection (1) requires that the Minister issues a notice (the 'first notice') to the bank, the liable person, and any joint account holders: (a) identifying the account to be subject to the proposed order; (b) stating the amount that is recoverable (c) setting out the terms of the proposed order; and (d) if the account is a joint account, setting out the Minister's duty to make an assessment as to the liable person's beneficial interest to any money in the account and the presumption that applies under clause 22.
- 170 Subsection (2) states that the notice must also invite the liable person, and if relevant the joint account holder, to make representations about the terms of the proposed order. In the case of joint accounts representations can also be made about the liable person's beneficial interest in any amounts held in the account. For the purposes of making representations, the liable person will also be able to provide evidence in support.
- 171 Subsection (3) sets out the means by which, and the period within which, the representations must be made. For these purposes, subsection (4) details that the period given must be at least 28 days after the day on which the first notice is given.
- 172 Subsection (5) sets out that the Minister must consider any representations made. In light of these representations, the Minister must then make the assessment as to the beneficial interest of monies held in a joint account (if applicable), and in all cases, decide whether, and in what terms to make the final direct deduction order in respect of the account.
- 173 Subsection (6) sets out that the first notice may be given to the bank before the notice is given to the liable person (and joint account holder, if relevant). The purpose of doing this is to ensure that the restriction on the account can be put in place before the liable person becomes aware of the terms of the proposed order. The reason for doing so is again to avoid forewarning the liable person and giving them an opportunity to remove the monies from the account.
- 174 Subsection (7) states that where the first notice has been given to the bank in advance under subsection (6), then the notice must be given to the liable person (and joint account holder) as soon as reasonably practicable afterwards.
- 175 Subsection (8) sets out what happens in the event the Minister decides not to proceed with making a final direct deduction order. In this case, the Minister must, as soon as reasonably practicable, notify the liable person (and any joint account holder) and the bank from which the proposed order was going to be made. This is to ensure that where the Minister does decide not to proceed, any restrictions on the account can be promptly removed.
- 176 The later regulation making power under clause 37 will enable the Minister to set out in further detail the duties of banks in complying with the direct deduction order, including the length of time in which the bank must respond to a request etc. This is to allow continuing engagement with banks to incorporate ongoing feedback as the direct deduction order powers are operationalised.

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## Clause 22: Amount of deductions

- 177 This clause prescribes the conditions under which the Minister may make a direct deduction order (“DDO”).
- 178 Subsection (1) makes it clear that a DDO may only be made where it is fair to do so and will not result in hardship in meeting essential living expenses for the liable person, any joint account holder, or any dependent party (whether financially dependent or otherwise). In order to be satisfied whether to make the order, the Minister must have regard to the information received by virtue of clauses 19 and 21.
- 179 The provisions of subsection (3) set out that under a regular direct deduction order, the amount deducted from an account during any period of 28 days cannot exceed 40% of the amounts credited to the account in the relevant period where the Minister is satisfied on a balance of probabilities there has been fraud under subsection (4). Where this is not the case (for example, where the person received the recoverable amount through error), only 20% of the amounts credited to the account in the relevant period may be deducted.
- 180 Subsection (5) defines the ‘relevant period’ as being the period for which bank statements have been obtained.
- 181 Subsection (6) states that the Minister must ensure that the total amount to be deducted and paid to the Minister does not exceed the payable amount to which the order relates. This is to ensure the correct amount of deductions are made at all times.
- 182 In accordance with subsection (7) an order cannot require a deduction is made on a non-working day i.e., Saturday, Sunday or a bank holiday. Where an order is made requiring payment on a non-working day, the obligation to make the deduction and the payment applies in relation to the next working day after that.
- 183 Clause 37 allows the Minister to make further provision in regulations relating to how the amount of deductions is calculated and in further considering the question of causing a liable person hardship. This is intended to bring the provisions in line with the increase or decrease in inflation and when what constitutes ‘essential living expenses’ changes in the future.

## Clause 23: Content and effect of direct deduction orders

- 184 This clause specifies the contents and effect of both regular and lump sum direct deduction orders and the requirements for banks’ compliance.
- 185 Both regular direct deduction orders and lump sum direct deduction orders must specify the amounts, or a method for calculating the amounts, to be deducted, and when. Subsection (3) also specifies that a regular deduction may specify different amounts, or different methods, to be deducted at different times.
- 186 Deductions may not be made until 28 days after an order has been made, this allowing the person the requisite time in order to request a review under clause 34. Subsection (5) states that the bank must comply with the order.
- 187 In accordance with subsection (6) an order cannot require a deduction is made on a non-working day i.e., Saturday, Sunday or a bank holiday. Where an order is made requiring payment on a non-

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working day, the obligation to make the deduction and the payment applies in relation to the next working day after that.

#### Clause 24: Bank's administrative costs

- 188 This clause allows banks to recover reasonable administrative costs associated with implementing the orders, in accordance with potential further regulations (see clause 37). This allows the bank to deduct their costs to which they are entitled immediately prior to making the direct deduction order.
- 189 In considering the deductions made under the final direct deduction order, under subsection (3) the Minister must take into account any deductions to be made by the bank for their administrative costs.
- 190 The later clause 37 contains power for the Minister to make further provision through regulations as to the administrative charges that can be imposed by the banks. This power will be used to introduce a cap on the charges which can be imposed under this clause that can be adjusted in line with inflation and to ensure that the charges remain at all times reasonable.

#### Clause 25: Insufficient funds

- 191 This clause set outs the circumstances where there are insufficient funds in an account in order to deal with a direct deduction order.
- 192 Under subsection (1), where the amount in an account is lower than the amount specified in, or calculated in accordance with, a lump sum direct deduction order, then no deduction is to be made, and the bank must notify the Minister as soon as possible.
- 193 Under subsection (2), where an amount is lower in the case of a regular direct deduction order, the order is to be read as requiring the deduction to be made on the same day the following week. If on that day the amount is still lower, then no deduction is to be made, and the bank must notify the Minister as soon as possible.
- 194 Subsection (3) sets out that where references are made to an amount to be deducted in accordance with a direct deduction order this includes any amount to be deducted in respect of the bank's administrative costs under clause 24.

#### Clause 26: Restrictions on accounts: banks

- 195 This clause introduces restrictions on accounts to maintain the balance required for deduction orders, with provisions to prevent closure or transactions that would reduce the balance below specified amounts.
- 196 Subsection (1) specifies that, upon receiving a first notice or a direct deduction order, the bank must ensure that the account in question is not closed. For lump sum direct deduction orders, the bank must also ensure that the amount in the account does not fall below the specified amount.
- 197 Subsection (2) allows the bank to transfer the anticipated value of a lump sum direct deduction order to a "hold account", to ensure that the amount is protected.
- 198 Subsection (3) states that, when a bank does transfer funds to a hold account, the direct deduction order payments should be taken from that account.
- 199 Subsection (4) requires that the bank does not cause any disadvantage to the liable person, or any

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other account holders, when they transfer money to a hold account rather than secure it within the liable person's main account.

- 200 Subsection (5) sets out that the requirements for a bank to keep an account open and to maintain a particular balance as outlined in subsection (1) do not apply when the decision is made not to make, or to revoke, a direct deduction order, or after the specified amount (outlined in subsection (6) as pertaining to the amount in the first notice) required in a direct deduction order has been paid to the Minister.

#### Clause 27: Restrictions on accounts: account holders

- 201 This clause imposes restrictions on account holders to prevent them from doing anything which may frustrate the effect of the first notice or the direct deduction order.
- 202 Subsection (2) specifies that under the first notice these restrictions cease to apply when a decision is made not to make the order, or once a final direct deduction order has been imposed. In the case of the final direct deduction order the restriction will cease when that order is revoked.
- 203 Subsection (3) clarifies that the reference to frustrating the effect of the first notice under subsection (1), this means frustrating the effect of the proposed direct deduction order.

#### Clause 28: Applications to vary

- 204 This clause defines the ability for the liable person (or joint account holder) to apply to the Minister to vary the direct deduction order during its lifetime. This is to allow the liable person (or a joint account holder) to notify the Minister of any changes in circumstance since the initial order was made.
- 205 Under subsection (2) in the case of a joint account, where an application is made, the Minister must give an opportunity for the other joint account holders to make representations.
- 206 Subsection (3) stipulates that the Minister must notify the applicant, and where appropriate any joint account holders, of the Minister's decision on the application.

#### Clause 29: Variation

- 207 This clause concerns the variation of direct deduction orders. Subsection (1) allows the Minister to issue a revised order (whether on an application by an account holder or otherwise).
- 208 Subsection (2) states that the provisions under this clause apply in relation to any variation of a direct deduction order, including one that results from a review under clause 34.
- 209 Subsection (3) specifies that the Minister must give the liable person (and joint account holders, if relevant) the opportunity to make representations on the terms of the proposed variation.
- 210 Subsection (4) allows the Minister to comply with the above subsection (3) at the same time as complying with clause 28(2). This will allow the Minister to take and consider representations for both the application to vary an order at the same time as any representations to vary the order.
- 211 Subsection (5) stipulates that the variation to a direct deduction order will take effect when the Minister gives the varied order to the bank or, if later, in accordance with the terms of the order as varied.
- 212 Subsection (6) requires the distribution of this revised order to the necessary parties.

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- 213 Subsection (7) allows the Minister to vary a direct deduction order to apply it to another account held by the liable person if the request is made to do so by them, or if the other account is a joint account, the other joint account holder's consent.
- 214 Subsection (8) details what happens when a direct deduction order is varied to apply to an account administered by a different bank or to apply to a joint account.
- 215 Subsection (9) sets out that the steps under clauses 19 to 21 do not need to be carried out again when considering to vary an order.

### Clause 30: Revocation

- 216 This clause provides for the revocation of direct deduction orders. Subsection (1) gives the Minister the authority to revoke these orders.
- 217 Subsection (2) obliges revocation upon the recovery of debts or the death of the liable person. Subsection (3) stipulates that notification of revocation is required to be given to the bank and the other account holders involved, where relevant.

### Clause 31: Further information notices

- 218 This clause sets out further information notices. Subsection (1) describes the Minister's ability to request information from a bank to assess whether changes to an order are required. Subsection (2) applies certain provisions from clause 19. Subsection (4) allows these notices to be issued before or after the Minister provides the liable person and any joint account holder the opportunity to make representations on the proposed variation.

### Clause 32: Suspension of direct deduction orders

- 219 This clause defines the circumstances under which the operation of direct deduction orders is suspended. Subsection (1) outlines that the Minister can at any time suspend and restart the operation of a regular direct deduction order by notifying the bank. Subsection (2) outlines the requirement for giving notification to account holders of any suspension or restart.

### Clause 33: Cessation on death of a liable person

- 220 This clause sets out what happens when a liable person dies during the period of a direct deduction order. It sets out that once the bank becomes aware of the liable person's death, the requirements of the order cease to have effect.

### Clause 34: Reviews

- 221 This clause introduces a process for review of deduction orders by an authorised officer of a higher grade than the original decision maker upon application by relevant parties. A review may be requested when the direct deduction order is made, when the order is varied or when the Minister decides not to vary a deduction order in response to an application under clause 28.
- 222 Under subsection (3), the period for requesting a review is 28 days, beginning with the day after which the varied order or notice is given.
- 223 Subsection (4) prevents an application made for a review being brought on any grounds relating to the existence of a payable amount (unless that amount is stated incorrectly in the order).
- 224 Subsection (5) sets out that once a review is requested, the Minister must review the decision in

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question.

- 225 Subsection (6) details that following a review the decision can be upheld, varied, or revoked, with notifications of outcomes as appropriate under subsection (7).
- 226 Subsection (8) refers to clause 29 for provisions about varying a direct deduction order. This is relevant as the Minister will need to allow for the liable person or any joint account holder to make representations in accordance with clause 29(2).

### Clause 35: Appeals

- 227 This clause outlines the right of appeal against the imposition of a direct deduction order to the First-tier Tribunal following a review.
- 228 Subsection (2) prohibits a relevant person from bringing an appeal unless they have first applied for a review under clause 34 and been notified of the outcome of the review. However, this does not apply where an order is varied on review. Relevant persons are given the meaning under clause 34(2).
- 229 Subsection (4) sets out that the time for bringing an appeal shall be 28 days beginning with the day after which the Minister complies with clause 34(7).
- 230 Under subsection (5), the specified grounds must not relate to the existence or amount of a payable amount, unless the payable amount has been incorrectly stated on the order, as the recoverable amount would either have been agreed by the liable person following the recovery notice or determined in a court of tribunal.
- 231 Under subsection (6) the First-tier Tribunal shall have the power to suspend the requirement on a bank to comply with an order for some or all of the time until the appeal has been finally determined.
- 232 Subsection (7) details that following an appeal the First-tier Tribunal may amend, revoke, or dismiss the appeal.

### Clause 36: Meaning of “bank” etc

- 233 This clause defines key terms within the legislation, such as definitions for “bank” and the relevant enactments that apply when concerning the definition of banks. The drafting has provided scope to capture standard high street banks, as well as electronic money service providers such as PayPal, Revolut, etc.

### Clause 37: Regulations

- 234 This clause sets out that the Minister is able to make further provision about direct deduction orders.
- 235 Subsection (2) sets out that these regulations may include: (a) how notices and orders are to be given by the Minister (b) how notices and information is to be given to the Minister (c) the calculation of amounts to be deducted (d) the duties of banks in relation to direct deduction orders (e) the costs in which a bank may recover under clause 24 or from the Minister and (f) the interaction between similar orders. These regulations are subject to the negative procedure under subsection (9).
- 236 For the purposes of (a), (b), (d) and (e) there is a requirement under subsection (5) to consult with the banking sector before introducing regulations.

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237 Subsection (3) allows the Minister to make regulations to apply clauses 17 to 36 to other types of person who provide financial products or services in the future. The purpose of this power is so that the powers can be applied to new forms of banking in the future, such as if cryptocurrencies were to become regulated by the government. This power is subject to the affirmative procedure under subsection (8) along with a duty to consult banks before introducing regulations under subsection (6).

### Clause 38: Deduction from earnings orders

238 This clause sets out the provisions, process, and requirements associated with deduction from earnings orders. These orders serve as a mechanism for recovering amounts from liable individuals who are employed.

239 Subsection (1) states that the Minister has the authority to initiate a deduction from earnings order when a recoverable amount is due from an employed liable person.

240 Subsection (2) specifies that a deduction from earnings order compels an employer to deduct specified amounts from the liable person's earnings and remit those amounts to the Minister.

241 Subsections (3) and (4) are self-explanatory.

### Clause 39: Content and effect of deduction from earnings orders

242 This clause defines the content and effect of deduction from earnings orders.

243 Subsection (1) sets forth the information that must be included, such as deduction amounts, calculation methods, payment schedules, and penalties for non-compliance.

244 Subsection (2) is self-explanatory.

245 Subsection (3) prohibits deductions before 22 days after the order being provided to the employer.

246 Subsection (4) obligates employers to comply with the order.

### Clause 40: Requirements before making a deduction from earnings order

247 This clause details the prerequisites before making a deduction from earnings order, including notifying the liable person and inviting representations about the proposed order.

248 Subsection (1) details that before making an order they must be given an opportunity to make representations. Subsection (2) sets out that the notice must include the terms of the proposed order, a statement of the amount that is recoverable and the means by, and period within which, representations may be made. This period must be at least 28 days from the date of the order.

249 Subsection (4) outlines that the Minister must consider any representations made and may change the terms of the proposed order as a result.

250 Subsection (5) states that the Minister must also provide a copy of the notice to the liable person's employer.

251 Subsection (6) requires the Minister to then notify the liable person and their employer if they decide not to make the order.

### Clause 41: Amount of deductions

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- 252 Subsection (1) states that an order may only be made if the Minister is satisfied that it won't cause the liable person or their dependents to suffer hardship in meeting ordinary living expenses. The order must also be fair. Subsection (2) is self-explanatory.
- 253 Subsection (3) and (4) limit deductions to 40% of net earnings to recover amounts relating to fraud, and 20% for all other circumstances.
- 254 Subsection (5) ensures deductions do not exceed the recoverable amount. Subsections (6) to (8) discuss the making of regulations for calculating deductions and addressing hardship. This is subject to the negative procedure. This will allow for the way deductions are calculated to be updated in line with inflation, and to further ensure that 'essential living expenses' are reflective of what constitutes essential living expenses at the relevant present time.
- 255 Subsection (9) defines "net earnings" for the purposes of this clause. They are defined as earnings after the following have been deducted: income tax; primary Class 1 national insurance contributions; and any pension scheme payments.

#### Clause 42: The employer's administrative costs

- 256 This clause sets out provisions related to deductions from earnings orders, particularly concerning the employer's role and related costs.
- 257 Subsection (1) allows for such an order to instruct the employer to deduct an amount, either specified or calculated as per the order, from an employee's earnings. This deduction is intended to cover costs reasonably incurred by the employer in fulfilling the order.
- 258 Subsection (2) mandates that in adhering to the requirements of clause 39(1) and (3) concerning a deduction from earnings order, the Minister must consider the deductions made by the employer under subsection (1).
- 259 Subsection (3) authorises the Minister to establish regulations regarding the costs described in subsection (1). This power will be used to introduce a cap on the charges which can be imposed under this clause that can be adjusted in line with inflation and to ensure that the charges remain at all times reasonable.
- 260 Subsection (4) states that any regulations created under this section will be subject to the negative procedure, meaning they will automatically become law without debate unless there is an objection.

#### Clause 43: Suspension of deductions from earnings orders

- 261 This clause sets out the circumstances under which the operation of direct deduction orders is suspended. Subsection (1) has the effect that the Minister may at any time suspend and restart the operation of a deduction from earnings order by notifying the employer. Subsection (2) sets out the requirement for giving notification to the liable person of any suspension or restart.

#### Clause 44: Duty to notify the Minister of change of circumstances

- 262 This clause outlines the processes for communicating changes related to when the liable person leaves or starts new employment. Subsection (1) mandates that a liable person informs the Minister of employment changes within 7 days, including providing information on their expected earnings from the new employment (under subsection (2)).
- 263 Under subsection (3) new employers, aware of such an order, must also notify the Minister within

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the same timeframe.

- 264 Subsection (4) and (5) further sets out what happens when the employee ceases to be employed by the employer subject to the order. This stipulates that the employer must notify the Minister within the period of 10 days beginning with the day on which the liable person leaves employment.

#### Clause 45: Applications to vary

- 265 This clause details the ability for the liable person to apply to the Minister to vary the deduction from earnings order during its lifetime. This is to allow the liable person to notify the Minister of any changes in circumstance since the initial order was made.
- 266 Under subsection (2) the Minister must notify the liable person of the Minister's decision.

#### Clause 46: Variation

- 267 This clause sets out the processes for varying changes related to deduction from earnings orders.
- 268 Subsection (2) sets out that should an order be varied, the liable person must be given an opportunity to make representations regarding the proposed changes. If an order is revised, then the liable person and their employer must be notified.

#### Clause 47: Revocation

- 269 This clause enables the Minister to revoke an order, and under subsection (2) must do so if the recoverable amount has been recovered. Under subsection (3) where the order has been revoked a notice must be given to the employer and liable person.

#### Clause 48: Reviews

- 270 This clause defines the processes for a liable person to request a review of a deduction from earnings order.
- 271 Subsections (1) and (2) allow a review to be requested where the Minister makes the deduction from earnings order, varies an order, or decides not to make an order to vary upon an application under clause 45. Subsection (3) allows a liable person to apply for a review of the order or notice within 28 days of receiving it.
- 272 Pursuant to subsection (4), a review cannot be based on the existence or amount of a payable amount (unless the amount is said to be incorrectly stated in the order).
- 273 Under subsection (5) the review must be conducted by the Minister.
- 274 Under subsection (6) the Minister may uphold, vary or revoke the order, and under subsection (7) the Minister is required to notify the liable person and their employer of the review's outcome.

#### Clause 49: Appeals

- 275 This clause sets out the process for appealing changes related to deduction from earnings orders.
- 276 Subsection (1) provides for an appeal to the First-tier Tribunal against the deduction from earnings order, the variation of the order, or a refusal to vary an order after an application under clause 45.
- 277 Under subsection (2) the liable person cannot bring an appeal unless they have applied for a review and been notified of its outcome. An appeal must be lodged within 28 days of the review outcome notification (subsection (4)) and the liable person is restricted from challenging the existence or

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amount of a recoverable loss or penalty notice issuance (subsection (5)).

278 The First-tier Tribunal shall have the power to suspend the requirement on a bank to comply with an order for some or all of the time until the appeal has been finally determined (subsection (6)).

