PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

PUBLIC AUTHORITIES (FRAUD, ERROR AND RECOVERY) BILL

Seventh Sitting

Thursday 6 March 2025

(Morning)

CONTENTS

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Monday 10 March 2025

The Committee consisted of the following Members:

Chairs: Sir Jeremy Wright, † Sir Desmond Swayne, Mrs Emma Lewell-Buck, Matt Western

† Baxter, Johanna *(Paisley and Renfrewshire South)* (Lab)
† Berry, Siân *(Brighton Pavilion)* (Green)
† Coyle, Neil *(Bermondsey and Old Southwark)* (Lab)
† Darling, Steve *(Torbay)* (LD)
† Dewhirst, Charlie *(Bridlington and The Wolds)* (Con)
† Egan, Damien *(Bristol North East)* (Lab)
German, Gill *(Clwyd North)* (Lab)
† Gould, Georgia *(Parliamentary Secretary, Cabinet Office)*
† Jameson, Sally *(Doncaster Central)* (Lab/Co-op)
† Jones, Gerald *(Merthyr Tydfil and Aberdare)* (Lab)
† McKee, Gordon *(Glasgow South)* (Lab)
† Milne, John *(Horsham)* (LD)
† Payne, Michael *(Gedling)* (Lab)
† Smith, Rebecca *(South West Devon)* (Con)
† Welsh, Michelle *(Sherwood Forest)* (Lab)
† Western, Andrew *(Parliamentary Under-Secretary of State for Work and Pensions)*
† Wood, Mike *(Kingswinford and South Staffordshire)* (Con)

Kevin Maddison, Simon Armitage, Dominic Stockbridge, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 6 March 2025

(Morning)

[Sir Desmond Swayne *in the Chair*]

Public Authorities (Fraud, Error and Recovery) Bill

11.30 am

The Chair: I remind members to email their speaking notes to hansardnotes@parliament.uk. Members should not imbibe tea or coffee in the room, and electronic devices should be switched to silent.

Clause 56

Procedural rights

Question proposed, That the clause stand part of the Bill.

The Chair: With this is will be convenient to discuss clauses 58 and 58 stand part.

The Parliamentary Secretary, Cabinet Office (Georgia Gould): It is a pleasure to continue to serve under your chairmanship, Sir Desmond.

A priority when designing the Bill was that its powers be sufficiently balanced by strong oversight and transparent safeguards to protect the vulnerable and guard against human error. Rightly, a large number of the questions from the Committee have probed that. Clause 56 is a key part of that design. It ensures that certain steps must be taken and assured before a penalty may be issued; these steps cannot be rushed, skipped or subverted. As I have confirmed, the application of these powers will be strictly limited to specifically authorised officers within the Public Sector Fraud Authority, as set out in clause 66. To exercise the powers, these officials will be required to comply with the relevant training and qualifications, as set out in the relevant codes. They will be subject to both internal and external oversight, including scrutiny of training.

Further safeguards are embedded throughout the legislation for civil penalties. These include the right to make representations in clause 56, the ability to request an internal review in clause 57, and the ability to request an appeal to an appropriate court in clause 60. Additional details of the safeguards will be set out in a code of practice published before the first use of the civil penalty powers. I will give some detail of what will be in that code of practice when we discuss the later clauses. Clause 56 is essential because it holds the PSFA and this Government accountable, ensuring that the safeguards are not only explained to the public but maintained and reviewed by independent oversight.

Clause 57 ensures that a penalty decision notice must be issued before a penalty is imposed, and provides an essential safeguard by giving individuals access to a review and sufficient time for it to be carried out. Powers of review will be available only to authorised officers within the PSFA who are appropriately trained. Penalties are a key part of the deterrent message that this Government wish to send by delivering the Bill. Fraud will not be tolerated, but it is not enough to simply recover money lost to fraud and error. A clear message must be sent that fraudulent actions have consequences.