279 The Tribunal may vary, revoke the order, or dismiss the appeal (subsection (7)).

## Chapter 5: Civil Penalties

### Clause 50: Penalty relating to fraud

280 This clause grants the Minister the power to impose penalties on a person. The Minister must be satisfied that, on the balance of probabilities, the person has carried out, or conspired to carry out, fraud to either gain an incorrect payment, or assist another person in doing so, or that a fraud has resulted in a loss to a public authority. The decision to impose a penalty must be made by an authorised officer.

### Clause 51: Application to members etc of bodies

281 This clause outlines the circumstances under which penalties may be imposed on an individual within a body, where that body is liable to receive a penalty.

282 Subsection (1) provides that subsection (2) is applicable when a body is liable to receive a penalty under clause 50 by reason of anything which the Minister finds, on the balance of probabilities, was consented to or connived by a relevant individual in relation to the body, or an individual purporting to act as a relevant individual.

283 Subsection (2) allows the Minister to impose a penalty on the individual as well as the body when the conditions in subsection (1) are met.

284 Subsection (3) provides the definition for “relevant individual,” detailing the roles and positions within various types of organisational structures—such as corporations, partnerships, and unincorporated associations—whose occupants may be subject to penalties if they exercise management functions.

### Clause 52: Amount of penalty relating to fraud

285 This clause sets the maximum amount of a penalty that can be applied for fraud. Subsection (1) specifies that any penalty levied under section 50 (1)(a) cannot exceed 100% of the incorrect payment to which it relates.

286 Subsection (2) relates to instances where a penalty is applicable under section 50 (1)(a) but the conduct has not led to a person receiving an incorrect payment. In such instances, the penalty may not exceed 100% of the amount which the Minister considers the payment would have been had it been received.

287 Subsection (3) addresses penalties under section 50(1)(b), stating that the penalty must not exceed the greater of 100% of the loss incurred by the public authority or, if higher, 100% of the benefit obtained by the individual as a result of the fraud in question.

### Clause 53: Penalty for failing to comply with requirements

288 This clause allows the Minister to impose a penalty for a failure to comply with a requirement imposed by or under Chapters 2 or 4, concerning investigatory powers and recovery, respectively.

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The decision to impose such a penalty must be made by an authorised officer. A failure to comply with a requirement imposed by or under Chapter 2 may include: non-compliance with an information notice, using information shared by the Minister for purposes other than the purpose for which it was disclosed (without the consent of the Minister), or disclosing information received from the Minister to another person without the consent of the Minister. In relation to Chapter 4, a penalty may be imposed for a failure to comply with a requirement which may include: a bank failing to comply with an information notice request; a bank failing to comply with the terms of a direct deduction order; a liable person doing something to frustrate the effect of a direct deduction order; or an employer failing to comply with a deduction from earnings order.

#### Clause 54: Application to members etc of bodies

289 This clause extends the imposition of penalties to relevant individuals within bodies that, without reasonable excuse, fail to comply with the requirements mentioned in clause 54. If a body is non-compliant and a relevant individual failed to prevent this non-compliance, without reasonable excuse, both the body and the individual may be penalised. The term "relevant individual" is defined in clause 51.

#### Clause 55: Amount of penalty for failing to comply with requirements

290 This clause specifies the amount of penalty that may be imposed for failing to comply with requirements imposed by or under Chapter 2 or Chapter 4. Subsection (1) specifies that the penalty for non-compliance with a requirement to provide information must be calculated based on a daily rate of £300.

291 Subsection (2) specifies that for non-compliance with any other requirement imposed by or under Chapter 2 or Chapter 4, the penalty must be a fixed amount of £300.

292 Subsection (3) specifies that the daily rate in subsection (1) will be applied for each day the failure continues, commencing on the day after the deadline for compliance passes.

293 Subsections (4) and (5) give the Minister power to amend the penalty amounts in this clause by regulations to reflect monetary value changes, with such regulations subject to the negative procedure.

#### Clause 56: Procedural Rights

294 This clause, along with clauses 57 and 58, outlines the steps required before the Minister may impose a penalty.

295 Subsection (2) requires that a notice of intent be given to any person facing a penalty, inviting them to make representations.

296 Subsection (3) specifies the information that must be included in the notice of intent.

297 Subsection (4) mandates a minimum period of 28 days during which individuals and businesses may make representations.

298 Subsection (5) obliges an authorised officer to consider any representations made and decide accordingly about any impact on the proposed penalty.

299 Subsection (6) ensures that if a decision is made that a penalty will not be imposed, a notice to that effect must be given.

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## Clause 57: Penalty Decision Notices

- 300 Subsection (1) provides that a penalty decision notice must be issued where an authorised officer has decided that a penalty should be imposed.
- 301 Subsection (2) specifies the mandatory content of a penalty decision notice, including that recipients have 28 days to request a review of the decision to issue the penalty decision notice.
- 302 Subsection (3) ensures that, if a review is requested within the 28 days, a penalty may not be imposed until after the review has been carried out.
- 303 Subsection (4) states that if no review is requested, the penalty may be imposed after the stipulated 28-day period.

## Clause 58: Reviews and Decisions

- 304 Subsection (1) is self-explanatory.
- 305 Subsection (2) specifies the three possible outcomes of a review.
- 306 Subsection (3) requires that, if the decision to uphold the penalty is made, the Minister must issue a notice to that effect, noting the right to appeal under clause 60.
- 307 Subsection (4) requires that, if a decision to cancel a penalty decision notice is made, the Minister must issue a notice to that effect.

## Clause 59: Penalty Notices

- 308 Subsection (1) confirms that penalties are imposed via the issue of a penalty notice requiring a person to pay a specified amount to the Minister on or before a specified day.
- 309 Subsection (2) prohibits issuing a person with more than one penalty for the same fraud or failure to comply.
- 310 Subsection (3) provides that where a person has received a penalty notice under section 53, and the penalty is based on a daily rate, each day they fail to provide the information is considered a separate omission.
- 311 Subsection (4) clarifies that 'specified' in subsection (1) means specified within the penalty notice.

## Clause 60: Appeals

- 312 Subsection (1) grants the right to appeal to an appropriate court (defined in subsection (9)).
- 313 Subsection (2) specifies the timeframe for filing an appeal.
- 314 Subsection (3) provides that the appropriate court may vary, uphold, or revoke a penalty.
- 315 Subsections (4) and (5) clarify the appropriate court's role where court proceedings other than an appeal against a penalty notice have reached a final determination on the question of whether the person to whom the notice was given carried out or conspired to carry out the fraud to which the penalty notice relates. For the purposes of the appeal against a penalty notice, that final determination is determinative as to whether fraud was committed.
- 316 Subsections (6), (7) and (8) give the Minister power to make further provisions about appeals against penalty notices by way of regulations, subject to the negative procedure. This power does

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not allow the Minister to repeal the right of appeal.

### Clause 61: Interest

- 317 This clause outlines the circumstances in which interest may be payable on monetary penalties.
- 318 Subsection (1) states that late payment interest is applied daily from the interest start day until payment is made.
- 319 Subsection (2) defines the interest start day as the day after the due date specified in the penalty notice.
- 320 Subsection (3) determines the interest rate as 2.5 percentage points above the Bank of England's rate applicable to the day.
- 321 Subsection (4) confirms that the Bank of England's rate is as determined by the most recent meeting of the Bank's Monetary Policy Committee prior to the day.
- 322 Subsection (5) clarifies that interest does not accrue on the late payment interest itself, i.e., there is no compound interest.

### Clause 62: Code of Practice

- 323 This clause mandates the issuance of a code of practice for penalty administration.
- 324 Subsection (1) mandates that the Minister must issue a code of practice regarding how penalties will be administered, including how decisions will be made to issue penalties and how amounts will be determined.
- 325 Subsection (2) mandates that the code of practice must include provision regarding penalty discounts due to cooperative conduct by the person on whom the penalty is imposed.
- 326 Subsection (3) allows the Minister to revise or reissue the code.
- 327 Subsection (4) mandates that the Minister must lay the code, or any revised or reissued code, before Parliament.

### Clause 63: Penalties and criminal proceedings or convictions

- 328 This clause outlines the relationship between penalties and criminal proceedings, ensuring a person is not penalised twice for the same act or omission.
- 329 Subsection (1) prohibits issuing a penalty notice if a person has been found guilty of an offence related to the same act or omission.
- 330 Subsection (2) 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.

## Chapter 6: General

### Clause 64: Independent review

- 331 This clause mandates the appointment of an independent person to review the exercise of the powers conveyed in this legislation.
- 332 Subsection (1) requires the Minister to appoint an independent person for conducting such reviews.

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An independent person can refer to an individual, office or body. In respect of this clause the intention is, in addition to reviews by other statutory bodies as applicable, create a new Independent Chair, to whom a new internal oversight team will report.

333 Subsection (2) specifies that following each review, a report must be prepared and submitted to the Minister, while subsection (3) obligates the Minister to publish the report and lay a copy before Parliament.

334 Subsection (4) defines the nature of the reviews. They should consider whether the exercise of the powers is in keeping with the legislation, codes of practice and relevant guidance, as well as being effective in pursuit of meeting the core functions of the bill: investigating suspected fraud against public authorities; recovering relevant amounts in respect of a public authority's losses; and taking enforcement action in connection with fraud against public authorities.

335 Subsection (5) mandates the independent person to include in their report any recommendations they feel appropriate from said review.

336 Subsection (6) defines the terms in this clause.

### Clause 65: Independent review: further provision

337 This clause provides for both the effective implementation of clause 64 in subsections (1) to (3), through noting the process to define timing of the reviews and enable the sharing of information. In addition, Subsection (4) and (5) enable the relevant Minister to expand the functions of the independent person should it become appropriate to do so in future in order to conduct the reviews under clause 64.

### Clause 66: Authorised officers

338 Whilst the functions are conferred on the Minister, they will be exercised by officers specifically authorised by the Minister. These officers are termed "authorised officers".

339 Subsection (1) sets out the decisions to use the powers in this Bill that authorised officers may take, by reference to the clauses of this Bill in which the powers are contained.

340 Subsections (2) and (3) supply further general conditions for reviews stipulated in clauses relating to specific powers, principally that reviews must be conducted by an authorised officer at least one grade senior to the officer involved in initial decision.

341 Subsection (4) sets out that authorised officers must be employed within the Civil Service in the Minister's Department, which is the Cabinet Office.

### Clause 67: Disclosure of information etc: interaction with external constraints

342 This clause outlines the boundaries and interactions for the disclosure, obtaining, and use of information under the Part, ensuring compliance with existing legal constraints.

343 Subsection (1) identifies the relevant provisions.

344 Subsection (2) explicitly states that any disclosures under this Part must not contravene data protection laws or specific parts of the [Investigatory Powers Act 2016](#).

345 Subsection (3) advises consideration of the provisions in determining compliance with data protection legislation.

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- 346 Subsection (4) allows for the disclosure as stipulated, without breaching confidentiality or other legal restrictions.
- 347 Subsection (5) ensures claims to legal professional privilege are maintained unless agreed otherwise by the person entitled to make that claim.
- 348 Subsection (6) provides protection against self-incrimination.
- 349 Subsection (7) states that the term "Data protection legislation" refers to the definition in the [Data Protection Act 2018](#).

### Clause 68: Crown etc application

- 350 This clause makes provision on the application of Part 1 to the Crown. Subject to the exceptions set out subsequently in the clause, subsection (1) provides that Part 1 binds the Crown.
- 351 Subsection (2) provides a definition of "Crown Premises."
- 352 Subsection (3) provides that clauses 16 to 37 do not bind the Crown, and Chapter 5 does not bind the Crown.
- 353 Subsection (4) provides that the powers of entry in Part 1 cannot be exercised on Crown premises if the Minister certifies that it is not appropriate in the interests of national security.
- 354 Subsection (5) provides that no power of entry may be exercised on private estates belonging to His Majesty (using the definition provided in subsection (6)), or on premises occupied by Parliament.

### Clause 69: The Public Sector Fraud Authority

- 355 This clause states that Schedule 2 makes provision for the Public Sector Fraud Authority to be set up (meaning as a statutory body separate from the Cabinet Office). The schedule provides for the transfer of functions from the Minister for the Cabinet Office to the PSFA. It is not the intention to commence this clause immediately, but at a later date after a review of the use of the powers in Part 1 has been undertaken.

### Clause 70: Interpretation

- 356 This clause provides definitions for terms within this Part, such as "authorised officer" and "core functions". Fraud is defined as including the offences in sections 1 and 11 of the [Fraud Act 2006](#) (fraud and obtaining services dishonestly), and the common law offence of conspiracy to defraud.

### Clause 71: Regulations

- 357 This clause makes provision in relation to the making of regulations under this Part. Regulations are to be made by statutory instrument and may include consequential, supplementary, incidental, transitional or saving provisions.

## Part 2: Social Security: Fraud, Error and Debt

### Chapter 1: Powers to require information

#### Clause 72: Information Notices

- 358 This clause widens the scope of information holders that can be compelled to provide information to DWP, with exemptions, as part of a criminal investigation and allows information requests to be

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made digitally. Clause 84 introduces the definition of 'DWP Offence' which includes every type of DWP-led criminal investigation, including payment, credit or grant fraud and National Insurance Number related offences.

- 359 Clause 72 (2) inserts a new section 109BZA into the Social Security Administration Act 1992.
- 360 Subsection (1) of new section 109BZA outlines the criteria for issuing an information notice.
- 361 Subsection (1) (a) allows DWP to issue information notices only for criminal investigations where there are reasonable grounds to suspect fraud. This includes offences relating to a benefit offence, any other offence relating to a benefit, payment, credit or grant and offences relating to the allocation or use of a national insurance number.
- 362 Subsection (1) (b) stipulates that information notices may only be made where it is necessary, proportionate and relevant to the investigation thereby preventing unnecessary or disproportionate information from being compelled (i.e., only for the purposes of section 109A (2) (c)-(d) (fraud related) of the [Social Security Administration Act 1992](#)).
- 363 Subsection (2) (a) of new section 109BZA stipulates that when an information notice is issued, that notice must contain sufficient information to identify the individual who is suspected of committing the offence, for example, by name or by a description that can help to identify them (for example, an account number, or membership number).
- 364 Subsection (2) (b) of new section 109BZA allows for information notices to be issued in respect of a person associated to the individual allegedly committing fraud, who is a member of their family. For example, if a person is claiming a benefit as a single person when it appears that they are part of a couple, information may be requested in relation to the alleged partner if it is relevant to the investigation.
- 365 Subsection (3) of new section 109BZA stipulates that the information notice issued by the authorised officer must be limited to information which they would reasonably be expected to access.
- 366 Subsection (4) of new section 109BZA stipulates three elements that must be included in an information notice.
- 367 Subsection 4 (a) requires the notice to specify the identity of a person who the information request relates to (either by name or description).
- 368 Subsection 4 (b) of new section 109BZA outlines how, where and the period within which the information must be given; to the authorised officer (for instance, timeframes that will be set out by DWP in the associated Code of Practice).
- 369 Subsection 4 (c) of new section 109BZA requires the notice to include the potential consequences of not providing the information requested.
- 370 Subsection (5) (a) of new section 109BZA allows for copies and extracts to be taken of the information to support the investigation. It enables DWP to require the information holder to provide an explanation if they are unable to comply with the information notice.
- 371 Subsection (5) (b) of new section 109BZA requires the information holder to provide information in a

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specified form.

- 372 Subsection (5) (c) of new section 109BZA requires the information holder to provide an explanation to DWP the reasons why an information request has not been complied with.
- 373 Subsection (6) prevents an information notice being issued in relation to information identified as communications data.
- 374 Subsection (7) of new section 109BZA provides essential explanations and definitions for words and key terms used in the clause.
- 375 Subsection (8) of new section 109BZA explains how the powers in this clause are to be interpreted when operating with other parts of this Act.
- 376 Clause 72 subsection (3) amends cross-references in section 109A of the Social Security Administration Act 1992.
- 377 Clause 72 (4) amends section 109B of the Social Security Administration Act 1992 by omitting existing provisions that are no longer required following the replacement of S109B(2A) with 109BZA.
- 378 Clause 72 (5) amends 109BA of the Social Security Administration Act 1992 to account for the new provision set out in s 109BZA and deletes references to sections 109B(2A).
- 379 Clause 72 (6) amends cross-references in 109C of the Social Security Administration Act 1992 for powers of entry.
- 380 Clause 72 (7) removes references to parliamentary controls and orders relating to section 109B(2A) which has been replaced by subsection 109BZA.

### Clause 73: Code of Practice

- 381 Clause 73 amends section 3 of the [Social Security Fraud Act 2001](#) by inserting a reference to new section 109BZA of the [Social Security Administration Act 1992](#). The amended section 3 requires a new Code of Practice to be laid before both Houses of Parliament by the Secretary of State in relation to the use of new section 109BZA before the powers may be used.

### Clause 74: Eligibility verification

- 382 This clause amends the [Social Security Administration Act 1992](#), making provision for the Secretary of State to issue an Eligibility Verification Notice.
- 383 Subsections (1) and (3) make amendments to the Social Security Administration Act 1992 consequential to the introduction of new section 121DB and Schedule 3B to the 1992 Act.
- 384 Subsections (2) and (4) introduce new section 121DB and Schedule 3B into the 1992 Act.
- 385 Section 121DB and Schedule 3B create a new legal framework for the Eligibility Verification Measure. These provisions establish a power for the Secretary of State to obtain information to identify, or assist in identifying, incorrect payments of certain benefits.
- 386 Regulations under paragraph 2(1)(b) or 19(2) of Schedule 3B are subject to the affirmative procedure, whilst regulations under paragraph 12 of Schedule 3B are subject to the negative procedure.

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387 Subsection (5) provides that Part 2 of Schedule 3 of this Bill amends the [Proceeds of Crime Act 2002](#).

#### Clause 75: Eligibility verification: independent review

388 Clause 75 amends the [Social Security Administration Act 1992](#) and inserts new sections 121DC and 121DD. New section 121DC establishes a requirement for independent oversight of the new eligibility verification powers to ensure accountability, compliance, and effectiveness. New section 121DD makes further provision in relation to this independent oversight and information sharing for the purposes of the independent person's review.

389 Subsection (1) of new section 121DC mandates that an independent person must be appointed to carry out reviews of the Secretary of State's powers under the Eligibility Verification Measure. The reviewer must assess the Secretary of State's compliance with the requirements of new Schedule 3B to the Social Security Administration Act 1992.

390 Subsection (2) of new section 121DC provides that after each review has been undertaken, the independent person must (a) prepare and (b) submit a report on their findings to the Secretary of State.

391 Subsection (3) of new section 121DC provides that on receipt of the report, the Secretary of State must (a) publish it and (b) lay a copy before Parliament.

392 Subsection (4) of new section 121DC provides that the review must relate to the period of 12 months beginning with the day Section 74 of the Public Authorities (Fraud, Error and Recovery) Bill comes into force, and subsection (5) provides that subsequent reviews must cover each following 12-month period. This is to provide a clear timeframe for independent oversight.

393 Subsection (6) of new Section 121DC provides that each review must consider (a) whether powers have been exercised as per the legislation and the Code of Practice during the period covered by the review, (b) actions taken by banks and other financial institutions comply with Eligibility Verification Notices during the period of the review and (c) the activities undertaken as part of the Eligibility Verification Measure power have been effective in identifying, or assisting in identifying, incorrect payments of the benefits covered during the period of the review. This independent review mechanism ensures that the Eligibility Verification Measure is exercised in a responsible and effective manner, in accordance with the legal framework. The requirement to publish findings and present them to Parliament supports transparency and facilitates scrutiny by both the public and Parliament.

394 Subsection (7) of new section 121DC enables regulations to give relevant functions to a person so that the person may conduct the independent review, ensuring compliance with subsections (1) to (6). The power will be subject to the negative procedure.

395 Subsection (1) of new section 121DD provides a legal gateway for the Secretary of State to disclose information to the independent reviewer, or a person acting on the reviewer's behalf, for purpose of carrying out their review.

396 Subsection (2) of new section 121DD provides that restrictions arising from data protection legislation (as defined in subsection (5)) and Parts 1 to 7 or Chapter 1 of Part 9 of the [Investigatory Powers Act 2016](#) will still apply when information is shared by the Secretary of State with the

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reviewer.

- 397 Subsection (3) of new section 121DD establishes that the power in subsection (1) enabling the disclosure of information from the Secretary of State to the independent reviewer must be taken into account when determining whether the processing of information would contravene the data protection legislation. This makes clear that such sharing of information will not in itself contravene data protection legislation.
- 398 Subsection (4) of new section 121DD provides that such a disclosure does not breach (a) any obligations of confidence owed by the Secretary of State, or (b) any other restrictions on the disclosure of information.
- 399 Subsection (5) of new section 121DD provides the definition of “data protection legislation” by reference to the relevant provision of the [Data Protection Act 2018](#).

## Chapter 2: Powers of entry, search and seizure etc

### Clause 76: Entry, search and seizure in England and Wales

- 400 The Department for Work and Pensions (DWP) investigates Economic, Serious and Organised Crime (“ESOC”) across England, Wales and Scotland. The ESOC team is the arm of Counter Fraud, Compliance and Debt that deals with complex and sophisticated attacks on DWP’s benefits and grants payments – usually by Organised Crime Groups. However, it does not have the authority to apply for, or execute warrants, production orders, search premises, seize items, or dispose of seized items.
- 401 The provisions set out in clause 76 allow DWP authorised investigators to apply for and execute a court warrant with or without police involvement in England or Wales. Clause 77 sets out equivalent powers for DWP in Scotland.
- 402 Subsection (2) of this clause inserts a new section 109D into the [Social Security Administration Act 1992](#). New section 109D enables specified powers available to the police to apply to specific DWP investigators when authorised by the Secretary of State (authorised investigators).
- 403 Subsection (2) of new section 109D places a geographical limit on DWP’s authority to enter premises within England and Wales only. The inclusion of the words ‘and items’ is intended to cover such matters as the production of information, as the powers apply to the seizure of items.
- 404 Subsection (3) and (4) of new section 109D specifies which powers from the [Police and Criminal Evidence Act 1984](#) (“PACE”) will apply to DWP authorised investigators when conducting criminal investigations in England and Wales, with some adaptations. For example, ‘authorised investigator’ is to be applied instead of reading ‘constable’. The full detail of each adaptation is contained within new Schedule 3ZC which is inserted into the Social Security Act 1992 Act by clause 76(3).
- 405 Authorised investigators are defined in subsections (5) and (6) of new section 109D. The references to, firstly, the authorisation of the Secretary of State and, secondly, the grade of Higher Executive Officer limits the exercise of these powers to DWP officers who investigate the most serious criminal cases, including those committed by organised crime groups.
- 406 When planning a search with a warrant, DWP will always consider the proportionality and necessity of the action and ensure the action taken is lawful.

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407 The sections of PACE that are relevant and applicable to DWP are the parts related to the searching and entering of premises, as well as the seizing of evidence relevant to the investigation.

408 The existing provisions in PACE will apply to authorised investigators and places an obligation when applying for a search warrant to set out in the application matters such as:

- the grounds for making the application
- the power under which the warrant will be issued
- whether the application is for a warrant authorising entry and search more than once
- the articles to be sought
- details of the person who controls the premises and any other occupants, including any children or vulnerable adults.
- why it is believed that the material sought will be found on those premises.

409 The specific sections of the PACE powers applicable to DWP that will be amended by the provisions are explained below:

Provision	What it means
<p><a href="#">PACE – Section 8</a> (1) to (5) (power of justice of the peace to authorise entry and search of premises).</p> <p>Subject to the adaptations that are made by Schedule 3ZC to this section to apply to DWP</p>	<p>This section allows a DWP authorised investigator to apply to a Court for a warrant that will allow for lawful entry into a premises with or without the permission of anyone who may be present there. On entering the premises, it allows for lawful search and for items of sufficient value to the investigation of an indictable offence to be taken away.</p> <p>An <i>indictable offence</i> is a serious crime that can or must be tried in a Crown court.</p>
<p><a href="#">PACE – Section 9</a> (1) (special provisions as to access) and Schedule 1 (special procedure)</p> <p>Subject to the adaptations that are made by Schedule 4 to this section to apply to DWP</p>	<p>This section allows an authorised investigator from DWP to apply to a judge for a Production Order to access excluded or special procedure material under Schedule 1 of PACE.</p> <p>A search warrant may also be granted under Schedule 1 of PACE, to access the premises to search for excluded material or special procedure material for the purposes of a criminal investigation.</p> <p>Any application must demonstrate to a judge that the access conditions specified in paragraph 2 of Schedule 1 as amended by sub-paragraph 3(5) of Schedule 3ZC have been met.</p> <p>For more information on these conditions see: <a href="#">PACE 1984-Schedule 1</a>.</p>

<p><a href="#">PACE – Section 15</a> (search warrants - safeguards)</p>	<p>This section outlines the information that a DWP authorised investigator must provide to the court when applying for a warrant under section 8.</p> <p>It also specifies the required level of information that must be included on the warrant.</p>
<p><a href="#">PACE - Section 16</a> (execution of warrants)</p>	<p>This section details the practical elements of the execution of warrants. If the authorised warrant allows, other authorised person(s) can join DWP authorised investigator(s) and will have the same search and seizure powers as the investigator(s).</p> <p>This is provided those powers are used under the supervision, and in the company of, a DWP authorised investigator.</p>
<p><a href="#">PACE - Section 19</a> (general power of seizure)</p>	<p>This section allows a DWP authorised investigator to lawfully seize anything found on a premises if:</p> <ul style="list-style-type: none"> <li>• they have reasonable grounds to believe it was gained from carrying out an offence</li> <li>• it is evidence in relation to an offence</li> <li>• seizing it is necessary to prevent it being: <ul style="list-style-type: none"> <li>○ concealed</li> <li>○ lost</li> <li>○ damaged</li> <li>○ altered</li> <li>○ destroyed</li> </ul> </li> </ul>
<p><a href="#">PACE – Section 20</a> (extension of powers of seizure to computerised information)</p>	<p>This section allows for a DWP authorised investigator that is lawfully on a premises to use Section 19 powers to seize items and require any accessible electronic information to be provided in a removable format.</p>
<p><a href="#">PACE – Section 21</a> (access and copying)</p>	<p>This section describes the circumstances under which a DWP authorised investigator is required to:</p> <ul style="list-style-type: none"> <li>• provide a record of</li> <li>• allow access to</li> <li>• provide copies of</li> </ul> <p>seized material to people who can show they were the occupiers of the premises from where a DWP authorised investigator: seized the material, or they had custody and control of the material immediately before it was seized.</p>
<p><a href="#">PACE – Section 22</a> (1) to (4) and (7) (retention)</p>	<p>This section outlines the conditions which apply to seized material which is kept by DWP.</p>
<p><a href="#">PACE – Section 117</a> (reasonable use of force)</p>	<p>This section allows a DWP authorised investigator to use reasonable force, when necessary, in exercising their authorised powers.</p> <p>This power will be limited to using reasonable force against things not people.</p>

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	Once the authorised investigator lawfully enters a premises this would, for example, allow forcing open a lock on a cabinet or a door in order to examine the contents within it or behind it.
<a href="#">PACE</a> – Sections 10 to 14, 23 and 118 (interpretation provisions)	These sections permit the substitution of equivalent DWP terminologies, expressions, and grade classifications to apply when reading and interpreting PACE.

410 Subsection (5) of new section 109D provides that the new powers may only be exercised by an individual who has received authorisation from the Secretary of State.

411 Subsection (6) of new section 109D explains that to meet this requirement, the individual must be a government official and an authorised investigator, holding at least a grade equivalent to that of a Higher Executive Officer (HEO). This ensures that the grade of the DWP investigator is of an equivalent grade to a police officer.

412 The equivalent terms for DWP:

<b>Police</b>	<b>DWP</b>
Constable	Authorised investigator
Rank	Grade – HEO

## Clause 77: Entry, search and seizure in Scotland

413 DWP investigates Economic, Serious and Organised Crime in England, Wales and Scotland. However, it does not have the authority to conduct, apply for, or execute warrants, production orders, search premises, seize items, or dispose of seized items.

414 This clause enables DWP to obtain a warrant in Scotland to enter premises, for the purposes of obtaining evidence that is considered necessary for the Secretary of State’s investigative functions.

415 The subsections set out in the clause allow DWP to seek a court warrant, enabling DWP authorised investigators to carry out these actions with or without police involvement in Scotland.

416 Subsections (1) and (2) of this clause insert a new section 109E into the [Social Security Administration Act 1992](#).

417 The effect of new section 109E enables powers similar to those under [PACE](#) (enabled by clause 76) to also apply to specific authorised DWP investigators in Scotland, with some modifications to ensure the powers operate appropriately for the jurisdiction of Scotland.

418 This will enable a DWP authorised investigator to apply for and execute a warrant, or production order, and search premises and seize items when that action is authorised by a Sheriff.

419 Subsection (3) of clause 77 inserts a new Schedule 3ZD into the Social Security Administration Act 1992. This schedule outlines the procedures for exercising the powers and the conditions required for applying for a warrant for entry, search, and seizure in Scotland.

420 Schedule 3ZD specifies the limitations of the powers in relation to how a warrant must be executed,

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the handling of seized items, and information to be provided to the person from whom items are taken. The Schedule outlines the process for returning a warrant to the Court and provides an explanation for the term "authorised investigator".

#### Clause 78: Entry, search and seizure: Crown application

- 421 This clause sets out how the powers should be interpreted and the restrictions that apply for premises linked to the Crown. It achieves this by adding in a new section, 109F Entry, search and seizure: Crown application, into the [Social Security Administration Act 1992](#).
- 422 Subsection (1) of new section 109F provides that sections 109D, 109E, and Schedule 3ZD apply to Crown premises in the same way as they do to other premises, unless it is stated otherwise.
- 423 Subsection (2) of new section 109F provides that limitations may apply for national security reasons.
- 424 Subsection (3) of new section 109F prevents power of entry under subsection (1) for: (a) land owned by His Majesty's private estates, (b) premises used by either House of Parliament.
- 425 Subsection (4) of new section 109F defines the terms which are essential for interpreting the legislation.

#### Clause 79: Offence of delay, obstruction etc

- 426 It is an existing offence under Section 111 of the [Social Security Administration Act 1992](#) to intentionally delay or obstruct an authorised officer. A conviction for a failure to comply may result in a fine up to £1,000.
- 427 Subsection (a) allows that obstruction of an authorised investigator be treated in the same way as obstructing an authorised officer. This will have the effect that obstructing an authorised investigator will be an offence under section 111 of the Social Security Administration Act 1992 and on conviction may result in a fine up to £1,000.
- 428 Subsection (b) defines the terms which are essential for interpreting the legislation.

#### Clause 80: Disposal of property

- 429 Where DWP executed a warrant that enabled an authorised investigator to seize items from a premises as part of a DWP investigation, generally DWP will be able to return items to the owner if they are no longer needed for an ongoing investigation.
- 430 In some cases, it may not be appropriate to return an item, this may be because the person from whom the item was taken was not the actual owner, or the owner may not be able to be traced. In some cases, there may be a risk that a seized item could be used for a criminal purpose if it were returned. For these reasons DWP requires a lawful way of disposing of these kinds of seized items.
- 431 This clause sets out the permitted actions available to DWP when certain criteria are met.
- 432 Clause 80 inserts a new section 109G into the [Social Security Administration Act 1992](#).
- 433 Subsection (1) of new section 109G of the Social Security Administration Act 1992 allows an interested person, such as an authorised investigator or any other concerned individual such as the lawful owner or the person from whom the property was taken, to apply to a magistrates' court for disposal of items seized under s109D and s109E powers when required. This includes requesting

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permission to return the property to its owner, retain it, or destroy it.

- 434 Subsection (2) allows the Court to determine seized items can be modified where necessary.
- 435 Subsection (3) of new Section 109G stipulates that where approval has been given by the magistrate for the item to be destroyed it cannot be destroyed until six months have passed from when the magistrate approved the application.
- 436 Subsection (4) of new Section 109G allows someone with an interest in the item to request the court to alter an approved action in relation to the item.
- 437 Subsection (5) of new Section 109G sets out that where an order has already been given to approve the destruction of an item, whilst a further application can be made to the court about the item, those applications can only be made regarding the timing of property destruction.
- 438 Subsection (6) clarifies the definition of "relevant property" as items lawfully seized by DWP with a warrant arising from an investigation of a DWP Offence. It also specifies that an application to a magistrate can be made by the Secretary of State or anyone with an interest in the item, such as the lawful owner or the person from whom it was taken. It ensures that references to the court's role in this process are applicable to where the action is taken, be that in England, Wales or Scotland.

#### Clause 81: Amendments to the Criminal Justice and Police Act 2001

- 439 When DWP is conducting a lawful search of premises under the powers granted by new sections 109D and 109E of the [Social Security Administration Act 1992](#), there may be instances where the authorised investigator cannot ascertain whether an item or material contains information relevant to that search. This situation may arise when dealing with large volumes of material, such as unlabelled or poorly stored paper documents or files or electronic devices.
- 440 In instances where the authorised investigator cannot distinguish between material that should be seized and material that should not, the material may for very practical reasons need to be taken for examination elsewhere, as it might be difficult to determine or separate it out on the premises.
- 441 The sections in this clause enable DWP to deal with situations of this type should they arise in Scotland, by making amendments to the [Criminal Justice and Police Act 2001](#). Amendments to the Act are not required in respect of England and Wales, as the powers in the Act apply automatically to powers of seizure exercised under PACE.
- 442 Subsection (2) of clause 81 amends Section 57 of that Act in relation to the retention of seized items. It also clarifies what cannot be retained, which is dependent on which powers were used to lawfully obtain the material.
- 443 Subsection (3) amends Section 63 of that Act to ensure that the treatment of seized items applies in the same way to copies as it does to originals.
- 444 Subsection (4) amends that Act to allow Section 50 of that Act to apply to seizures conducted in accordance with Schedule 3ZD. Section 50 of that Act sets out the conditions that must be met where it is permissible to remove material from a premises which may for very practical reasons need to be taken for examination elsewhere rather than having to identify its relevance on the premises at the time of a search. This is sometimes colloquially described as 'seize then sift' rather than 'sifting and then seizing'.

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## Clause 82: Incidents etc in England and Wales

- 445 When DWP exercises the new powers in section 109D of the [Social Security Administration Act 1992](#), an independent complaints route will be available. DWP will handle less serious complaints using existing processes, including complaints made to them about matters unrelated to the exercise of these new powers.
- 446 The Independent Office for Police Conduct which oversees complaints, professional conduct matters, and serious incidents involving the Police and similar bodies in England and Wales will handle serious complaints relating to the use of the s109D powers by DWP in relation to DWP offences.
- 447 This clause achieves that position by amending the [Police Reform Act 2002](#) by inserting a new section 26H regarding DWP investigators.
- 448 Subsection (1) of new section 26H allows the Secretary of State to make regulations concerning how the function will operate. This power will be subject to the negative procedure.
- 449 Subsection (2) of new section 26H allows for those regulations to set out specific detail on arrangements to make them applicable to DWP and for any matters relating to payment to be set out in regulations.
- 450 Subsection (3) of new section 26H allows for investigations to be undertaken jointly or separately by the appropriate person.
- 451 Subsection (4) of new section 26H permits an authorised officer to be able to lawfully provide information to the complaint body as part of an investigation.
- 452 Subsection (5) of new section 26H permits the complaint body to provide information the other relevant complaint body as part of their role.
- 453 Subsection (6) of new section 26H allows the Secretary of State to make regulations concerning information and its disclosure in relation to complaint matters.
- 454 Subsections (7) and (8) of new section 26H detail how matters relating to disclosure of information interact with other existing provisions which relate to the protection and disclosure of information. This ensures where information has been provided it is provided lawfully, and that the action of providing that information is not considered to be an offence and no confidences have been broken.
- 455 Subsection (9) of new section 26H clarifies the definitions in the clause around certain Acts and terminology used when describing a DWP investigator and the meaning of a complaint function.

## Clause 83: Incidents etc in Scotland

- 456 This clause provides for an independent complaints route where DWP exercises the new powers in new section 109E and Schedule 3ZD of the [Social Security Administration Act 1992](#). Less serious complaints or incidents will be handled using existing DWP processes, including where complaints are made about matters unrelated to the exercise of these new powers.
- 457 The Police Investigations and Review Commissioner (“PIRC”) independently investigate incidents and complaints involving policing bodies in Scotland. This body will be responsible for handling and investigating serious incidents relating to the use of the s109E powers by DWP in relation to DWP

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offences.

458 Subsections (1) and (2) amend the existing legislation to enable the scope of PIRC to also include DWP authorised investigators and sets out how the legislation should be interpreted.

459 Subsection (3) enables the PIRC to investigate and report on certain serious incidents involving DWP investigators, as requested by the Secretary of State. It also clarifies definitions relating to specific Acts and terms linked to a DWP investigator and the meaning of a serious incident in relation to DWP matters.

460 Subsection (4) enables the appropriate prosecutor to direct the PIRC to investigate crimes and deaths which may be connected to a person exercising the functions of a DWP authorised investigator.

## Chapter 3: Further provision relevant to investigatory powers

### Clause 84: DWP Offence

461 Clause 84 provides the definition of a relevant offence as set out in the [Social Security Administration Act 1992](#). A DWP offence is defined as a benefit offence, or another offence relating to a benefit, payment, credit or grant. This also includes offences relating to the use of a national insurance number.

### Clause 85: Disclosure of information etc: interaction with external constraints

462 This clause inserts a new section 109H Disclosure of information: interaction with external constraints, into the Social Security Administration Act 1992.

463 Subsection (1) of new Section 109H sets out the appropriate parts of the Social Security Administration Act 1992 to which this clause is applicable.

464 Subsection (2) of new Section 109H provides that DWP's actions under Part V of the Social Security Administration Act 1992 must comply with existing laws relating to the use of data and the existing protections that are in place to protect confidential data and data prohibited by the [Investigatory Powers Act 2016](#).

465 Subsection (3) of new section 109H stipulates what must be considered when determining if disclosing, obtaining, or using information violates data protection laws, including telecommunications data.

466 Subsection (4) of new section 109H sets out that a person required to provide information to DWP can do so lawfully and will not be considered to have committed an offence or broken a confidence by doing so.

467 Subsections (5) and (6) of new section 109H exempt information from disclosure if it is confidential and pertains to legal professional privilege.

468 Subsection (7) of new section 109H exempts information that may lead to self-incrimination (this includes incriminating spouses or civil partner from disclosure).

469 Subsection (8) of new section 109H exemption information being sought from a person who provides services on a not-for-profit basis in relation to social security, housing (including the

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provision of temporary accommodation), or debt.

470 Subsection (9) of new section 109H exempted information notices that may include (a) excluded material, or (b) special procedure material as defined in [Police and Criminal Evidence Act 1984](#).

471 Subsections (10) and (11) set out definitions of key terms associated with these provisions.

### Clause 86: Giving notices etc

472 This clause inserts into section 121DA the provision for DWP to retain the ability to issue an information notice and receive relevant documents by post.

### Clause 87: Independent review

473 This clause provides for DWP investigation activity to be inspected and evaluated by an independent person or body. It does this by adding a new section into the [Social Security Administration Act 1992](#): 109I Independent review.

474 Subsection (1) of new section 109I provides that the Secretary of State must appoint someone to inspect DWP criminal investigations.

475 Subsections (2) (a) and (b) of new section 109I provide that following an inspection a report must be written and provided to the Secretary of State detailing the outcome of the inspection.

476 Subsections (3) (a) and (b) of new section 109I require that the Secretary of State must then publish that report and lay it in Parliament.

477 Subsections (4) (a) & (b) require that compliance with codes of practice etc., are considered as part of the review and that the DWP's investigations are correctly carrying out their functions.

478 Subsection (5) of new section 109I sets out that the report of the inspection must include recommendations based on information gathered during the inspection.

479 Subsection (6) of new section 109I explains the key definitions used in the clause.

### **New section 109J of the Social Security Administration Act 1992: Independent review: further provision**

480 Subsection (1) of new section 109J allows for timeframes for the inspections to be set out.

481 Subsection (2) of new section 109J requires that the independent person must be consulted prior to being directed by the Secretary of State.

482 Subsection (3) of new section 109J allows information to be disclosed where necessary.

483 Subsection (4) of new section 109J enables regulations to set out the specific details and powers relating to the inspection function. The power will be subject to the negative procedure.

484 Subsection (5) of new section 109J allows for different independent persons to be appointed for a particular territorial area.

## Chapter 4: Overpayments: recovery and enforcement

### Clause 88: Enforcement of non-benefit payments

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485 This clause sets out provisions concerning enforcement of non-benefit payments that are inserted in the [Social Security Administration Act 1992](#).

486 Clause 88 inserts three new sections after section 71ZH. Those are:

**New section 71ZI of the Social Security Administration Act 1992: Overpayment of non-benefit payments: overview and recovery**

487 New section 71ZI of the Social Security Administration Act 1992 sets out the general provisions about the recovery of non-benefit payments which have been overpaid.