Clause 58 is essential to ensure that the PSFA enforcement unit acts with transparency and is held accountable for its decisions. It is also an essential safeguard for the individuals and businesses that it will deal with, as it provides a right of review and a chance for decisions to be challenged. As part of the process, the penalised person will have the opportunity to request a review of the penalty and state why it should not be imposed; a person may contest the level of the penalty. During review, a penalty will not be imposed, per clause 57(3). If a person is not satisfied with the result of a review, they will have the opportunity to appeal the outcome to an appropriate court, per clause 60. Reviews will be carried out by an authorised officer of higher grade than the authorising officer who made the original penalty decision, as stated in clause 66(3). This is yet another safeguard that ensures a fair review of the penalty.

Mike Wood (Kingswinford and South Staffordshire) (Con): The clauses outline the steps and safeguards before the Minister may impose a penalty. Getting these provisions right, ensuring that due process is followed, affected individuals and businesses have a right to respond and penalties are not imposed arbitrarily, is crucial.

Clause 56 sets out the procedural rights of a person facing a penalty. It ensures that penalties are not imposed without the affected party first being allowed an opportunity to respond. Subsection (2) requires that a notice of intent be given to any person facing a penalty, inviting them to make representations before a final decision is made. Under subsection (3), the notice of intent must include the amount of the proposed penalty, the reasons for imposing a penalty of that amount, and the means by which representations may be made, as well as the timescale for doing so.

As we are approaching the end of part 1, I know that the Government will be disappointed if I do not have a long list of questions on these provisions for the Minister. A theme from Tuesday's sessions was the time limit on representations. The Bill states that individuals and businesses must be given a minimum of 28 days to make representations. There is a little more flexibility in the provisions we debated on Tuesday, but do the Government intend to set a maximum limit, whether in the legislation or perhaps the code of practice, on the number of days that would be available for such representations? If not, how will it be ensured that the process does not become excessively prolonged, as the Minister spoke about on Tuesday? As well as causing delay for the public authority seeking to recover funds, it might cause uncertainty for businesses and individuals. We are also interested to hear about guidance that might be issued on when it would be appropriate to vary the 28 days and allow a longer period for representation in order to strike a balance.

On the issue of authorised officers, and assuming that the decisions are being delegated, the Minister has previously referred to the Carltona principle whereby Ministers can delegate decision-making and executive powers to appropriate officials. In the light of the Government's intention to repeal the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023, I am interested to know whether they have assessed the impact that might have on the operation of the Carltona principle in these circumstances. The principle is derived from pre-second world war case law, but it was significantly weakened in the Gerry Adams challenge. It was one of the things the previous Government were seeking to change, as a response to amendments in the House of Lords to re-establish the principle. In the absence of the 2023 Act, will the principle still be legally robust enough to allow the delegation that the Government intend under this Bill?

We assume that the decision on whether to maintain, reduce or cancel a proposed penalty will be made by an authorised officer rather than the Minister for the Cabinet Office, so will the Minister set out the level of seniority of the authorised officers within the PSFA and how that decision was reached? What training will those officers be required to undergo for this specific function, and what steps is the PSFA expected to put in place to ensure consistency in decision making across different cases?

Clause 57 outlines the process for issuing a penalty decision notice once a final decision has been made. Again, the requirements in the clause appear to be sensible and necessary if we are to ensure that individuals and organisations are fully informed of their liability and have an opportunity to challenge decisions that they believe to be incorrect or unfair, so we support the clause standing part of the Bill.

Clause 58 deals with reviews of penalty decisions. I have a few questions about who in the PSFA or Government will conduct the review. Who will ensure that they are properly separate from the individual decision-making process and if the reviews are to be conducted by officials, what will be the level of seniority required?

The clauses set out important procedural safeguards that seem to be appropriate to ensure penalties are not imposed unfairly. If we are given clarification regarding the degree of discretion available, the seniority, and training in decision making and the safeguards that ensure fairness, we will be content for the clauses to stand part of the Bill.

Steve Darling (Torbay) (LD): It is a pleasure to serve under your chairmanship, Sir Desmond. The Liberal Democrats broadly welcome the proposals in the clauses. Safeguarding people is an essential part of the Bill. I suspect we will go into that in greater depth as we embark on part 2.

Georgia Gould: I would indeed have been disappointed if the shadow Minister had not had lots of detailed questions for me on the operation of the powers. I agree wholeheartedly about the importance of safeguards.