488 Subsection (1) of new section 71ZI sets out the circumstances in which an overpayment of a non-benefit payment will arise, which is where a payment has been made in consequence of a misrepresentation or failure to disclose a material fact.

489 New section 71ZI subsection (2) provides a power to recover the overpayment, as if it were recoverable under section 71 of the Social Security Administration Act 1992, if the person who has been overpaid is convicted of any related offence or if they agree to pay a penalty under section 115A of the Social Security Administration Act 1992.

490 Subsection (3) is self-explanatory.

491 Subsection (4) of new section 71ZI provides that this power does not affect other recovery powers for non-benefit payments.

492 Subsection (5) of new section 71ZI sets out the meaning of the term “non-benefit payment” which is set out in section 121DA(5) of the Social Security Administration Act 1992.

**New section 71ZJ of the Social Security Administration Act 1992: Overpayment of non-benefit payments: overpayment decision and notice**

493 New section 71ZJ of the Social Security Administration Act 1992 relates to the recovery of overpayments under new section 71ZI and sets out what the Secretary of State must do before an overpayment can be recovered. This includes providing an overpayment notice, the detail that must be included in that notice and that the person must have had the opportunity to challenge the overpayment.

494 Subsection (1) of new section 71ZJ provides that before the Secretary of State exercises their power to recover an overpayment of a non-benefit payment, an overpayment notice must be given to the person, and they must be given the opportunity to challenge the notice.

495 Subsection (2) of new section 71ZJ provides that the Secretary of State can only issue an overpayment notice if the person has been convicted of an offence set out in this legislation or it appears possible to institute proceedings against a person for an offence.

496 Subsection (3) of new section 71ZJ sets out the requirements that must be met when issuing a valid overpayment notice: the notice must state the overpayment amount, provide the Secretary of State’s reasons as to why that overpayment has occurred, state what the notice means for the person receiving it (for example, that they will need to repay the overpayment and any penalties that may apply) and set out the person’s right to a review of the overpayment decision, and a subsequent appeal.

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497 Subsection (4) of new section 71ZJ provides that the Secretary of State has a power to invite a person to agree a penalty under new section 115A of the Social Security Administration Act 1992. This enables an Administrative Penalty, which is an existing mechanism, to be offered as an alternative to prosecution in cases of non-benefit overpayments following an investigation that has met a criminal burden of proof.

498 Subsection (5) of new section 71ZJ provides the elements that must be met in order for the condition set out in subsection (1) to be met.

### **New section 71ZK of the Social Security Administration Act 1992: Overpayment of non-benefit payments: reviews and appeals**

499 New section 71ZK of the Social Security Administration Act 1992 relates to the ability to seek a review and also to appeal any decision to issue a notice or to recover an overpayment of a non-benefit payment, under new section 71ZJ.

500 Subsection (1) of new section 71ZK provides that a person may apply to the Secretary of State for a review of the notice and the grounds on which that review may be asked for – that there has been no overpayment, or the value of the overpayment is wrong.

501 Subsection (2) of new section 71ZK provides that the request for a review in subsection (1) must be made within one month.

502 Subsection (3) of new section 71ZK provides that the Secretary of State has the power to uphold, vary or revoke the notice.

503 Subsection (4) of new section 71ZK sets out that the Secretary of State must notify the person who has appealed of the outcome of the review.

504 Subsection (5) of new section 71ZK outlines that there is a right of appeal to the First-tier Tribunal against the notice, unless it has been revoked on review.

505 Subsection (6) of new section 71ZK provides that a person must bring an appeal to the First-tier Tribunal under subsection (5) within one month of receiving the notice.

506 Subsection (7) of new section 71ZK provides that the First-tier Tribunal has the power to uphold, vary or revoke the notice.

### **Clause 89: Recovery and enforcement mechanisms**

507 Clause 89 (2) inserts new section 80A into the [Social Security Administration Act 1992](#). References to the 'liable person' in Chapter 4 relate to the debtor.

508 New section 80A provides that the new recovery methods set out in 80B and 80C can only be applied when the Secretary of State has already given the liable person reasonable opportunity to settle the debt, and they have been notified of the nature and possible use of the powers. It also provides that the new recovery methods can only be exercised where it is not reasonably possible to recover them through other designated methods of recovery.

509 Subsection (3) amends section 111 of the Social Security Administration Act 1992 to exclude obligations to provide information and documents under Schedule 3ZA (recovery from accounts) or Schedule 3B (eligibility verification) from the offence under that section.

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- 510 Subsection (4) amends section 191 of the Social Security Administration Act 1992 to add additional definitions, for use across the Act, of phrases relevant to new Schedule 3ZA and new Schedule 3ZB.

#### Clause 90: Recovery from bank accounts etc

- 511 Clause 90 (1) inserts new section 80B recovery from bank accounts etc into the [Social Security Administration Act 1992](#) after section 80A.
- 512 New section 80B makes provision for recovery of social security debt directly from the liable persons bank account and inserts Schedule 3ZA into the Social Security Administration Act 1992, which sets out detailed provisions concerning Direct Deduction Orders. This power is broadly similar to powers contained in the [Child Support Act 1991](#) and the [Finance Act \(No.2\) 2015](#), which provides for similar powers to deduct directly from the liable persons bank account(s) without a court order. Recovery directly from bank accounts includes safeguards similar to existing Third Party Debt Orders in the county court.
- 513 Regulations under paragraphs 24(3) of Schedule 5 (new Schedule 3ZA) will be subject to the affirmative procedure. The negative procedure will apply for all other regulations under paragraph 24.

#### Clause 91: Disqualification from driving

- 514 Clause 91 inserts new section 80C disqualification from driving into the [Social Security Administration Act 1992](#) after section 80B.
- 515 New section 80C makes provision for a liable person to be disqualified from driving in certain circumstances. Any disqualification from driving will always be suspended in the first instance, subject to the liable person complying with what the Court has assessed to be affordable and reasonable repayments. Where disqualification does occur, it is temporary, and the liable person can have the disqualification lifted by satisfying the Court they are now making (and will continue to make) repayments. This power will only be applied as a last resort where recoveries cannot be made by any other method and is intended to encourage individuals to repay their debt before reaching the point where the application of the power is considered. The power is similar to that under section 40B of the [Child Support Act 1991](#), already used by the Child Maintenance Service.
- 516 The regulation-making power, at paragraph 7(4) of new Schedule 3ZB (inserted by this clause and found at Schedule 6 of this Bill) will be subject to the negative procedure.
- 517 Subsections (4)-(7) amend the [Road Traffic Offenders Act 1988](#) to ensure the following existing legislative provisions apply in relation to a Full DWP Disqualification Order made under Schedule 3ZB: per subsection 5, amending section 27 to require the liable person to produce their driving licence when they have been ordered to do so by the court; per subsection (6), providing that a licence is revoked automatically by law when a person is disqualified, except if the period is under 56 days in duration; and per subsection (7), provision that a person can apply to have a licence reinstated after the period of disqualification has ended.
- 518 Subsection (8) amends section 164 of the [Road Traffic Act 1988](#) to apply a provision that allows constables to seize a driving licence where a court has required it to be produced by a full DWP disqualification order made under Schedule 3ZB.

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## Clause 92: Code of practice

- 519 This clause amends the [Social Security Administration Act 1992](#), inserting a new section 80D. New section 80D establishes a Code of Practice for the new direct deduction order and driving disqualification powers. This is to act as an additional safeguard to ensure the recovery methods are applied fairly and proportionately.
- 520 New section 80D requires that the Secretary of State issue a Code of Practice. It sets out information the Code of Practice must include and requires the Secretary of State to undertake public consultation before it is published. The Secretary of State may from time-to-time revise and re-issue this Code of Practice, and each iteration must be laid before Parliament.
- 521 The Code of Practice must include provision regarding how the Secretary of State will exercise the new recovery methods under Schedule 3ZA (Recovery from Bank Accounts Etc) and Schedule 3ZB (Disqualification from Driving) of the Social Security Administration Act 1992.
- 522 The primary function of this Code of Practice will be to provide an operational framework for the application of these powers and to further safeguard individuals where they are applied.

## Clause 93: Rights of audience

- 523 This clause amends the [Social Security Administration Act 1992](#), inserting a new section 80E.
- 524 New section 80E grants rights of audience and rights to conduct litigation in the Magistrates Court, County Court, and Crown Court in England and Wales for or in connection with debt recovery proceedings to designated officers of the Secretary of State. This will allow DWP officials to be able to pursue the enforcement of debts via the court without the need to instruct solicitors thereby ensuring cost efficiency in the recovery of public funds.

## Clause 94: Recovery of costs

- 525 This clause amends the [Social Security Administration Act 1992](#) by inserting a new section, section 80F. New section 80F states that any costs incurred by the Secretary of State in recovering an amount under clauses 71 to 80 or Schedule 3ZA or 3ZB of the Social Security Administration Act 1992 may be recovered as though they were recoverable under the same methods as the debt itself.
- 526 This means costs incurred by the Secretary of State in taking recovery actions through court or deduction from accounts can be themselves be recovered through any method of recovery, including via deduction from benefit, Direct Earnings Attachment (“DEA”) deduction directly from bank accounts and suspended and/or immediate disqualification from driving orders. This ensures the reasonable costs incurred by the Secretary of State (for example, court fees) are met by the liable person even where other recovery actions are taken later.

## Clause 95: Recovery: further provision

- 527 This clause amends the Social Security Administration Act 1992 by inserting a new section, section 80G. New section 80G subsections (1) to (4) set out that the recovery powers have to be interpreted to be consistent with existing data protection legislation. This ensures general data safeguards are applicable in respect of information the Secretary of State (and others) receive or process under these powers.
- 528 Subsection (5) is self-explanatory.

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529 Subsection (6) sets out that in the new legislation the 'giving' of notices can include sending via post (and other methods).

## Chapter 5: Offences and penalties etc

### Clause 96: Offences: non-benefit payments

530 Subsection (2) amends section 111A of the [Social Security Administration Act 1992](#). It is an offence to make a dishonest representation (s.111A) (or to produce false information or documents) to obtain a benefit. This expands the offence to include a non-benefit payment. It inserts a new section (1H), which amends section 111A so that the offences set out in subsections (1A) to (1G), should be read to include a reference to a person being entitled to, having a right to receive or qualifying for a non-benefit.

531 Subsection (3) amends Section 112 of the Social Security Administration Act 1992. It is an offence to make false representation (s.112) (or to produce false information or documents) to obtain a benefit. This expands the offences to include a non-benefit payment by amending the summary offence in Section 112 of the Social Security Act 1992 (False representations for obtaining benefit), to mirror the amendments made to section 111A.

532 Subsection (4) provides that the Secretary of State may prescribe in regulations what constitutes a non-benefit payment. Regulations made under subsection (4) will be subject to the negative procedure.

### Clause 97: Penalty as alternative to prosecution: extension to non-benefit payments

533 This clause amends section 115A of the [Social Security Administration Act 1992](#) (penalty as alternative to prosecution). The clause expands the definition of the types of overpayments that section 115A applies to include a non-benefit payment.

534 Subsection (1) is self-explanatory.

535 Subsection (2) inserts new subsections (1B) and (1C).

536 New section (1B) expands Section 115A so that it applies to an overpayment where a person has been given a notice under new section 71ZJ (overpayment notice in relation to non-benefit payment).

537 New section (1C) describes the situation where the condition in new section (1B) will be met – when the time for a review has passed or it has been concluded.

538 Subsections (3) to (5) make consequential amendments to section 115A to ensure that the new provisions relating to non-benefit payments apply where the sums are recoverable under new section 71ZI.

539 Subsection (6) inserts a new subsection (8A). New subsection (8A) relates to new section (1B) and provides that overpayment has the meaning set out in new section 71ZI.

540 Subsection (7) amends Section 115B of the Social Security Administration Act 1992 (penalty as alternative to prosecution: colluding employers etc) to include an offence for an overpayment of a non-benefit payment to ensure that provision applies where the sums are recoverable under new section 71ZI.

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## Clause 98: Amendments to the Social Security Fraud Act 2001: loss of benefits following penalty

- 541 The [Social Security Fraud Act 2001](#) introduced powers to reduce or withdraw specified benefits where an offender has been convicted twice of benefit offences within a three year period. This was amended by the [Welfare Reform Act 2009](#) to apply this for a first conviction and at a lesser scale where an Administrative Penalty has been accepted. This clause amends the Social Security Fraud Act 2001 to remove the loss of benefit provisions where an Administrative Penalty has been accepted as an alternative to prosecution.
- 542 Subsection (1) states that this clause amends the Social Security Fraud Act 2001.
- 543 Subsection (2) amends section 6B so that the definition of “appropriate penalty provision” no longer refers to section 115A of the [Social Security Administration Act 1992](#).
- 544 Subsection (3) amends section 6C so that the definition of “appropriate authority” no longer refers to the [Social Security Act 1998](#).

## Part 3: General

### Clause 99: Application and limitation

- 545 This clause sets out the scope and limitations of the functions conferred by the Act.
- 546 Subsection (1) (a) provides that any function related to investigations or enforcement can be applied to actions taken or not taken before the Act comes into force.
- 547 Subsection (1) (b) provides that functions related to the recovery of money can be used to recover funds that a public authority was entitled to before the Act was enacted.
- 548 Subsection (2) provides that the provisions in subsection (1) (a) do not apply to amendments made by sections 95 (offences: non-benefits payments) and 96 (penalty as alternative to prosecution: extension to non-benefit payments).
- 549 Subsections (3) and (4) extend the limitation period for actions related to coronavirus-related fraud. It specifies the time limit for bringing such actions will be twelve years from the date the fraud is discovered or could have been discovered with reasonable diligence.
- 550 Subsection (5) defines what constitutes an "England and Wales public authority" and distinguishes it from devolved Scottish and Welsh authorities, which are defined in the [Scotland Act 1998](#) and section 157A of the [Government of Wales Act 2006](#), respectively.
- 551 Subsection (6) provides the definition of "coronavirus" as per section 1(1) of the [Coronavirus Act 2020](#).
- 552 Subsection (7) amends Section 38 subsection (11) of the [Limitation Act 1980](#) to include references to Part 1 of the Public Authorities (Fraud, Error and Recovery) Act 2025.

### Clause 100: Power to make consequential provision

- 553 Clause 100 gives the Secretary of State a regulation-making power to make amendments to other legislation which are consequential to provisions in this part of the Bill. Any regulations proposed under this power would be made by statutory instrument.

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## Clause 101: Financial provision

554 This clause authorises expenditure arising from the Bill, further information about which can be found under the “Parliamentary approval for financial costs or for charges imposed” section of the Explanatory Notes.

## Clause 102: Extent

555 Detailed analysis of the extent of the Bill can be found at Annex A. Otherwise, clause 102 is self-explanatory.

## Clause 103: Commencement

556 This clause sets out the manner in which provisions in the Bill will be commenced.

557 Subsection (1) provides that, except as provided by subsection (2), the Secretary of State and the Minister for the Cabinet Office may make regulations setting out the days such provisions come into force.

558 Subsection (2) provides that certain provisions, including Part 3 and any other provision enabling the exercise of powers to make regulations, will come into force on the day the Act is passed.

559 Subsection (3) provides that different parts of the Act can start on different dates.

560 Subsection (4) enables the Secretary of State or the Minister for the Cabinet Office to make transitional or saving provisions in connection with the commencement of any provision of the Act.

561 Subsections (5) and (6) are self-explanatory.

## Clause 104: Short title

562 Clause 104 is self-explanatory.

# Schedules

## Schedule 1: Fraud against public authorities: Police and Criminal Evidence Act 1984 powers etc

563 This Schedule sets out how [PACE](#) is modified for the purpose of enabling the powers set out in clause 7 of this Bill to be used by authorised investigators authorised by the Minister to do so.

564 Paragraph 2, sub-paragraph (1) establishes that every reference to a constable is to include authorised investigators.

565 Sub-paragraph (2) stipulates that references to offences are to be read as offences of fraud against a public authority, except for where an offence is referenced in section 21(8)(b) PACE.

566 Sub-paragraph (3) specifies that references to criminal investigations are to be read as being in relation to offences of fraud against a public authority.

567 Paragraph 3, sub-paragraph (1) modifies section 15 PACE, substituting "articles or persons" with "material" because the PSFA will not be conducting searches of persons.

568 Sub-paragraph (2) adjusts section 16 PACE, equating the rank of Inspector to an authorised investigator of at least the grade of Senior Executive Officer (SEO). It makes provision for Higher Executive Officers to fulfil the role of an SEO/Inspector where they are authorised to do so by an

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authorised investigator who is a Grade 7 or above.

569 Sub-paragraph (3) modifies section 21 PACE so that every reference to the police is to be read as a reference to an authorised investigator as it applies to the PSFA.

570 Sub-paragraph (4) modifies section 22 PACE so that the provisions regarding the retention of seized material under PACE apply to authorised investigators. It also clarifies that section 22 PACE does not prevent anything seized by an authorised investigator from being retained by a constable or affect the power of a court to make an order regarding the disposal of relevant property under clause 8.

## Schedule 2: The Public Sector Fraud Authority

571 This Schedule sets out provision for the establishment, constitution, and operational framework of a new statutory body called the Public Sector Fraud Authority (the independent PSFA). The policy intention is not to commence this Schedule immediately, but at a later date once a review of the effectiveness of the use of these powers has been undertaken.

572 Part 2 of Schedule 2 makes provision on the constitution etc of the independent PSFA. Paragraph 2 provides for a chair, a number of other non-executive members, a chief executive and a number of other executive members. Paragraphs 3 to 6 make provision on the appointment of members and paragraph 7 deals with the terms of membership, including conditions for tenure, resignation, and removal.

573 Paragraph 8 addresses financial matters concerning the remuneration and compensation of the chair and non-executive members.

574 Paragraph 9 makes provision in relation to staffing, including specifying the independent PSFA's power to appoint staff and to determine their pay, contingent upon Ministerial approval.

575 Paragraph 10 deals with the discharge by the independent PSFA of its functions and paragraph 11 provides for it to determine its own procedures. Paragraph 12 requires the preparation and submission of annual reports to the Minister, who is then required to lay them before Parliament.

576 Paragraph 15 permits the Minister to create appropriate transfer schemes for assets and liabilities to enable the independent PSFA to exercise its functions.

577 Paragraphs 16 to 20 amend existing enactments to reflect the establishment of the independent PSFA.

578 Paragraph 21 gives the Minister a regulation making power, including the power to transfer certain functions conferred in Chapters 1-5 of Part 1 to a new statutory body. This power can be used to make further provision about the application of Part 1 to the new body; that further provision would be concerned with ensuring Part 1 works for the new statutory body and would not otherwise change the substance of any of the provisions in Part 1. Regulations could also provide for the giving of general or specific directions by the Minister.

579 Paragraph 22 contains a power for the Minister to amend the name of the Public Sector Fraud Authority in clause 69 and this Schedule.

## Schedule 3: Eligibility verification etc

*These Explanatory Notes relate to the Public Authorities (Fraud, Error and Recovery) Bill as introduced in the House of Commons on 22 January 2025 (HC Bill 167).*

## **Part 1: Eligibility Verification**

580 Schedule 3 makes amendments to the [Social Security Administration Act 1992](#), inserting a new Schedule 3B. This establishes a power to require information by way of an Eligibility Verification Notice to support the Secretary of State in verifying eligibility for relevant benefits.