To take the questions in turn, we are confident of the legal robustness of the Carltona principle. It is how Government routinely works, and we are confident that the powers can be exercised by highly trained authorised officers. As the shadow Minister says, 28 days is a minimum. There are no plans at the moment to introduce a maximum, but the intention is for the team to work as quickly as possible to recoup public money. As we have discussed, there might be exceptional circumstances where people need more time, and the authorised officers will be able to provide that time on a case-by-case basis, always bearing in mind the need to return money that is owed because of fraud.

We will talk shortly about the oversight and review process, but we want a separate team outside the PSFA that is answerable to an independent reviewer. It could look at the wide range of cases and ensure there is consistency and that powers are used proportionately. It could report to Parliament, so there would be ongoing scrutiny of the exercise of the powers. It is important to remember what will have taken place by the time we get to a penalty. In order to establish the recovery of a debt, if the individual did not agree, the matter will have gone to court. An authorised officer will have reviewed the case and submitted to a senior member of the team the rationale for a penalty to be imposed.

There are a number of routes of review. The first is a review by another authorised officer of a higher grade in the PSFA team. If the individual is not satisfied with that, they will, as the shadow Minister set out, have the ability to apply to a court or a tribunal to have that reviewed. There are robust safeguards built in within the PSFA and outside the PSFA.

Question put and agreed to.

Clause 56 accordingly ordered to stand part of the Bill.

Clauses 57 to 59 ordered to stand part of the Bill.

Clause 60

APPEALS

11.45 am

Question proposed, That the clause stand part of the Bill.

Georgia Gould: This legislation is underpinned by robust oversight and layers of protection for individuals and businesses. Safeguards have been put in place to ensure that there are sufficient opportunities for individuals and businesses to make representations, request internal reviews of decisions and appeal to the relevant courts. Every opportunity will be provided to ensure that no one is penalised unfairly or in error.

Clause 60 is an important final safeguard that ensures that everyone has the right to appeal to an independent court or tribunal should they disagree with the PSFA's final determination. Per clause 14(b), once an appeal is made, recovery measures may not be exercised until after the appeal is heard and completed.

The clause includes a delegated power that allows the Minister, by regulation, to make further provisions about appeals. The regulations are subject to the negative procedure. Crucially, the Minister is not given the power to remove the right of appeal; instead, the Minister may amend the clause simply to make the appeal process more efficient—for example, by allowing an appeal against a penalty or debt to be heard at the same time.

Mike Wood: We support the provision that a person can appeal against a penalty to the appropriate court. This is an appropriate level of oversight for these civil penalties, and it is appropriate that the court can uphold, revoke or amend the penalty notice and make the final decision on whether an individual should be penalised for fraud. Obviously the Minister's judgment that the behaviour was fraudulent and caused the loss to the public authority will form a part of that decision. It is clearly right that there is a role for the legal system in the appeal process. It is also sensible to have the decision by the appropriate court marked as the final decision, to prevent ongoing appeals that could frustrate the proper recovery of funds that are properly payable.

The clause also allows the Minister to make further regulation via the negative procedure regarding appeals against a penalty notice. Will she explain why the negative procedure was judged appropriate in these circumstances, rather than one that would allow Parliament automatically to have its say on any proposed regulations? What further provisions does she envisage being introduced at a later date? I understand that part of the purpose of the clause is to accommodate unforeseeable changes in circumstances, so it is not always possible to see the detail, but some clarity on the kind of area or circumstances in which regulations may be needed would help the Committee to form a judgment on the clause. If no further provisions are expected and there is no reason to imagine that they may be necessary, that clearly renders that part redundant.

That is a rather shorter list of questions to this clause—I am drawing to a close. I would appreciate if the Minister could provide that clarification.

Georgia Gould: I am pleased to provide that clarification. As I said, the critical point is that this provision is very limited in its scope, and the right to appeal set out in the Bill cannot be removed. In my initial remarks, I gave an example of making the appeal process more efficient, such as by allowing an appeal against a penalty or debt to be heard at the same time. The provision is limited to how appeals are operationalised, and does not affect the right to have an appeal.