### **Schedule 3B Part 1: Power to require information.**

- 581 Paragraph 1 sub-paragraph (1) provides the Secretary of State with the power to issue an Eligibility Verification Notice to a person, namely a bank or other financial institution, to help DWP identify whether benefit payments are being made correctly. The Notice can be sent to the persons described in paragraph 2 of new Schedule 3B and requires them to undertake the two steps set out in sub-paragraphs (2) and (3) of paragraph 1. The provision requires these persons to identify individuals in receipt of relevant DWP payments and provide the Secretary of State with information to help the Secretary of State verify a claimant's eligibility.
- 582 Once accounts have been identified as receiving a relevant DWP benefit payment, the bank or other financial institution must search their records for all accounts held by that individual. These accounts will be assessed against the eligibility indicators set out in the Eligibility Verification Notice given to the bank. The eligibility indicators are specific criteria set by the Secretary of State, which will be used to help identify whether a specified relevant benefit may have been, or may be, incorrectly paid. Further details on how this measure will be applied will be set out in the accompanying Code of Practice which will be published in due course.
- 583 Paragraph 1 sub-paragraph (2) provides the first step that a person in receipt of an Eligibility Verification Notice must take. The steps focus on identifying financial accounts that are in receipt of a DWP benefit and meet the specific criteria linked to the receipt of a relevant benefit.
- 584 The provision in paragraph 1 sub-paragraph (2)(a) is self-explanatory.
- 585 Paragraph 1 sub-paragraph (2)(b)(i) narrows the scope to accounts into which a specified relevant benefit has been paid, or accounts linked to such benefit payment-receiving accounts. Linked accounts are defined at paragraph 1 sub-paragraph (8) as any held by the individual(s) receiving the benefit payment. This ensures that the data reported under the measure relate to benefit-receiving accounts and other accounts held by the same individual.
- 586 Paragraph 1 sub-paragraph (2)(b)(ii) introduces the concept of "eligibility indicators", which are criteria specified by the Secretary of State that will be used to identify whether the specified relevant benefit may have been, or may be, incorrectly paid. The eligibility indicators may be met by the account which receives the benefit payment, by an account which is linked to it, or a combination of both. Further detail on eligibility indicators is set out in paragraph 3.
- 587 Paragraph 1 sub-paragraph (3) provides the second step that a person in receipt of an Eligibility Verification Notice must take. It requires the person to provide information to the Secretary of State about the accounts identified in step 1, in paragraph 1 sub-paragraph (2). It outlines the specific data points that must be disclosed. These are details of relevant accounts (for example, sort code and account number); details about account holders (for example, their names and dates of birth) to enable identification of the benefit recipient; and details as to how the accounts meet the eligibility indicators specified within the Eligibility Verification Notice (for example, this may be whether the total capital held across accounts is greater than allowed by benefit eligibility rules).

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- 588 Paragraph 1 sub-paragraph (4) restricts both the Secretary of State’s power to request information under paragraph 1 sub-paragraph (1) and the information that can be given in response to an Eligibility Verification Notice. Specifically, it prohibits requiring or providing information that amounts to transaction information or special category data. Transaction information and special category data are defined in paragraph 22. Special category data includes data related to an individual’s health, ethnic origin or political opinion. This restriction safeguards individuals’ right to privacy by ensuring that only essential and limited information for verifying eligibility indicators is requested from banks and other financial institutions, and no unnecessary intrusion into personal financial details or other sensitive information occurs. Further details on how this measure will be applied will be set out in the accompanying Code of Practice which will be published in due course.
- 589 Paragraph 1 sub-paragraph (5) provides that the prohibition on the sharing of special category data specifically does not prevent the sharing of data that establishes the fact that someone is in receipt of the specified relevant benefit (i.e., the benefit specified in the Eligibility Verification Notice). This provision makes clear that data could be shared establishing that an individual is in receipt of, for example, Employment and Support Allowance even if this fact could amount to data related to health (which is a special category). It does not permit any sharing of special category data beyond the fact of being in receipt of such a benefit.
- 590 Paragraph 1 sub-paragraph (6) provides that only accounts held within the United Kingdom are in scope for the measure. This prevents banks and other financial institutions from being obliged to search their records for accounts which are held abroad.
- 591 Paragraph 1 sub-paragraph (7) defines “linked accounts” in relation to accounts into which a specified relevant benefit is paid as other accounts held by the same person. This includes other accounts held by the recipient of the benefit payment (for example, a savings account). It does not include accounts held by others who are not the account holder of the benefit-receiving account, unless they are held jointly with the benefit recipient. This means that any joint account would be included in the definition of a linked account but not any additional accounts held by the other joint account holder. However, where relevant DWP payments are paid into a joint account, all other accounts held by both account holders would be considered linked accounts.
- 592 Paragraph 1 sub-paragraph (8) defines “incorrect payments” of a relevant benefit within new Schedule 3B as any payment amount that differs from what the benefit recipient is eligible to receive and clarifies that this includes both past and future payments.
- 593 Paragraph 2 defines the types of person to whom the Secretary of State may issue an Eligibility Verification Notice, referred to in paragraph 1 sub-paragraph (1), which includes banks and certain other financial institutions.
- 594 Paragraph 2 sub-paragraph (1) defines the type of person either as a person to whom paragraph 2 sub-paragraph (2) applies or as a person described in regulations. This provides a delegated power to add to the definition through secondary legislation in the future, if necessary.
- 595 Paragraph 2 sub-paragraph (2) specifies that Eligibility Verification Notices can be issued to persons lawfully authorised to accept deposits or issue electronic money and who provide accounts into which a relevant benefit may be paid. This ensures that Notices are sent only to banks and other financial institutions holding necessary information for verifying benefit eligibility.

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- 596 The provisions from paragraph 2 sub-paragraph (3) to (4) provide the scope of the delegated power to add to the definition of the type of person to whom the Secretary of State may issue an Eligibility Verification Notice. Sub-paragraph (3) limits the delegated power to describing only types of person who provide accounts into which a relevant benefit has been or may be paid. This includes accounts which operate using cryptoassets or similar, as further defined in sub-paragraph (4).
- 597 The provisions from paragraph 2 sub-paragraph (5) to (7) provide cross-references to existing legislation and regulations to clarify interpretation of sub-paragraphs (2)(a)(i) and (2)(a)(ii).
- 598 Paragraph 3 sub-paragraph (1) establishes the nature of eligibility indicators, which are the criteria specified in an Eligibility Verification Notice. It requires that these indicators demonstrate that the specified relevant benefit may have been, or may be, incorrectly paid. For example, in the case of Universal Credit, an eligibility indicator could be set such as to require a person to provide the Secretary of State with information about benefit-receiving accounts (and any linked accounts) which have a total capital balance over the threshold of £16,000, which in the majority of cases is the maximum permitted under Universal Credit eligibility rules.
- 599 Paragraph 3 sub-paragraph (2) provides that eligibility indicators may be met by the data gathered from the benefit-receiving account on its own or by taking into account any number of linked accounts. For example, if an account in receipt of Universal Credit payments had a balance of £10,000 and a linked savings account also had £10,000, then the bank or other financial institution which provides the accounts would be required to provide information to the Secretary of State, if a Notice requested information about Universal Credit-receiving accounts (and any linked accounts) which have more than £16,000 in capital. This is because the total capital balance of the accounts is above £16,000, as specified in the Eligibility Verification Notice.
- 600 Paragraph 3 sub-paragraph (3) expressly prohibits eligibility indicators from including personal data. This means that DWP will not share any personal data with banks and other financial institutions. This provision expressly prohibits DWP from issuing an Eligibility Verification Notice which is targeted at specific individuals and balances the need for finding incorrect payments with respect for individuals' financial privacy. Further details on how this measure will be applied will be set out in the accompanying Code of Practice which will also be consulted on and published in due course.
- 601 Paragraph 4 stipulates information that must be specified within an Eligibility Verification Notice.
- 602 Paragraph 4 sub-paragraph (1) provides that an Eligibility Verification Notice must specify the deadline by which the recipient must comply in order to avoid being liable for a penalty under Part 2 and that the Notice must explain that failure to provide the information could result in such a penalty.
- 603 Paragraph 4 sub-paragraph (2) provides that the time period by which a recipient of an Eligibility Verification Notice must respond must be at least 14 days starting on the day on which the Notice is given. An Eligibility Verification Notice could specify a longer period, but this is the minimum period which can be specified.
- 604 Paragraph 4 sub-paragraph (3) mandates that an Eligibility Verification Notice must contain certain details. This includes the recipient's rights to seek an internal review of the Notice and to appeal the Notice. The Notice must also contain details about penalties that may be issued if the Notice is not fully complied with.

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- 605 Paragraph 4 sub-paragraph (4) permits an Eligibility Verification Notice to include ongoing compliance requirements. It provides that an Eligibility Verification Notice may require a person to identify accounts and provide information at specified intervals for a period not exceeding one year from the date of the Notice. For example, the Secretary of State may issue a bank with an Eligibility Verification Notice which requires the bank to provide information on the first day of every month about accounts it provides which meet the criteria set out in the Notice, for a period of one year from the date of the Notice.
- 606 Paragraph 4 sub-paragraph (5) provides that for each specified interval, the period within which the person must provide information for each interval must also be specified. For example, if the Eligibility Verification Notice requires the bank to provide information on the first day of every month, it must also specify, for example, that the recipient must reply by the fifteenth day of the month.
- 607 Under paragraph 4 sub-paragraph (6), the specified period within each interval must not be less than 14 days.
- 608 Paragraph 4 sub-paragraph (7) prohibits Eligibility Verification Notices from requiring the recipient to return information that is considered historic, with the exception of the information set out in sub-paragraph (9). Historic information is defined in sub-paragraph (8) as any information relating to a time greater than one year prior to the day the Notice was given.
- 609 The exception in sub-paragraph (9) provides that an Eligibility Verification Notice may request the date on which an account which meets an eligibility indicator first began to meet that indicator, which may be at a time greater than one year prior to the date of the Notice being given. If, for example, a Universal Credit receiving account has held over £16,000 for some time, and an Eligibility Verification Notice is sent to a bank to require it to provide information about such accounts, then the bank may be required to provide the Secretary of State with the date on which the account first had a balance of over £16,000, even if that date was earlier than one year prior to the day the Notice was given.
- 610 Paragraph 4 sub-paragraph (10) is self-explanatory.
- 611 Paragraph 4 sub-paragraph (11) is self-explanatory.
- 612 Paragraph 5 defines how information provided to the Secretary of State in response to an Eligibility Verification Notice (referred to as “EVM information”) can be lawfully used. It may only be used for identifying, or assisting in identifying, incorrect payments of the specified benefits or in cases where an incorrect payment is found any associated benefits. If, for example, EVM information helps to identify that a claimant is ineligible for Universal Credit, then the Secretary of State may use the information obtained to assess whether other benefit payments which the claimant also receives are incorrect. This may be the case for benefits such as “passported” Housing Benefit, where a claimant’s eligibility for this benefit depends on their eligibility for another benefit (in this case, Universal Credit or Pension Credit). This ensures that EVM information is limited to safeguarding benefit integrity and cannot be misused, with further details on these objectives provided in the accompanying Code of Practice. This provision also makes clear that the information can be used for these specific purposes in relation to criminal proceedings related to such payments (such as for benefit-related fraud offences) and civil proceedings related to such payments (such as recovering overpayments or imposing penalties). While EVM information would only serve as an initial flag for

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the Secretary of State to review a benefit claim, it could also possibly be included in any subsequent proceedings arising from this review.

- 613 Paragraph 6 sub-paragraph (1) provides that by processing information to comply with an Eligibility Verification Notice, a person does not breach legal obligations or restrictions. Further details on how this measure will be applied will be set out in the accompanying Code of Practice which will be published in due course.
- 614 Paragraph 6 sub-paragraph (1)(a) provides that an Eligibility Verification Notice does not require the recipient of a Notice to process data in a manner that contravenes data protection legislation, which includes the UK General Data Protection Regulations and the Data Protection Act 2018 (the term “data protection legislation” is defined in paragraph 22).
- 615 Paragraph 6 sub-paragraph (1)(b) prohibits the Secretary of State from requiring the processing of information by a Notice recipient in contravention of the Investigatory Powers Act 2016, specifically Parts 1 to 7, and Chapter 1 of Part 9. These sections provide a framework to govern the use of investigatory powers by law enforcement and other agencies, and this Schedule ensures that Eligibility Verification Notices cannot override this.
- 616 Paragraph 6 sub-paragraph (2) establishes that the powers and obligations contained in this legislation must be taken into account such that requests empowered by this legislation should not be understood to contravene data protection legislation.
- 617 Paragraph 6 sub-paragraph (3)(a) provides that complying with an Eligibility Verification Notice does not breach any obligations of confidence owed by the person processing the information. This prevents a bank or other financial institution that provides account details in compliance with an Eligibility Verification Notice from being in breach of any confidentiality agreements with account holders.
- 618 Paragraph 6 sub-paragraph (3)(b) establishes that compliance with an Eligibility Verification Notice does not breach any other restrictions on processing information, regardless of how those restrictions are imposed (e.g. by contract or other legal obligations).

### **Schedule 3B Part 2: Penalties**

- 619 Paragraph 7 sub-paragraph (1) provides the circumstances in which a fixed penalty can be issued. The Secretary of State must consider that (a) a person has failed to comply with an Eligibility Verification Notice by the date or within the time specified and (b) that person has no reasonable excuse as to why they have not done so.
- 620 Paragraph 7 sub-paragraph (2) sets out that no fixed penalty notice can be issued without (a) the recipient of the Notice having had the opportunity to explain their case and (b) before any requested internal review has been carried out by DWP and a conclusion has been reached.
- 621 The provisions contained in paragraph 7 sub-paragraph (3) to paragraph 7 sub-paragraph (8) are self-explanatory.
- 622 Paragraph 8 sub-paragraph (1) empowers the Secretary of State to impose a daily rate penalty in circumstances where a person has been given a fixed penalty notice for failing to comply with an Eligibility Verification Notice and the Secretary of State considers that the person continues to fail to comply with the Notice without having a reasonable excuse.

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- 623 For example, if Bank A was issued with a fixed penalty notice for non-compliance with an Eligibility Verification Notice, and continues to fail to comply with the requirements of the Notice, the Secretary of State has the power to issue a daily penalty notice to Bank A which requires it to pay a daily penalty of not greater than £40 per day in addition to the fixed penalty initially given to it. The Secretary of State has the power to vary or cancel a daily rate penalty.
- 624 The provisions contained in paragraph 8 sub-paragraph (2) to paragraph 8 sub-paragraph (7) are otherwise self-explanatory.
- 625 Paragraph 9 sub-paragraph (1) provides for an increased daily rate penalty to be applied if (a) a daily rate is imposed on a person under paragraph 8, (b) the failure to which the penalty relates continues for more than 30 days from the date on which the daily rate penalty first became payable, and (c) the person has been notified that an increased daily penalty may become payable.
- 626 The following provides an example of the process of an increased daily rate penalty being applied. On 1 January, Bank A was issued a fixed penalty notice for failing to comply with the requirements of an Eligibility Verification Notice. Bank A did not apply for a review and, on 1 February, was issued with a daily rate penalty because its non-compliance with the Eligibility Verification Notice continued and the bank was informed that if it continues to fail to comply with the requirements of the Notice, then an application may be made to increase the daily rate penalty. The daily rate penalty became payable from 1 February. On 3 March (30 days after the daily rate penalty became payable) the Secretary of State applies to the Tribunal to increase the daily penalty rate because the non-compliance continues. The Tribunal then considers a number of factors including those outlined in sub-paragraph (4) and determines that an increased daily rate penalty is payable at the rate of £1,000 per day from any day that the Tribunal determines. The Secretary of State then informs Bank A of the Tribunal's decision, and the new increased daily rate penalty is payable from the day determined by the Tribunal.
- 627 The provisions contained in paragraph 9 sub-paragraph (2) to paragraph 9 sub-paragraph (6) are otherwise self-explanatory.
- 628 Paragraph 10 sub-paragraph (1) empowers the Secretary of State to impose a penalty on a person if the Secretary of State considers (a) that the person has provided inaccurate information in response to an Eligibility Verification Notice and (b) condition A, B or C (below) is met.
- Condition A is met where the inaccuracy was deliberate or due to a failure by the person to take reasonable care without reasonable excuse (under sub-paragraph (2)).
  - Condition B is met when the person knew of the inaccuracy at the time of giving the information but did not inform the Secretary of State at that time and has no reasonable excuse for failing to do so (under sub-paragraph (3)).
  - Condition C is met when the person discovered the inaccuracy at a later point, and failed to take reasonable steps to report the inaccuracy to the Secretary of State, and has no reasonable excuse for failing to do so (under sub-paragraph (4)).
- 629 Paragraph 10 sub-paragraph (5) provides for the Secretary of State to issue a penalty if a person, without reasonable excuse, provides information which they do not have authority to share, namely transaction information or special category data as outlined in paragraph 1 sub-paragraph (5) and

defined in paragraph 22. If, for example, a bank provides information in response to an Eligibility Verification Notice which includes the value of an individual transaction or the details of what was purchased or from whom, then the bank would be liable for a penalty under this paragraph. This provides a safeguard against the sharing of transaction information and special category data.

- 630 The provisions contained within paragraph 10 sub-paragraph (6) to paragraph 10 sub-paragraph (10) are otherwise self-explanatory.
- 631 Paragraph 11 sub-paragraph (1) sets out the process for recovering penalties in England and Wales via (a) the county court if the penalty is payable under an order of that court or (b) the High Court, if the penalty was payable under an order of that court.
- 632 Paragraph 11 sub-paragraph (2) sets out that, in Scotland, a penalty will be enforced by the Sheriff court of any sheriffdom in Scotland.
- 633 Paragraph 12 provides that future regulations may change the limit that can be applied to fixed rate, daily rate, increased daily rate and inaccurate information penalties to reflect future changes in the value of money.

### **Schedule 3B Part 3: Reviews**

- 634 Paragraph 13 provides the circumstances and procedures to be followed should a person in receipt of an Eligibility Verification Notice wish to apply for an internal review of the decision to give the Notice. The review process provides a quicker and more cost-effective alternative to the formal appeals process and the Tribunal for banks and other financial institutions who wish to query an Eligibility Verification Notice with DWP. The provisions contained in paragraph 13 sub-paragraph (1) to paragraph 13 sub-paragraph (5) are otherwise self-explanatory.

### **Schedule 3B Part 4: Appeals**

- 635 Paragraph 14 provides the grounds and processes by which a recipient of an Eligibility Verification Notice may appeal against it.
- 636 Paragraph 14 sub-paragraph (1) establishes that a person in receipt of an Eligibility Verification Notice can appeal to the Tribunal against the Notice on specific grounds: (a) they are not liable to receive an Eligibility Verification Notice (i.e., not a bank or other financial institution), (b) the Notice is not correct (i.e., requests information outside of the remit of this Schedule), or (c) complying with the Notice would be unduly onerous for the bank or financial institution. The appeals process forms part of the safeguarding measures for the Eligibility Verification Measure: if the bank or other financial institution considers that there is cause to appeal against the Notice or the requirements it sets out, there is an established route for the bank or other financial institution to follow.
- 637 Paragraph 14 sub-paragraph (2) provides for the timeframe for appeals. Appeals must be made within 14 days of either (a) the day on which the Eligibility Verification Notice was given or, (b) the day on which the person is notified of the outcome of a review, where one has been requested. Further details on the internal review processes will be set out in the Code of Practice.
- 638 Paragraph 14 sub-paragraph (3) establishes that, in determining an appeal the Tribunal may dismiss the appeal or amend or revoke the Eligibility Verification Notice. Amending the Notice could involve, for instance, altering the period in which the information is required or the frequency with which the information is required.

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- 639 Paragraph 14 sub-paragraph (4) is self-explanatory.
- 640 The provisions contained in paragraph 15 are self-explanatory.
- 641 The provisions contained in paragraph 16 are self-explanatory.

### **Schedule 3B Part 5: Code of Practice**

- 642 Paragraph 17 sub-paragraph (1) establishes the requirement for a Code of Practice. It details how the Secretary of State must issue a Code of Practice about Eligibility Verification Notices before the first Notice is issued to provide further information about the way in which the measure will be used and to offer guidance to banks and other financial institutions about matters including the points in paragraph 17 sub-paragraph (2).
- 643 Paragraph 17 sub-paragraph (2) provides what must be included in the Code of Practice. The Code of Practice must provide further information about when an Eligibility Verification Notice may be issued, how information gathered under the measure will be processed and stored, the process of complying with an Eligibility Verification Notice, the penalties regime for cases of non-compliance, and the internal review process that will be followed if a bank or other financial institution wishes to dispute an Eligibility Verification Notice.
- 644 Paragraph 17 sub-paragraph (3) is self-explanatory.
- 645 Paragraph 17 sub-paragraph (4) is self-explanatory.
- 646 Paragraph 17 sub-paragraph (5) permits the Secretary of State to carry out the actions under sub-paragraph 3, i.e., consult on the Code of Practice, before the legislation comes into force. This is to ensure that a Code of Practice is in place from the first day that the Eligibility Verification Measure comes into force.
- 647 Paragraph 18 sub-paragraph (1) enables the Secretary of State to revise and re-issue the Code of Practice. Under paragraph 18 sub-paragraph (2), the requirements of paragraph 17 sub-paragraphs (3) and (4) apply when the Secretary of State reissues the Code of Practice. However, those requirements do not apply if the only changes involved are updates to references to legislation or documents which have become out of date or other changes which the Secretary of State deems minor (sub-paragraphs (3)(a) and (3)(b)).

### **Schedule 3B Part 6: General provision and interpretation**

#### **Relevant benefits**

- 648 Paragraph 19 sub-paragraph (1) defines the term “relevant benefit” for the purposes of this Schedule. It sets out the benefits that are currently included under this measure and therefore where its initial focus will be. These are: (a) Universal Credit; (b) Employment and Support Allowance; and (c) State Pension Credit. These three benefits have been selected because these benefits have been identified as having the highest levels of fraud and error. For Financial Year End (FYE) 2024, for example, overpayments in Universal Credit totalled £6.46 billion, which is an overpayment rate of 12.4%. The majority of overpayments are due to fraud: 10.9% (£5.66 billion). The Pension Credit overpayment rate was 9.7% (£520m) in FYE 2024, which represents a statistically significant increase compared to the figures from FYE 2023, in which the overpayment rate was 6.8% (£330m). Employment and Support Allowance had an overpayment rate of 3.4%

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(£430m) in FYE 2024. For the rates of overpayment of other DWP benefits, see Appendix 1 of the published fraud and error statistics.

- 649 Paragraph 19 sub-paragraph (2) allows for regulations to be enacted in the future to add or remove types of benefits from the list which defines “relevant benefits”. The purpose of this paragraph is to ensure that the scope of “relevant benefit” can evolve as the social security system or relevant policies change or there is a justified need to bring further benefits into scope due to increased levels of incorrect payments in certain benefits.
- 650 Paragraph 19 sub-paragraph (3) provides that the regulations referenced under paragraph 19 sub-paragraph (2) may only add a type of benefit to the list of relevant benefits if that benefit is administered by, or on behalf of, the Secretary of State. This provision ensures that only benefits directly managed or overseen by the Secretary of State can be included within the scope of this legislation, maintaining consistency in administration and accountability.
- 651 Paragraph 20 sub-paragraph (1) defines how “relevant account” is to be interpreted throughout this Schedule. “Relevant accounts” are personal accounts operating as current accounts, savings accounts, or investment accounts including such accounts that operate by reference to electronic money. Sub-paragraph 2(c) provides a cross-reference for the definition of “electronic money”.
- 652 Paragraph 20 sub-paragraph (2)(a) provides the definition of “personal account” as it is used in this Schedule. The definition specifies that a “personal account” is an account held by one or more individuals, and explicitly excludes accounts provided for purposes related to trade, business, or profession, such as business accounts. This ensures that the scope of the measure is appropriately targeted and does not inadvertently capture non-personal accounts.
- 653 Paragraph 20 Sub-paragraph 2(b) provides further detail on these definitions regarding current accounts. It clarifies that a current account refers to any account in which individuals can deposit and withdraw money, and which is designed to enable the account holder to execute transactions with third parties. This definition expressly excludes certain types of accounts, to ensure that only relevant accounts are brought into scope of the measure. Accounts such as credit card accounts or current account mortgages, which are not relevant, are excluded from the definition.
- 654 Paragraph 20 sub-paragraph (2)(c) is self-explanatory.
- 655 Paragraph 20 sub-paragraph (3) defines a person holding an account by referring to those holding (a) joint accounts, and (b) any other account held in the person’s name. This clarifies the definition of an account “holder” for the purposes of this Schedule. Joint accounts recognise accounts held jointly by multiple persons, ensuring all parties involved are considered account holders. This provision covers any account associated with a person’s name in any capacity. These definitions ensure all forms of account involvement are captured, minimising ambiguities in enforcement or compliance. These definitions also clarify that an account is only linked to the benefit-receiving account for the purposes of this power if it is held in one of these ways by the same person.
- 656 Paragraph 20 sub-paragraph (4) provides that sub-paragraphs (5) to (8) make provision related to where an Eligibility Verification Notice is given to a body corporate.
- 657 Paragraph 20 sub-paragraph (5) provides that when a Notice is given to a body corporate, in complying with the first step of identifying relevant accounts which the body corporate provides (in

paragraph 1(2)(a)), relevant accounts include other accounts in the same group as the body corporate if the conditions under sub-paragraph (6) are met. Those conditions are that the corporate body is able to identify relevant accounts provided by the other person, i.e., accounts into which a specified relevant benefit has been paid (or linked accounts) and which meet eligibility indicators and obtain information about the identified accounts. This ensures that the measure can operate effectively where multiple entities within the same group provide accounts, provided the body corporate that receives the Notice has sufficient oversight and access to information. Sub-paragraph (7) provides the circumstances and interpretation of when two persons are to be considered as being in the same group, for the purposes of sub-paragraph (5). This is namely when one is a subsidiary of the other, or when both are subsidiaries of the same body corporate. This definition provides a clear framework for identifying entities within the same group, ensuring consistent application of the measure. Under sub-paragraph (8), the term “subsidiary”, as used in sub-paragraph (7), is defined by reference to the relevant section of the Companies Act 2006.

658 Paragraph 21 is self-explanatory.

659 Paragraph 22 defines various key terms used within the Schedule including “benefit”, “eligibility indicators”, “Eligibility Verification Notice”, “personal data”, “special category data” and “transaction information”. “Benefit” means any relevant social security benefit as defined in section 121DA (7) of the Social Security Administration Act 1992 (other than a state pension, which is excluded from the list of benefits in scope), as well as payments and arrangements under section 2(2)(d) of the Employment and Training Act 1973. The Act’s framework allows for various initiatives to support unemployed individuals. These may include programmes such as job creation schemes, employment subsidies, training allowances, and other measures designed to facilitate temporary employment opportunities. State Pension is expressly excluded from the list of benefits in scope because levels of fraud and error are generally low for this benefit: the State Pension overpayment rate remained at 0.1% in FYE 2024 (£170m), the same as in FYE 2023 (£100m). These definitions ensure clarity and consistency in the interpretation and application of the Schedule’s provisions.

660 Paragraph 23 confirms that nothing in this Schedule limits or interferes with the powers conferred on the Secretary of State by section 109B and 109BZA of the Social Security Administration Act 1992 (powers to require information). This power is distinct from the investigatory powers conferred on authorised officers elsewhere in the Act. This Schedule preserves the integrity and scope of other statutory frameworks, ensuring that this Schedule operates harmoniously within the broader legal context.

## **Part 2: Proceeds of Crime Act 2002**

661 Paragraph 2 sub-paragraph (1) of Part 2 of Schedule 3 provides for the Proceeds of Crime Act 2002 to be amended as per paragraph 2 sub-paragraph (2) and paragraph 2 sub-paragraph (3).

662 Paragraph 2 sub-paragraph (2) and paragraph 2 sub-paragraph (3) amend Section 330 and Section 331 respectively of the Proceeds of Crime Act 2002, which establish offences relating to the failure to disclose knowledge or suspicion of money laundering in the regulated sector. The amendments introduce exemptions for individuals who obtain information solely as a result of complying with an Eligibility Verification Notice issued under new Schedule 3B of the Social Security Administration Act 1992. Individuals who receive an Eligibility Verification Notice and consequently obtain information that would otherwise trigger disclosure obligations under Section 330 or 331 of the

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Proceeds of Crime Act 2002 are not criminally liable if: the information or other matter came to them solely as a result of complying with the Eligibility Verification Notice, and, if not for the information obtained as a result of that Eligibility Verification Notice the person would not know or suspect or have reasonable grounds for knowing or suspecting money laundering. This provides a safeguard for individuals who are required to comply with Eligibility Verification Notices, preventing unintended criminal liability under the Proceeds of Crime Act 2002 for disclosures triggered solely by compliance with Eligibility Verification Notices. However, the amendments do not exempt individuals from their ongoing duty to report any other knowledge or suspicions of money laundering that arise independently of the information obtained as a result of an Eligibility Verification Notice.

#### Schedule 4: Benefit fraud: search and seizure powers etc

- 663 Schedule 4 inserts in the [Social Security Administration Act 1992](#) a new schedule 3ZC Entry, Search and Seizure etc: England and Wales.
- 664 This schedule outlines how the specific sections and terminology as expressed within the Police and Criminal Evidence Act 1984 are to be interpreted for the context of investigations by DWP authorised investigators.
- 665 Paragraph 2 sub-paragraph (1) of new schedule 3ZC allows for references to ‘constables’ in the relevant sections of PACE to apply to authorised investigators in the context of investigations of DWP offences.
- 666 Paragraph 2 sub-paragraph (2) of new schedule 3ZC sets out that references to ‘offences’ in the relevant sections of PACE also include DWP offences.
- 667 Paragraph 2 sub-paragraph (3) of new schedule 3ZC sets out that any reference to a criminal investigation in the relevant sections of PACE also applies to an investigation of a DWP offence by an authorised investigator.
- 668 Paragraph 3 sub-paragraphs (1) (a) and (b) of new schedule 3ZC section 15 of PACE place an obligation on the person applying for a search warrant to set out in detail the grounds for making that application. This sub-paragraph restricts DWP’s searches to premises and items on those premises. DWP cannot conduct a search of a person(s).
- 669 Paragraph 3 sub-paragraphs (2) (a) and (b) of new schedule 3ZC set out that where an “all premises warrant” has been authorised by the courts, entry into any premises which has not been specified in the warrant must be authorised in writing by an officer of at least a Senior Executive Officer grade.
- 670 Paragraph 3 sub-paragraph (2)(c) of new schedule 3ZC provides that applications are restricted to permit a DWP authorised investigator to search for material(s) and not person(s).
- 671 Paragraph 3 sub-paragraph (3) of new schedule 3ZC: Section 21 Access and Copying. This sets out that for materials seized by a DWP authorised investigator which need to be retained for the purpose of investigating a DWP offence, the same provisions and procedures to grant a person access to that material apply as if they were seized and retained by the police.
- 672 Paragraph 3 sub-paragraph (4) of new schedule 3ZC: Section 22 1(a)(b) (retention) amends PACE so that any material seized or taken by a DWP authorised investigator may be retained for as long as necessary. This ensures the provision applies in the same manner as if the materials were

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seized or taken by the police.

- 673 Paragraph 3 sub-paragraph (4)(d) makes section 28H(5) of the Immigration Act 1971 (searching persons in police custody) inapplicable for Department for Work and Pensions (DWP) purposes.
- 674 Paragraph 5 of new schedule 3ZC: Schedule 1 (special procedure). Under section 9 and schedule 1 of PACE, a constable can apply to a judge for access to special procedure or excluded material through a production order or a search warrant. The terms 'items subject to legal privilege', 'excluded material', and 'special procedure material' are defined in sections 10, 11, and 14 of PACE.
- 675 This section enables DWP to be able to apply to a judge for permission to access specific items within this category. This is achieved through the modifications made at sections 5 (a), (b), and (c), which collectively restrict a DWP authorised investigator's ability to access such material, without first applying to a Judge for permission for a warrant or a production order. This applies to material including personal records and business records. The effect of section 5(b) is there is no ability for DWP to apply to a Judge for access to human tissue etc or journalistic material.
- 676 Paragraph 5(d) PACE Schedule 1 lists two sets of access conditions, one or other of which must be fulfilled by the police to allow the court to order access. This provision means that DWP authorised investigators can only apply for access based on the first set of access conditions.

#### **New Schedule 3ZD Entry, Search and Seizure etc: Scotland.**

- 677 This schedule also adds a new Schedule 3ZD Entry, Search and Seizure etc: Scotland into the Social Security Administration Act 1992, outlining the search and seizure powers for DWP authorised investigators when investigating DWP offences in Scotland. This replicates DWP's investigatory search and seizure powers in England and Wales, accounting for the different jurisdiction and court processes in Scotland.
- 678 Part 1 of new Schedule 3ZD relates to powers to be exercised for normal material and Part 2 relates to special procedure material. Part 1 describes the procedure for applying for a warrant DWP authorised investigator must follow in Scotland, along with the specific conditions that must be fulfilled for this warrant to be applicable. It enables the DWP authorised investigator to request permission to enter premises and sets out the different parameters under which a search may be conducted.
- 679 Paragraph 1 sub-paragraph (1) of new Schedule 3ZD allows the Sheriff to grant a 'specific premises' warrant.
- 680 Paragraph 1 sub-paragraph (2) of new Schedule 3ZD requires that the warrant specify the precise parameters of the location(s) to be searched for the Sheriff to grant a 'specific premises' warrant.
- 681 Paragraph 1 sub-paragraph (3) of new Schedule 3ZD provides that the DWP authorised investigator must demonstrate to the Sheriff that the conditions in paragraphs (a-e) can be met.
- 682 Paragraph 1 sub-paragraph (4) of new Schedule 3ZD provides that the power to issue a warrant under the terms permitted within this Act does not prevent any other search warrant power operating.
- 683 Paragraph 2 sub-paragraph (1) (a) – (f) of new Schedule 3ZD detail the permitted actions that a

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Sheriff can authorise a DWP authorised investigator to carry out by warrant.

- 684 Paragraph 2 sub-paragraph (2) of new Schedule 3ZD sets out the conditions for a warrant to be met in respect of a DWP offence.
- 685 Paragraph 2 sub-paragraph (3) of new Schedule 3ZD limits items being removed from a premises, unless taking a copy or recording of it would be insufficient.
- 686 Paragraph 2 sub-paragraph (4) of new Schedule 3ZD prevents items being seized or removed from a premises where it meets the set criteria (the authorised investigator believes it to be subject to legal privilege, excluded material, or special procedure material).
- 687 Paragraph 2 sub-paragraph (5) of new Schedule 3ZD provides that a warrant may set out specific conditions or restrictions on its execution.
- 688 Paragraph 3 sub-paragraphs (1) – (3) of new Schedule 3ZD provide that when carrying out a warrant, any DWP authorised investigator can execute the warrant, and bring any additional personnel and equipment needed. Those assisting have the same power as the DWP authorised investigator but must act only in their company and under their supervision.
- 689 Paragraph 3 sub-paragraphs (4)(a) and (b) of new Schedule 3ZD allow the Sheriff to limit the time of day a warrant can be carried out and requires additional justification where the warrant is requested for anti-social hours. It also sets out the timeframe for which a warrant is valid.
- 690 Paragraph 3 sub-paragraph (5) of new Schedule 3ZD provides that each time premises is entered, specific information as set out in paragraphs (a) to (c) must be provided, detailing the requirements for entry. Procedures for exiting the premises are also set out.
- 691 Paragraph 3 sub-paragraph (6) of new Schedule 3ZD permits the use of reasonable force to enter a building and search a premise. No force against a person can be used.
- 692 Paragraph 4 sub-paragraphs (1) and (2)(a) and (b) of new Schedule 3ZD require a receipt to be issued for seized items or copies provided.
- 693 Paragraph 4 sub-paragraph (3) of new Schedule 3ZD provides for items seized to be retained for as long as necessary for the purposes of investigating any DWP offence.
- 694 Paragraph 4 sub-paragraphs (4) (a) and (b) of new Schedule 3ZD provide that authorised investigators may examine any item or record any information.
- 695 Paragraph 4 sub-paragraph (5) of new Schedule 3ZD specifies the circumstances when sub-paragraph (6) applies.
- 696 Paragraph 4 sub-paragraph (6) of new Schedule 3ZD specifies when an authorised investigator can refuse access to a seized item. If criteria are not met, access to the item must be allowed.
- 697 Paragraph 5 sub-paragraph (1) of new Schedule 3ZD outlines the requirement for a warrant to be returned to court with a summary of what action was taken when the powers were exercised.
- 698 Paragraph 5 sub-paragraph (2) of new Schedule 3ZD requires a warrant to be returned to court if not executed as soon as reasonably possible.
- 699 Paragraph 5 sub-paragraph (3) of new Schedule 3ZD sets out that a warrant should be retained for

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a period of 12 months.

- 700 Paragraph 6 sub-paragraphs (1) and (2)(a) to (c) of new Schedule 3ZD set out that authorised investigators are defined by being an official of a government department and their grade, which in DWP's hierarchy is equivalent to Higher Executive Officers. This grade matches that of a constable.
- 701 Part 2 of new Schedule 3ZD relates to powers to access special procedure material.
- 702 Paragraph 7 sub-paragraphs (1) and (2) of new Schedule 3ZD provides the Sheriff with the authority to grant a production order, which will require items requested by an authorised investigator be given to them.
- 703 Paragraph 7 sub-paragraph (3) of new Schedule 3ZD provides that the compliance period for a production order is seven days or longer, if specified in the order.
- 704 Paragraph 7 sub-paragraph (4) of new Schedule 3ZD provides that for a Production Order to be granted, all conditions must be met: it must pertain to an indictable offence and material involved must be crucial to an investigation. Material must be personal or confidential and likely to be relevant evidence. Access may be granted if no other practical method to secure that material is available and where it can be demonstrated that accessing said information serves the public interest.
- 705 Paragraph 7 sub-paragraph (5) of new Schedule 3ZD provides that information stored electronically or in the cloud must be provided in a visible, legible, and portable form.
- 706 Paragraph 7 sub-paragraph (6) of new Schedule 3ZD states that paragraph 4 relating to seizure of items applies to material provided in accordance with a production order.
- 707 Paragraph 8 sub-paragraph (1) of new Schedule 3ZD provides that a Sheriff may grant a 'specific premises warrant' where the conditions in paragraphs (a) and (b) are met.
- 708 Paragraph 8 sub-paragraphs (2) and (3) of new Schedule 3ZD set out the conditions to be met for a warrant to be granted. Sub-paragraph (2) provides that a warrant may be issued when there are reasonable grounds to believe that the material is located within the premises specified or described in the application. Sub-paragraph (3) sets out further conditions to be met in paragraphs (a) to (f).
- 709 Paragraph 8 sub-paragraph (4) of new Schedule 3ZD states that the provisions of Part 1 (warrants for entry, search, and seizure for normal material) that apply to specific premises warrant also apply here.
- 710 Paragraph 9 of new Schedule 3ZD allows rules to be made in relation to further procedural requirements.
- 711 Paragraph 10 of new Schedule 3ZD provides definitions of the terms which are essential for interpreting the legislation.

## Schedule 5: Recovery from bank accounts etc

- 712 Schedule 5 makes amendments to the [Social Security Administration Act 1992](#), inserting a new Schedule 3ZA. This sets out the statutory requirements that must be met to apply the power to recover directly from a bank account. References to the 'liable person' in Schedule 5 relate to the debtor.

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## **Schedule 3ZA Part 1: Deductions from Accounts**

- 713 Paragraph 1 sub-paragraph (1) and sub-paragraph (2) provide for the Secretary of State to make a direct deduction order to recover monies owed directly from the liable person's bank account.
- 714 Paragraph 1 sub-paragraph (3) makes provision for two types of direct deduction orders – Regular Direct Deduction Orders and Lump Sum Direct Deduction Orders.
- 715 Paragraph 1 sub-paragraph (4) provides for Regular Direct Deduction Orders to require banks to make regular, fixed deductions from a liable person's account and pay them to the Secretary of State in order to repay the debt owed. This will allow Secretary of State to recover debt over an extended period of time which is not possible under the court ordered deduction orders, that only allow recovery via lump sums. This is to allow affordable and sustainable repayment plans to be enforced, whilst protecting individuals from undue hardship.
- 716 Paragraph 1 sub-paragraph (5) provides for lump sum direct deduction orders which require banks to make a one-off deduction from a person's account and pay this to the Secretary of State in order to pay the debt owed.
- 717 Paragraph 1 sub-paragraph (6) provides that the Secretary of State may request more than one deduction order type in relation to the same debt and account. This enables further recovery where a single Lump Sum Direct Deduction Order would not recover the full amount of a debt at once, and a Regular Direct Deduction Order is required to recover the remaining sum.
- 718 Paragraph 1 sub-paragraph (7) requires that the Secretary of State gives a copy of the deduction order to the individual owing the money, and from whose account recovery will be made. Where the order is in respect of a joint account, this includes the other account holder(s). Requirements of what must be included in the deduction order are set out later in the Schedule.
- 719 Paragraph 1 sub-paragraph (8) is self-explanatory.
- 720 Paragraph 2 sub-paragraph (1) provides for those accounts which may be the subject of a direct deduction order. (a) provides that the account must be held by the liable person and subsection (b) that this must contain an amount in which the Secretary of State reasonably believes the liable person has a beneficial interest. This provides that funds can only be considered for deduction if it is reasonable for the Secretary of State to conclude that the monies belong to the liable person.
- 721 Paragraph 2 sub-paragraphs (2) and (3) provide that the Secretary of State may make a direct deduction order from a joint account, provided that the liable person does not have a sole account from which the debt may be recovered in a reasonable amount of time, unless the debt being recovered is jointly owed by all account holders (this will apply, for example, where there are two joint account holders and both are jointly liable for the debt). This has the effect that recovery is only attempted from joint accounts where necessary.
- 722 Paragraph 3 sub-paragraph (1) requires that the Secretary of State obtains and considers at least three months of bank account statements prior to pursuing a direct deduction order. This is for the purpose of considering the affordability of recovery.
- 723 Paragraph 3 sub-paragraphs (2) and (3) make provision for Account Information Notices, which will be issued to the bank to request at least three months of most recent bank statements. This section provides for a longer period of statements to be requested where the Secretary of State deems

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appropriate – for example, where a regular income pattern cannot be established. This section also sets out what data must be included in the notice in order for the bank to identify the correct account.