Question put and agreed to.

Clause 60 accordingly ordered to stand part of the Bill.

Clause 61 ordered to stand part of the Bill.

Clause 62

Code of practice

Question proposed, That the clause stand part of the Bill.

Georgia Gould: The clause is an important part of the Bill because the code of practice will set out how and why civil penalties will be calculated and imposed. This will help to ensure that those powers are used transparently and reasonably. I made a commitment as we went through the previous clauses to go into detail about what will be in the code of practice, which I plan to do now.

The code of practice will set clear guidance and standards for authorised officers when using the powers. It will also help the general public to understand how those powers are exercised. To encourage co-operation with our investigations, allowing the PSFA to recover more from fraudsters in the most efficient way possible, it may be appropriate to offer discounted penalties to those who co-operate.

We will consult on the code of practice and publish it ahead of the first use of the civil penalty powers to ensure sufficient time for Members to familiarise themselves with the measures. In the spirit of being helpful to the Committee, I want to give as much detail as I can on what the code of practice will contain so that the House has the opportunity to understand it, as well as the other place in due course. This will of course be subject to change if either House amends the Bill.

The code of practice will set out the statutory obligation under which it is published, who the intended audience is, and how it should be used. It will set out the rights of anyone who is penalised, which will include appointing legal advisers or other representatives, and how to access legal aid, if entitled to do so. It will set out how the civil penalty system will be overseen by senior officials and set out the roles of the oversight function and the "independent person" under clauses 64 and 65.

The code will explain the scope of the power and how individuals, companies and other organisations will be treated. It will also set out the various kinds of penalties in the Bill, and that penalties may be applied to fraud that occurred before the Bill is enacted. It will cover the training that authorised officers will have undertaken before being authorised to issue civil penalties and the standards used by the Government's counter-fraud profession.

The code will inform the public about the investigative process in enough detail to give a fair understanding of how cases will be proven to the civil standard, without giving so much information that it would enable a fraudster to game the system. This will include how cases are referred to the PSFA, how authorised officers will be trained to assess individual vulnerability and how that will be assessed during the initial case assessment.

The code will explain how the information powers in the Bill work, how they will be used, the safeguards for their use and how reviews may be requested. It will include how authorised officers will establish a claim, including in court, and how authorised officers will assess whether a case meets the civil burden of proof required to issue a fraud penalty. It will also test that assessment with others, including subject matter experts, specialists and legal advisers. It will explain the decision-making process, including who will make the decision about penalty calculation and imposition.

The code will also set out the circumstances in which the PSFA will not apply a penalty, such as where there has been an error rather than fraud. Importantly, it will also make it clear that civil penalties will not be applied as an alternative to criminal prosecution but as a separate response to fraud.

The code will set out how fraud penalty levels will be calculated. Penalties will be bespoke to the case they relate to, based on the individual facts. Penalties imposed will be reasonable and proportionate, and the code will set out what that means in practice. Penalty levels will be decided by reference to a variety of factors, based on the circumstances of each case. Those include, but are not limited to: the financial loss to the public authority; the time period and frequency of the offence, whether it

is a one-off or a sustained fraud; the harm done to a public authority; the impact of the offence; the offender's behaviour; whether the offender has acted alone or as part of a group; whether a position of trust held by those committing fraud has been abused.

Separately, the code will set out how the penalties in the Bill for non-compliance will work, along with information powers and debt recovery powers, and the safeguards that will be in place. It will set out the criteria by which the PSFA may offer to discount a penalty for fully co-operating and disclosing fraud. It is beneficial to the Government to seek early resolution to investigation and enforcement action, and that kind of discount is used elsewhere to incentivise that. However, the code will also explain that there can be no discount without full co-operation.

The code will set out the practical steps of issuing a penalty in accordance with the clauses in the Bill. That will include the issuing of notices of intent; how a person can access their right to make representations on any relevant matters; how penalty decision notices will be issued; and how to access the rights of internal review and of appeal to the tribunals. On that last point, the code will also help a person to understand what a tribunal is and how to appeal. It will not replicate the existing published guidance on the tribunals, which it will instead signpost people to.

The code will set out when a penalty becomes payable, how to pay it and what will happen if it is not paid. That will include setting out how the debt recovery powers in the Bill will work, if their use is required, and other potential routes of debt recovery action. Finally, the code will make it clear how the PSFA will process, hold and share data, as set out in the Bill and with reference to the Data Protection Act 2018.

The content of the code of practice, as I have set out, will give anyone affected by these powers a clear understanding of what will happen and why, their rights and responsibilities, and how the PSFA will act throughout the process. Having explained that, I commend clause 62 to the Committee.

Mike Wood: I thank the Minister for that explanation. Obviously, it is helpful for us to have what are, essentially, the chapter headings of the code of practice—the areas that it will cover. That clearly provides some degree of transparency, but it is no substitution for the detail of what will actually appear within those chapters.

We heard from a range of witnesses last week who, in response to many of our questions, were unable to say whether the powers and provisions in the Bill are appropriate and proportionate because of the absence of detail about the code of practice. It would be helpful and courteous to this House, therefore, if as much detail as possible about what will appear—the actual provisions for how the code of practice will operate, rather than just the chapter headings—could be made available at an early enough stage for it to be considered during the Bill's passage through this House.

Can the Minister give more information about the input that will go into deciding what the details are within the code of practice? Which stakeholders does she expect will be engaged with? Are there any parallel equivalent codes of practice in other areas that might be expected to be a model for this code, or are we effectively starting with a blank sheet?

Again, although the Minister's explanation is extremely welcome, we continue to be disappointed that the actual detail is currently scheduled to be made available only for Members of the House of Lords to consider before legislating, rather than elected Members of Parliament. We appreciate the recognition of the importance of transparency, which we are obviously seeking to maintain throughout the Bill, but we hope that the Government will accelerate their plans to provide more information for Members of Parliament so that informed decisions can be made about this important legislation.

12 noon

Siân Berry (Brighton Pavilion) (Green): It is a pleasure to serve under your chairmanship again, Sir Desmond. I want to reiterate the points made by the Opposition spokesperson, the hon. Member for Kingswinford and South Staffordshire. It is not good enough to be able to refer only to the official record of the long list that the Minister just read out of what is likely to appear in the code of practice. At this stage of the legislation, we ought to be scrutinising at least a draft.

The clause does not include any consultation on a draft code of practice and there are no scrutiny safeguards built into the legislation, so it is wrong to not be looking at the details. In previous debates, I have set out my concerns that although there have been reassurances that this part of the Bill is about major fraud, and that it excludes the Department for Work and Pensions, it is easy to envisage that there may be a scheme of fraud against other Departments that involves defrauding grants that are available to support people claiming certain benefits. That might bring people who are poorer and more vulnerable into a scheme where, according to previous clauses, these penalties may be applied. We need to look at the code of practice in draft form at this stage of the legislation or as soon as possible.

Steve Darling: Legislation that is rushed is often legislation that is dangerous, and I fear that that is where we are today. The hon. Member for Kingswinford and South Staffordshire was very polite in putting his challenges to the Minister, but I would like to be a little more robust and say that I believe it is extremely unreasonable that we do not have the code before us. "The devil is in the detail" is a hackneyed phrase, but that is the fact of the matter. I say to the Minister that it would be extremely helpful if the code could be published before the legislation passes throughout Parliament, so that there is at least the opportunity to scrutinise it at a later date. I look forward to receiving a satisfactory response from her.

Georgia Gould: I am grateful for those questions. As I set out, the code of practice provides additional guidance and operational detail, but the important thing is that the key safeguards we have discussed are covered in a great deal of detail in the Bill. We have gone through the right to appeal and the level of the authorised officer who will be looking at every part of the process, whether that is the initial decision or the review. We have discussed the timeframes, all the appeal routes that are built into the legislation, and the oversight. The key safeguards to the operationalisation of these powers are in the Bill in a great deal of detail.