- 724 Paragraph 3 sub-paragraph (4) restricts the Secretary of State's ability to request bank statements only for the consideration of a direct deduction order, to ensure that any request for information is justified and proportionate.
- 725 Paragraph 3 sub-paragraph (5) makes provision for a General Information Notice, which for the purposes of deciding whether to issue a direct deduction order requires a bank to identify each account held by the person with that bank and provide more detailed information on the accounts held, including (if the account is a sole account) the account balance. For joint accounts the bank must also provide the Secretary of State with the other joint account holders name(s) and correspondence address(es). These will be utilised where an Account Information Notice is insufficient to allow for the application of a direct deduction order and further information is needed to ascertain whether an order is possible from an alternative account. Correspondence addresses obtained will be used to notify the liable person and if applicable, the joint account holder(s) of the proposed direct deduction orders.
- 726 Paragraph 3 sub-paragraph (6) is self-explanatory.
- 727 Paragraph 3 sub-paragraph (7) and sub-paragraph (8) requires a bank to comply with a notice, and that the notice must set out any steps the bank must take to comply with it. Subsection (1)(b) also requires the Secretary of State to inform the bank they may be liable to a penalty (under Paragraph 20) if they fail to comply.
- 728 Paragraph 3 sub-paragraph (9) sets out that on receipt of either an Account Information Notice or a General Information Notice the bank must not notify the liable person or any other account holder that these have been received. This is to prevent an account holder taking action to frustrate the operation of the direct deduction order.
- 729 Paragraph 3 sub-paragraph (10) requires that the Secretary of State may only use the information provided in response to a notice under this paragraph for the purposes connected to the recovery of debts under the operation of the specific powers as set out in this Part of the Bill.
- 730 Paragraph 4 sub-paragraph (1) requires, when dealing with a joint account where one person is not liable for the debt, for the Secretary of State to make an assessment about the beneficial interest of the funds in the account before issuing a direct deduction order in order to prevent recovery being made from funds not belonging to the liable person
- 731 Paragraph 4 sub-paragraph (2) sets out that (unless there is information to the contrary, in which case paragraph 4, sub-paragraphs (3) and (4) apply) the Secretary of State must assume funds in the account are shared equally between all account holders.
- 732 Paragraph 4 sub-paragraph (3) and sub-paragraph (4) require that where bank statements and responses to the Secretary of State's requests for representation indicate the presumption about the amount of funds in a joint account belonging to the liable person is wrong, this must be taken into account in any order. This prevents DWP from knowingly deducting more than the amount in an account which belongs to the liable person.

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- 733 Paragraph 5 sub-paragraphs (1) to (4) require that, before giving a bank a direct deduction order, the Secretary of State has a requirement to notify the account holder, or holders in the case of a joint account, of certain points including the action to be taken, the size of the debt and the account number against which an order is to be issued. The list of certain information that must be included in the notice is under sub-paragraph (1), subsections (a-e). This notice must also include information about the representation process. This is where the liable person, and if applicable any joint account holder, can make representations regarding the terms of the proposed order and provide further information or evidence in relation to the ownership of funds. The notice will clearly set out how representations can be made and the period in which they need to be made. This period must be at least one month after the date of the notice.
- 734 Paragraph 5 sub-paragraph (5) requires the Secretary of State to consider any representations made within the time period specified within the notice, by the liable person and/or joint account holder(s) and make any appropriate changes either to the terms of the order and/or to the amount in a joint account to which the liable person is deemed to be beneficially entitled. This acts as a safeguard to allow those affected by the order to make the Secretary of State aware of their circumstances in order to allow the Secretary of State to consider these and the effect they have on the order.
- 735 Paragraph 5 sub-paragraph (6) states that a notice may be given to the bank prior to it being given to the liable person and/or joint account holder(s), and sub-paragraph (7) provides that where this is done the notice must then be given to the liable person and/or joint account holder(s) as soon as reasonably practical. This allows for the bank to take steps to hold the funds required to meet the amount, if this is required by the direct deduction order.
- 736 Paragraph 5 sub-paragraph (8) requires that, if a decision is made not to make a final deduction, the liable person and/or joint account holder(s) and the bank (if alerted to the fact an order was proposed) must be notified of this.
- 737 Paragraph 6 sub-paragraphs (1) and (2) set out a direct deduction order can only be made where it would not cause financial hardship to the liable person, any other account holder, or as defined in sub-paragraph (2) those living with or financially dependent on the liable person or account holder(s).
- 738 Paragraph 6 sub-paragraphs (3) and (4) stipulate that under a Regular Direct Deduction Order, in relation to any period of a month, no more than 40% of the amounts credited to an account over the period for which bank statements are obtained, may be deducted under the order. This is to safeguard individuals from deductions that could increase the risk of hardship. This provision is subject to any regulations made under paragraph 24(2)(d), which may from time-to-time lower the maximum rate of deduction below 40% in some or all cases.
- 739 Paragraph 6 sub-paragraph (5) requires the Secretary of State to ensure that the amount(s) deducted from an account must not be greater than the debt owed. This is to protect the liable person from over-recovery of that deduction.
- 740 Paragraph 7 sub-paragraph (1) sets out the requirements as to the content of Regular Direct Deduction Orders and what they must specify. Subsections (a)-(c) require that this must include the amounts to be deducted by the order, or a method for calculating the amounts to be deducted,

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when these amounts are to be deducted and paid to the Secretary of State, as well as information on penalties for banks (see paragraph 20).

- 741 Paragraph 7 sub-paragraph (2) makes provision for the Secretary of State to vary amounts, or the method for calculating the amounts, in a Regular Direct Deduction Order over time where appropriate. This empowers the Secretary of State to recover debts efficiently and proportionately.
- 742 Paragraph 7 sub-paragraph (3) subsection (a) requires a Lump Sum Direct Deduction Order to set out the amount to be deducted, and subsection (b) requires the order to set out when the amount should be deducted and paid to the Secretary of State. Subsection (c) requires the notice to also include information on penalties for banks (see paragraph 20).
- 743 Paragraph 7 sub-paragraph (4) sets out that there must be a period of at least one month between the date the order is given and the date when any deduction is made under the order.
- 744 Paragraph 7 sub-paragraph (5) requires that banks must comply with deduction orders requested by the Secretary of State.
- 745 Paragraph 8 sub-paragraphs (1) to (3) set out the option for banks to deduct fees up to an amount to be set in regulations prior to making a final direct deduction. This provides the opportunity for banks to recover certain operational costs when applying a direct deduction order and before they pay the funds to the Secretary of State. The Secretary of State is required to take such costs into account when determining the amount to be deducted.
- 746 Paragraph 9 sub-paragraph (1) sets out that if the amount in the account is lower than the amount to be deducted for a Lump Sum Direct Deduction Order the bank should not take a deduction and should instead notify the Secretary of State of this as soon as possible.
- 747 Paragraph 9 sub-paragraph (2) sets out that if the amount in the account is lower than the amount to be deducted for a Regular Direct Deduction Order the bank should attempt the deduction on the same day the following week, and if on the second attempt the amount is still lower, not to take a deduction and instead notify the Secretary of State of this as soon as possible.
- 748 Paragraph 9 sub-paragraph (3) provides that references in paragraph 9 to the amount to be deducted under a deduction order include any amount to be deducted to cover a bank's costs, as permitted under paragraph 8(1).
- 749 Paragraph 10 sub-paragraphs (1) and (2) set out that if the direct deduction falls on a non-working day, to take the deduction on the next working day.
- 750 Paragraph 11 sub-paragraph (1) requires that when the first notice of a direct deduction order, or a direct deduction order itself, is issued to a bank, the bank must ensure the account is not closed at the request of the account holder. If the notice or Order issued to the bank is a notice of a Lump Sum Direct Deduction Order or a Lump Sum Direct Deduction Order itself, the bank must also ensure that no transactions take place that would result in the sum in the account falling below the amount to be deducted.
- 751 Paragraph 11 sub-paragraphs (2) and (3) provide for the creation of hold accounts in order for banks to transfer funds to be recovered (or proposed to be recovered) by Lump Sum Direct Deduction Orders. The specified monies to be deducted may be transferred to hold accounts, in

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order to protect those funds from being transferred elsewhere by the liable person to evade repayment, and these funds may subsequently be transferred from the hold account to DWP upon the final issue of the deduction order.

- 752 Paragraph 11 sub-paragraph (4) requires that if the bank takes the action of holding the funds in a different account, it must ensure the person is not left worse off for having had the money moved into a separate account than if it had been held in their own account. For example, if the account the money was held in was an interest-bearing account and the funds were returned, the interest for that period (at a rate at least as high as the originating account) should still be paid, as if the funds were in the originating account for that period.
- 753 Paragraph 11 sub-paragraph (5) has the effect that the requirements under sub-paragraph (1) are no longer applicable should the bank be notified that DWP will no longer proceed with the proposed order or that all the deductions under the order have been made.
- 754 Paragraph 11 sub-paragraph (6) is self-explanatory.
- 755 Paragraph 12 sub-paragraphs (1) to (3) provide the right for, either a liable person or joint account holder(s) subject to a direct deduction order to apply to the Secretary of State to request that the order is varied. This section also sets out that the Secretary of State must allow all account holders the opportunity to make representations and must notify them all of the outcome of such an application.
- 756 Paragraph 13 sub-paragraphs (1) and (2) set out that the Secretary of State may vary an existing direct deduction order and that the steps set out in this section apply to any variation, including when an order is varied upon review.
- 757 Paragraph 13 sub-paragraph (3) sets out that (except where sub-paragraph 7 applies) where the Secretary of State proposes to vary a deduction order, the liable person and all other account holders (where the account in question is a joint account) must be notified so they have the opportunity to make representations about the proposed variation).
- 758 Paragraph 13 sub-paragraph (4) sets out that the requirement to allow representations under sub-paragraph (3) can happen at the same time as any representations are sought under paragraph 12 (2) (applications to vary).
- 759 Paragraph 13 sub-paragraph (5) and (6) set out that the varied direct deduction order takes effect as soon as the order is given to the bank or in line with the order if that provides for it to take effect on a later date. The Secretary of State must also give a copy to the liable person and/or the joint account holder(s).
- 760 Paragraph 13 sub-paragraph (7) provides for a varied direct deduction order to be applied to a different bank account where this is requested by the liable person and, where that different account is a joint account, each account holder consents.
- 761 Paragraph 13 sub-paragraph (8) sets out that if the varied order applies to an account held by a different bank to the original order, the Secretary of State must also notify both the bank which administers the account to which the order will be applied, and the bank where the original order was held. If either account is a joint account, the Secretary of State must notify each account holder of the change.

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- 762 Paragraph 13 sub-paragraph (9) sets out that when varying an order, the steps set out in paragraphs 3 to 5 of the Schedule are not required to be actioned. This means that, amongst other things, the Secretary of State does not need to apply for bank statements in relation to a decision to vary a deduction order.
- 763 Paragraph 14 sub-paragraph (1) provides for the ability for the Secretary of State to revoke direct deduction orders, and sub-paragraphs (2) - (3) requires the Secretary of State to do so where either the full recoverable amount has been recovered or if the liable person has died. Where an order is revoked the Secretary of State must then give notice of the revocation to the bank, the liable person (if they are still alive) and any joint account holders.
- 764 Paragraph 15 sub-paragraph (1) provides for further account information notices to be issued to support the Secretary of State to make decisions to vary or revoke existing orders.
- 765 Paragraph 15 sub-paragraphs (2) - (4) then set out the requirements relating to any such notice. This includes details of the information that must be included in it, how many such notices may be issued, the purposes for which the Secretary of State may use any information provided in response to such a notice and a requirement to also give notice to any joint account holders before a further information notice requiring bank statements for a joint account is issued.
- 766 Paragraph 16 sub-paragraphs (1) and (2) provide for the suspension and subsequent restarting of Regular Direct Deduction Orders should DWP wish to pause recovery via deduction for a period of time. The Secretary of State must notify the bank, the liable person and any joint account holders of any suspension or subsequent re-starting of an order. This enables flexibility in recovery where there is reason to temporarily pause deductions.
- 767 Paragraph 17 provides that upon the bank becoming aware of the death of the liable person, any active direct deduction order upon their account will cease to be in effect.
- 768 Paragraph 18 sub-paragraphs (1) - (3) set out that an application to review a decision can be made when the Secretary of State either makes a deduction order or after the outcome of a variation application. Only the liable person or the joint account holder (if applicable) can apply for a review of such a decision. An application for review must be made within one month, calculated from the date of the notified decision.
- 769 Paragraph 18 sub-paragraph (4) sets out that a request for review cannot be made on grounds regarding the debt itself, unless the amount of the debt is incorrectly stated.
- 770 Paragraph 18 sub-paragraphs (5) and (6) set out the actions the Secretary of State can take upon review, who they must notify of the outcome of the review and who must be given a copy of the varied order if a decision is made, upon review, to vary a direct deduction order.
- 771 Paragraph 18 sub-paragraph (7) is self-explanatory.
- 772 Paragraph 19 sub-paragraphs (1) and (2) set out when a relevant person can appeal to the First-tier Tribunal; that they must have either made representations or have requested a review and they must have received the outcome.
- 773 Paragraph 19 sub-paragraph (3) is self-explanatory.
- 774 Paragraph 19 sub-paragraph (4) requires that any appeal must be lodged within one month of the

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appellant receiving a copy of the direct deduction order or (if applicable) within one month following receipt of a varied order or notice of the outcome of a review.

775 Paragraph 19 sub-paragraph (5) sets out that an appeal cannot be made on grounds regarding the debt itself, unless the amount of the debt is incorrectly stated. Sub-paragraph (6) also sets out that the tribunal may suspend the order whilst the appeal is withdrawn, abandoned or determined.

776 Paragraph 19 sub-paragraph (7) states that the tribunal may either vary the deduction order, revoke it, or dismiss the appeal.

777 Paragraph 19 sub-paragraph (8) is self-explanatory.

### **Schedule 3ZA Part 2: Penalties**

778 Paragraph 20 sub-paragraph (1) provides for the Secretary of State to issue a penalty of £500 to banks if they have not complied with their statutory obligations under this Schedule and have no reasonable justification for this. This penalty will ensure compliance with the statutory obligations placed upon banks by this legislation. Regulations made under Paragraph 24(2)(a)-(b) and (f) may make further provision for how a bank must comply, and the Code of Practice will include provision on when the Secretary of State will consider a giving a penalty.

779 Paragraph 20 sub-paragraph (2) requires any bank due to receive notice of such a penalty to be afforded an opportunity to make representations to DWP as to why any failure to meet their obligations was justified, prior to the full application of the penalty. This allows for mediation between banks and DWP where there is reasonable excuse for a bank to be unable to meet its statutory obligations and serves to avoid formal appeals against penalties where possible. Paragraph 20 sub-paragraph (3) specifies that the Secretary of State imposes a penalty by giving the bank a penalty notice. Sub-paragraph (4) requires that any penalty notice issued must state the amount of the penalty, the period within which it must be paid and the right of appeal against the penalty.

780 Paragraph 20 sub-paragraph (5) provides for the Secretary of State to vary or cancel the penalty by giving notice of this decision to the bank in question. This allows for the Secretary of State to take appropriate action if, following any representations made by the bank, they are satisfied that it had a reasonable excuse for failing to comply with some or all of its statutory obligations under this Schedule.

781 Paragraph 21, sub-paragraphs (1) and sub-paragraph (2) provide for the recovery of any such penalties if the relevant court orders this.

782 Paragraph 22, sub-paragraph (1) and sub-paragraph (2) provide for appeals against a penalty notice to be brought in the First-tier tribunal within one month from the date on which the penalty notice was given.

783 Paragraph 22 sub-paragraph (3) and sub-paragraph (4) allow the Tribunal to either confirm or quash the decision to impose the penalty, and states that the penalty is not payable until any such appeal has been determined or withdrawn.

784 Paragraph 23 sub-paragraphs (1) to (4) provide interpretative definitions key to understanding the legislation, such as a definition of "bank" and details of the relevant enactments that apply for the purpose of defining some of the terminology used within the definition of bank. The drafting has the

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scope to capture standard high street banks, as well as electronic money service providers.

- 785 Paragraph 23 sub-paragraphs (5) and (6) are self-explanatory.
- 786 Paragraph 24 sub-paragraph (1) sets out that further provision can be made about direct deduction orders via regulations.
- 787 Paragraph 24 sub-paragraph (2) sets out that these regulations may make provision, about matters including : (a) how notices and orders under this Schedule are to be given by the Secretary of State; (b) how notices and information under this Schedule are to be given to the Secretary of State; (c) the calculation of amounts to be deducted; (d) setting a reduced maximum deduction rate of less than 40% in some or all cases; (e) adjusting the amount of the penalty charged to banks for non-compliance with their duties under this Schedule to reflect any change in the value of money; (f) the duties of banks in relation to direct deduction orders; (g) the costs which a bank may recover; and (h) the interaction between direct deduction orders and similar orders provided for under other legislation. Regulations made under sub-paragraph (2) will be subject to the negative procedure.
- 788 Paragraph 24 sub-paragraph (3) allows for regulations to apply this Schedule to other persons who may in the future provide different types of financial products and services and bring these within this legislation, for example, cryptocurrency. Regulations made under sub-paragraph (3) will be subject to the affirmative procedure.
- 789 Paragraph 24 sub-paragraph (4) is self-explanatory.
- 790 Paragraph 24 sub-paragraph (5) sets out there is a requirement for the Secretary of State to consult with the banking sector before introducing regulations under paragraph 24(2)(a), (b), (f) or (g). This is to ensure any such regulations are reasonable and that due consideration has been given to the impact on banks.
- 791 Paragraph 24 sub-paragraph (6) sets out that before making regulations to include within the scope of the Schedule any persons who may provide different types of financial products or services in the future the Secretary of State must consult with those who appear to represent the interests of those persons and any other appropriate persons.
- 792 Paragraph 24 sub-paragraph (7) explains the meaning of “relevant regulations” within paragraph 24.

## Schedule 6: Disqualification from driving

- 793 Schedule 6 inserts Schedule 3ZB in the Social Security Administration Act 1992. Schedule 3ZB makes provision for the Suspended DWP Disqualification Order and the Immediate DWP Disqualification order. This schedule empowers the Secretary of State to apply to a Court to suspend disqualification pending a repayment plan being maintained, or if that is unsuccessful to disqualify a liable person from driving where an individual continuously avoids repayment of their debt and the debt cannot therefore be recovered via any other means.

## **Schedule 3ZB: Disqualification from Driving**

- 794 Paragraph 1 sub-paragraphs (1) and (2) set out where this schedule applies and that the suspended disqualification order can only be applied to recover debts of at least £1,000.
- 795 Paragraph 1 sub-paragraph (3) sets out what is required to be included in the suspended disqualification order. The order is required to include the terms of repayment and state that if the

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liable person does not adhere to the order's terms, they may be subject to an immediate DWP disqualification order (this is where their driving licence is disqualified, and they will be unable to drive).

- 796 Paragraph 1 sub-paragraph (4) requires that the court must make a suspended order if the Court is satisfied that the liable person hasn't paid the amount owing and does not have a reasonable excuse for not doing so. Account must be taken at this point of sub-paragraph (6).
- 797 Paragraph 1 sub-paragraph (5) sets out that the terms of repayment must also include terms of payment for any costs awarded by the court to the Secretary of State that have been incurred by taking this action.
- 798 Paragraph 1 sub-paragraph (6) states that the court may not make such an order where the liable person needs their driving licence to earn a living and/or has another essential need for their licence. This protects individuals from action that would put them at risk of hardship or have an impact on other duties or obligations that a judge (or summary Sheriff in Scotland) deems essential.
- 799 Paragraph 1 sub-paragraph (7) provides for further suspended disqualification orders to be made against the same liable person/debt even if the amount owing has fallen to less than the original threshold for applying this order, even if this falls below £1,000. This prevents individuals from avoiding repayment of some of their debt by paying it off only to below this level.
- 800 Paragraph 1 sub-paragraph (8) sets out that a disqualification order ceases to have effect if it is revoked under paragraph (4) or if the whole recoverable debt and costs have been recovered from the liable person.
- 801 Paragraph 1 sub-paragraph (9) sets out the right for the Secretary of State and the liable person to be heard by the court before determining the application of any suspended order.
- 802 Paragraph 1 subparagraph (10) is self-explanatory.
- 803 Paragraph 2 sub-paragraph (1) sets out that if the liable person fails to comply with the suspended order, then the Secretary of State may apply to the court for an Immediate DWP Disqualification Order.
- 804 Paragraph 2 sub-paragraph (2)(a) requires that an immediate disqualification order must set out the terms of repayment with which the liable person must comply. Sub-paragraph (2)(b) sets out that the order disqualifies the liable person from driving for the period of time the court considers it likely it will take for the debt owing to be repaid in full.
- 805 Paragraph 2 sub-paragraph (3) sets out that if the court is satisfied that on the balance of probabilities the liable person has failed to comply with the terms of repayment in the suspended DWP disqualification order without reasonable excuse the court must make an order to immediately disqualify the liable person from driving. Here, 'on the balance of probabilities' means the court considers it is more likely than not.
- 806 Paragraph 2 sub-paragraph (4) sets out that the disqualification period may not be longer than 2 years from when the order is made.
- 807 Paragraph 2 sub-paragraph (5) states that the court may not make such an order where the liable person needs their driving licence to earn a living and/or has another essential need for their

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licence. This protects individuals from action that would put them at risk of hardship or have an impact on other duties or obligations that a judge deems essential.

- 808 Paragraph 2 sub-paragraph (6) sets out that if a liable person misses a single instalment that this does not constitute as a failure to comply, with the exception of the last payment due to be made under the terms of repayment.
- 809 Paragraph 2 sub-paragraph (7) sets out that the Secretary of State is able to apply for more than one Immediate DWP Disqualification Order in relation to the same Suspended DWP Disqualification Order. For example, if the liable person, on multiple occasions failed to comply with the repayment terms of the suspended order.
- 810 Paragraph 2 sub-paragraph (8) sets out the right for the Secretary of State and the liable person to be heard by the court before determining the application of any immediate disqualification order.
- 811 Paragraph 3 provides that the court must be satisfied that the terms of repayment set out in the orders must be reasonable based on the liable person's circumstances.
- 812 Paragraph 4 sub-paragraphs (1) to (3) enables the court to consider applications from either the liable person or the Secretary of State to vary or revoke the order; in doing so, the court must invite the other party to make representations regarding the request before making their decision. If the debt has been fully recovered the court must make an order to end the suspended or immediate order. Sub-paragraph (2) sets out that this action can only be taken when the court considers that doing so will make it more likely to result in the debt being repaid.
- 813 Paragraph 4 sub-paragraph (4) sets out that the court may vary or revoke a DWP disqualification order on an application from a liable person if the order was made with the liable person being heard and the court considers that the liable person had good reason for not making the representations and taking advantage of the opportunity to be heard.
- 814 Paragraph 4 sub-paragraph (5) sets out that any application to vary or revoke a disqualification order must be made within 21 days of the liable person being given notice of the order being made.
- 815 Paragraph 4 sub-paragraph (6) sets out the right for the Secretary of State and the liable person to be heard by the court before determining whether an order should be varied or revoked.
- 816 Paragraph 4 sub paragraph (7) sets out that when the debt has been fully recovered, the court must be notified by the Secretary of State. The court must then revoke the order. This can be done without a hearing.
- 817 Paragraph 4 sub-paragraphs (8) and (9) are self-explanatory.
- 818 Paragraph 5 sets out that where a court makes an Immediate DWP Disqualification Order, it may order the liable person to give the court their driving licence; this will then be transferred to the Secretary of State for Transport.
- 819 Paragraph 6 sub-paragraphs (1) to (4) provide for appeal rights against any order made by the court to disqualify a person from driving. In line with usual requirements for appealing a court order, this appeal must be made within 21 days (starting on the day after the order being issued by the court) and will be heard in the relevant court, which may then make whatever order is deemed appropriate.

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- 820 Paragraph 7 sub-paragraph (1) and sub-paragraph (2) requires the court to notify the Secretary of State if they make a suspended or immediate order, as well as if they decide to vary or change the order or allows an appeal against an order. The notification must contain all relevant information that the Secretary of State requires.
- 821 Paragraph 7 sub-paragraph (3) extends the number of days in which an application for appeal can be made where the court is satisfied there is good reason for a late appeal.
- 822 Paragraph 7 sub-paragraph (4) sets out the Secretary of State may make regulations for the purposes of assisting the court's determination of relevant factors to assess matters in paragraphs 1(6) and 2(5), regarding whether there is an essential need for a driving licence, and 3 regarding the terms of repayment. Regulations made under paragraph 7 sub-paragraph (4) will be subject to the negative procedure.
- 823 Paragraph 7 sub-paragraph (5) is self-explanatory.
- 824 Paragraph 8 provides for a public authority that holds information regarding a person's driving licence (such as the Driver and Vehicle Licensing Agency) may share this with the Secretary of State upon request for the purposes of pursuing a disqualification order. This allows the Secretary of State to effectively apply the power by ensuring a person possesses a licence before seeking to disqualify them from driving on application to the court. This will also allow the Secretary of State to ensure the person is not already disqualified from driving for any other reason.
- 825 Paragraph 9 sub-paragraphs (1) to (2) sets out Northern Ireland licences and that Section 109(1) if the Road Traffic Act 1988 has effect as well as Part 3.

## Commencement

- 826 Clause 103 sets out the manner in which provisions in the Bill will be commenced.
- 827 Subsection (2) details which provisions of this Bill come into force on Royal Assent. In respect of all other provisions, subsection (1) allows the Secretary of State and the Minister for the Cabinet Office to make regulations setting out the dates such provisions come into force.

## Financial implications of the Bill

- 828 Analytical notes providing the rationale, purpose and expected impact of all interventions made are included in the Impact Assessment and will be available in the supporting documents to the Bill. Full details of the financial implications of the Bill will be set out in the Impact Assessment.

## Parliamentary approval for financial costs or for charges imposed

- 829 A money resolution is required where a bill gives rise to, or confers powers that could give rise to, new charges on the public revenue or a potential increase in an existing charge (broadly speaking, new public expenditure). This Bill requires a money resolution primarily because it confers new functions on the Minister for the Cabinet Office and the Department for Work and Pensions, and

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contains provision that would result in the establishment of the Public Sector Fraud Authority as a statutory body, but also because other government departments and public authorities may incur expenditure as a result of the Bill where functions conferred by the Bill are exercised on their behalf.

830 Generally, a ways and means resolution is required where a bill gives rise to, or confers power that could give rise to, new charges on the people (broadly speaking, new taxation or similar charges). This Bill does not give rise to such charges and does not require a ways and means resolution.

## Compatibility with the European Convention on Human Rights

831 The Rt Honourable Liz Kendall MP, Secretary of State for Work and Pensions, has made a statement under Section 19(1)(a) of the Human Rights Act 1998 that, in her view, the provisions of the Bill are compatible with the Convention rights.

832 Issues arising as to the compatibility of the Bill with the Convention rights are dealt with in a separate memorandum. This has been published separately on Gov.uk on 22 January 2025.

## Compatibility with the Environment Act 2021

833 The Secretary of State for Work and Pensions is of the view that the Bill as published does not contain provisions which, if enacted, would be considered environmental law for the purposes of Section 20 of the [Environment Act 2021](#). Accordingly, no statement under that section has been made.

## Duty under Section 13C of the European Union (Withdrawal) Act 2018

834 The Secretary of State for Work and Pensions is of the view that the Bill as introduced into the House of Commons does not contain provision which, if enacted, would affect trade between Northern Ireland and the rest of the United Kingdom. Accordingly, no statement under section 13C of the [European Union \(Withdrawal\) Act 2018](#) has been made.

## Annex A – Territorial extent and application in the United Kingdom

Provision	England		Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?	
Part 1 [Functions Exercisable on behalf of Public Authorities]								
Clause 1	Yes	Yes	Yes	No	N/A	N/A	N/A	

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Clause 2	Yes	Yes	Yes	No	N/A	N/A	N/A
Clause 3	Yes	Yes	No	No	N/A	No	N/A
Clause 4	Yes	Yes	No	No	N/A	No	N/A
Clause 5	Yes	Yes	No	No	N/A	No	N/A
Clause 6	Yes	Yes	No	No	N/A	No	N/A
Clause 7	Yes	Yes	Yes	No	N/A	No	N/A
Clause 8	Yes	Yes	No	No	N/A	No	N/A
Clause 9	Yes	Yes	Yes	No	N/A	No	N/A
Clause 10	Yes	Yes	No	No	N/A	No	N/A
Clause 11	Yes	Yes	No	No	N/A	No	N/A
Clause 12	Yes	Yes	No	No	N/A	No	N/A
Clause 13	Yes	Yes	No	No	N/A	No	N/A
Clause 14	Yes	Yes	No	No	N/A	No	N/A
Clause 15	Yes	Yes	No	No	N/A	No	N/A
Clause 16	Yes	Yes	No	No	N/A	No	N/A
Clause 17	Yes	Yes	No	No	N/A	No	N/A
Clause 18	Yes	Yes	No	No	N/A	No	N/A
Clause 19	Yes	Yes	No	No	N/A	No	N/A
Clause 20	Yes	Yes	No	No	N/A	No	N/A
Clause 21	Yes	Yes	No	No	N/A	No	N/A
Clause 22	Yes	Yes	No	No	N/A	No	N/A
Clause 23	Yes	Yes	No	No	N/A	No	N/A
Clause 24	Yes	Yes	No	No	N/A	No	N/A
Clause 25	Yes	Yes	No	No	N/A	No	N/A
Clause 26	Yes	Yes	No	No	N/A	No	N/A
Clause 27	Yes	Yes	No	No	N/A	No	N/A
Clause 28	Yes	Yes	No	No	N/A	No	N/A
Clause 29	Yes	Yes	No	No	N/A	No	N/A
Clause 30	Yes	Yes	No	No	N/A	No	N/A
Clause 31	Yes	Yes	No	No	N/A	No	N/A
Clause 32	Yes	Yes	No	No	N/A	No	N/A
Clause 33	Yes	Yes	No	No	N/A	No	N/A
Clause 34	Yes	Yes	No	No	N/A	No	N/A
Clause 35	Yes	Yes	No	No	N/A	No	N/A
Clause 36	Yes	Yes	No	No	N/A	No	N/A
Clause 37	Yes	Yes	No	No	N/A	No	N/A
Clause 38	Yes	Yes	No	No	N/A	No	N/A
Clause 39	Yes	Yes	No	No	N/A	No	N/A
Clause 40	Yes	Yes	No	No	N/A	No	N/A
Clause 41	Yes	Yes	No	No	N/A	No	N/A
Clause 42	Yes	Yes	No	No	N/A	No	N/A
Clause 43	Yes	Yes	No	No	N/A	No	N/A
Clause 44	Yes	Yes	No	No	N/A	No	N/A
Clause 45	Yes	Yes	No	No	N/A	No	N/A

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Clause 46	Yes	Yes	No	No	N/A	No	N/A
Clause 47	Yes	Yes	No	No	N/A	No	N/A
Clause 48	Yes	Yes	No	No	N/A	No	N/A
Clause 49	Yes	Yes	No	No	N/A	No	N/A
Clause 50	Yes	Yes	No	No	N/A	No	N/A
Clause 51	Yes	Yes	No	No	N/A	No	N/A
Clause 52	Yes	Yes	No	No	N/A	No	N/A
Clause 53	Yes	Yes	No	No	N/A	No	N/A
Clause 54	Yes	Yes	No	No	N/A	No	N/A
Clause 55	Yes	Yes	No	No	N/A	No	N/A
Clause 56	Yes	Yes	No	No	N/A	No	N/A
Clause 57	Yes	Yes	No	No	N/A	No	N/A
Clause 58	Yes	Yes	No	No	N/A	No	N/A
Clause 59	Yes	Yes	No	No	N/A	No	N/A
Clause 60	Yes	Yes	No	No	N/A	No	N/A
Clause 61	Yes	Yes	No	No	N/A	No	N/A
Clause 62	Yes	Yes	No	No	N/A	No	N/A
Clause 63	Yes	Yes	No	No	N/A	No	N/A
Clause 64	Yes	Yes	Yes	No	N/A	No	N/A
Clause 65	Yes	Yes	Yes	No	N/A	No	N/A
Clause 66	Yes	Yes	No	No	N/A	No	N/A
Clause 67	Yes	Yes	No	No	N/A	No	N/A
Clause 68	Yes	Yes	No	No	N/A	No	N/A
Clause 69	Yes	Yes	Yes	No	N/A	No	N/A
Clause 70	Yes	Yes	No	No	N/A	No	N/A
Clause 71	Yes	Yes	No	No	N/A	No	N/A
Schedule 1	Yes	Yes	Yes	No	N/A	No	N/A
Schedule 2	Yes	Yes	Yes	No	N/A	No	N/A
<b>Provision</b>	<b>England</b>	<b>Wales</b>		<b>Scotland</b>		<b>Northern Ireland</b>	
<b>Part 2 [Social security]</b>	<b>Extends to E &amp; W and applies to England?</b>	<b>Extends to E &amp; W and applies to Wales?</b>	<b>Legislative Consent Motion process engaged?</b>	<b>Extends and applies to Scotland?</b>	<b>Legislative Consent Motion process engaged?</b>	<b>Extends and applies to Northern Ireland?</b>	<b>Legislative Consent Motion process engaged?</b>
Clause 72	Yes	Yes	No	Yes	Under consideration	No	N/A
Clause 73	Yes	Yes	No	Yes	Under consideration	No	N/A
Clause 74	Yes	Yes	No	Yes	No	No	N/A
Clause 75	Yes	Yes	No	Yes	No	No	N/A
Clause 76	Yes	Yes	No	Yes	Under consideration	No	N/A
Clause 77	No	No	No	Yes	Under consideration	No	N/A
Clause 78	Yes	Yes	N/A	Yes	Under consideration	No	N/A
Cause 79	Yes	Yes	No	Yes	Under consideration	No	N/A
Clause 80	Yes	Yes	No	Yes	Under consideration	No	N/A
Clause 81	Yes	Yes	No	No	No	No	N/A
Clause 82	No	No	No	No	No	No	N/A

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Clause 83	Yes	Yes	N/A	Yes	Under consideration	No	N/A
Clause 84	Yes	Yes	No	Yes	Under consideration	No	N/A
Clause 85	Yes	Yes	No	Yes	Under consideration	No	N/A
Clause 86	Yes	Yes	No	Yes	Under consideration	No	N/A
Clause 87	Yes	Yes	No	Yes	Under consideration	No	N/A
Clause 88	Yes	Yes	No	Yes	No	No	N/A
Clause 89	Yes	Yes	No	Yes	Under consideration	No	N/A
Clause 90	Yes	Yes	No	Yes	Under consideration	No	N/A
Clause 91	Yes	Yes	No	Yes	Under consideration	No	N/A
Clause 92	Yes	Yes	No	Yes	Under consideration	No	N/A
Clause 93	Yes	Yes	No	Yes	Under consideration	No	N/A
Clause 94	Yes	Yes	No	Yes	Under consideration	No	N/A
Clause 95	Yes	Yes	No	Yes	Under consideration	No	N/A
Clause 96	Yes	Yes	No	Yes	No	No	N/A
Clause 97	Yes	Yes	No	Yes	No	No	N/A
Clause 98	Yes	Yes	No	Yes	Under consideration	No	N/A
Schedule 3	Yes	Yes	No	Yes	No	No	N/A
Schedule 4	Yes	Yes	No	Yes	Under consideration	No	N/A
Schedule 5	Yes	Yes	No	Yes	Under consideration	No	N/A
Schedule 6	Yes	Yes	No	Yes	Under consideration	No	N/A
<b>Provision</b>	<b>England</b>	<b>Wales</b>		<b>Scotland</b>		<b>Northern Ireland</b>	
<b>Part 3 [General]</b>	<b>Extends to E &amp; W and applies to England?</b>	<b>Extends to E &amp; W and applies to Wales?</b>	<b>Legislative Consent Motion process engaged?</b>	<b>Extends and applies to Scotland?</b>	<b>Legislative Consent Motion process engaged?</b>	<b>Extends and applies to Northern Ireland?</b>	<b>Legislative Consent Motion process engaged?</b>
Clause 99	Yes	Yes	N/A	Yes	N/A	No	N/A
Clause 100	Yes	Yes	N/A	Yes	N/A	No	N/A
Clause 101	Yes	Yes	N/A	Yes	N/A	No	N/A
Clause 102	Yes	Yes	N/A	Yes	N/A	No	N/A
Clause 103	Yes	Yes	N/A	Yes	N/A	No	N/A
Clause 104	Yes	Yes	N/A	Yes	N/A	No	N/A

## Subject matter and legislative competence of devolved legislatures

835 Part 1 of this Bill provides powers for the Cabinet Office to tackle fraud against the public sector, to recover monies (debts) overpaid and introduces arrangements for the oversight of these powers to drive their effective use and ensure they are not misused. The territorial extent for measures in Part 1 will be England and Wales to align with policing powers and the Fraud Act 2006, this means they will apply to England and Wales only.

836 Part 1 of the Bill relates to the functions of the PSFA and focuses on powers concerning fraud against public authorities and the subsequent recovery of associated debts. Specific provisions in this part extend to Wales and engage devolved legislative competencies. Consequently, a

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Legislative Consent Motion (“LCM”) will be requested from the Welsh Government. It should be noted that Part 1 does not necessitate a Legislative Consent Motion from Scotland or Northern Ireland, as it does not alter their devolved competencies. The table above provides an analysis of clauses in Part 1, detailing their territorial extent and application across the United Kingdom.

- 837 Part 2 of the Bill introduces new powers to improve the DWP’s ability to address fraud and error in the social security system and to recover associated debt. Part 2 also includes oversight provision. The territorial extent for the measures in Part 2 is England, Wales and Scotland. DWP intends to deliver the measures in this Bill in the same way in England, Wales and Scotland.
- 838 Social Security is reserved to the UK Parliament for England and Wales. Consequently, a Legislative Consent Motion (LCM) will be not requested from the Welsh Government for the provisions in Part 2.
- 839 Social Security is partially devolved to the Scottish Parliament. Currently, DWP delivers certain devolved benefits under Agency Agreements on behalf of Scottish Ministers. DWP delivers these devolved benefits in the same way as it delivers reserved benefits in England and Wales. It is currently the intent that some of the provisions in Part 2 will apply to these devolved benefits that are being delivered by the DWP under Agency Agreements. The benefits delivered under these agreements include Personal Independence Payment, Carer’s Allowance, Disability Living Allowance, Attendance Allowance, the Severe Disablement Allowance and the Industrial Injuries Scheme. DWP also carries out debt recovery functions for Scottish Ministers under Agency Agreements.
- 840 Where these Agency Agreements remain in place for devolved benefits in Scotland, following the coming into force of the Bill, DWP will want to be able to exercise the following powers in respect of these benefits: the information gathering powers set out in Chapter 1, clause 72; the powers of entry, search and seizure in Chapter 2 under clause 77 and other relevant places including Schedule 4 where Schedule 3ZD is inserted. DWP will also want to be able to exercise the powers to recover and enforce recovery of overpayments in chapter 4 and Schedules 5 and 6 with the debt recovery functions it currently delivers for Scottish Ministers. In so far as these measures in Part 2 currently apply to these devolved benefits and functions delivered under Agency Agreements, it is anticipated that this may necessitate a Legislative Consent Motion. Subject to further consideration and engagement with the Scottish Government, the DWP anticipates it may request a Legislative Consent Motion for these powers in this specific context.
- 841 The measures under Chapter 1, clause 74 (Eligibility Verification) are only applied to a specified set of reserved benefits (Universal Credit, Employment Support Allowance and Pension Credit). As such they will not apply to any devolved benefits delivered under agency agreement without further regulations first being brought forward. As such, this does not necessitate legislative consent. Similarly, the measures under Chapter 5 are only to be applied to reserved benefits.
- 842 Social Security in Northern Ireland is transferred to the Northern Ireland Assembly. While this is the case, parity has long been a guiding principle between the UK Government and Northern Ireland Executive on matters of Social Security. Consequently, a Legislative Consent Motion (LCM) will be not requested from the Northern Ireland Executive for the provisions in Part 2.

*These Explanatory Notes relate to the Public Authorities (Fraud, Error and Recovery) Bill as introduced in the House of Commons on 22 January 2025 (HC Bill 167).*

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# **PUBLIC AUTHORITIES (FRAUD, ERROR AND RECOVERY) BILL EXPLANATORY NOTES**

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