[Georgia Gould]

It is right that I went through the kind of operational detail that the code of practice will cover. To hopefully offer some reassurance on the questions of consultation and precedent, in developing the code of practice, we are building on a great deal of precedent within Government—from the DWP, the Home Office and His Majesty's Revenue and Customs—on the use of these powers and what has worked well. There is already a huge amount of consultation, at ministerial and official level, on developing the code. There will be a public consultation on it as well, and, as we have already committed, we will bring forward the code of practice within the parliamentary process.

Question put and agreed to.

Clause 62 accordingly ordered to stand part of the Bill.

Clause 63 ordered to stand part of the Bill.

Clause 64

INDEPENDENT REVIEW

Steve Darling: I beg to move amendment 31, in clause 64, page 34, line 23, at end insert—

"(1A) Prior to appointing an independent person, the Minister must consult the relevant committee of the House of Commons.

(1B) For the purposes of subsection (1A), 'the relevant committee' means a committee determined by the Speaker of the House of Commons."

This amendment would ensure Parliamentary oversight of the appointment of the "Independent person".

The Chair: With this it will be convenient to discuss the following:

Clause stand part.

Clause 65 stand part.

Steve Darling: The amendment is about ensuring transparency around the Bill. I have already explored transparency, and other hon. Members have talked about reasonableness. The Bill gives the Minister the ability to appoint their own independent person. Although I am sure that those in power for the foreseeable future are very reasonable individuals who will genuinely appoint independent persons, we can read in our newspapers about people not very far away who are effectively appointing yes-people around them, so I fear that we need to future-proof the Bill to ensure that the people appointed are genuinely independent.

Constitutions elsewhere in the world have checks and balances heavily built into governance. The amendment, which proposes to delegate to the Speaker the decision about how the appropriate Committee of Parliament can be involved and consulted about the appointment of the independent individual, would be a good way of ensuring genuine independence and reasonableness. I hope that the Government seriously consider it; we will be pressing it to a vote.

Georgia Gould: I will start by talking about clauses 64 and 65, and then I will address the amendment.

It is absolutely necessary that there is appropriate independent oversight to ensure the powers in the Bill are used appropriately, and we welcome debate on that. That is why we have introduced the power to appoint an independent person, which might be one person—an independent reviewer—or an organisation such as His Majesty's inspectorate of constabulary and fire and rescue services. They will augment the existing oversight structures laid out elsewhere in the Bill, such as the role of the Independent Office for Police Conduct, set out in clause 9, which will investigate the most serious complaints into the PSFA's use of entry, search and seizure powers.

Clause 64 mandates that an independent person appointed by the Minister undertakes reviews of the use of powers in the Bill. The independent reviewer will conduct reviews to consider whether the exercise of the powers is in keeping with the legislation, codes of practice and relevant guidance. They will produce a report of their findings for the Minister, including any recommendations they deem appropriate. The Minister is then required to publish the report and lay it before Parliament. That ensures there is both public and parliamentary accountability in the role of the independent person outlined in the Bill.

As we state in the explanatory notes, we intend to make the duty imposed by the clause in two ways. First, the Government will commission His Majesty's inspectorate of constabulary and fire and rescue services to inspect the PSFA's use of the new investigative powers, which can include the end-to-end investigative process and decision making. HMICFRS has a long-standing history, going back to 1856, and it independently assesses and reports on the performance of police and fire and rescue services in the UK, as well as other public bodies with investigatory powers, such as His Majesty's Revenue and Customs. HMICFRS reports are already made available publicly, and are an efficient way to hold bodies accountable for their investigative practices.

Secondly, the Government are creating a new position for an independent reviewer to whom the PSFA's oversight team will report. The independent reviewer will assess how the PSFA exercises the powers given to it in the Bill. The independent reviewer will carry out reviews and report on whether the use of the powers is in keeping with the legislation, codes of practice and relevant guidance, as well as considering areas where HMICFRS or other oversight bodies have not already reported. The independent reviewer could, for instance, consider live case reviews or conduct supplementary reviews between those undertaken by other bodies, or look specifically at how the PSFA has taken forward recommendations from past reviews. The independent chair will have discretion in determining where to focus their resources.

We do not believe it is necessary to legislate in the manner proposed by the amendment to ensure parliamentary scrutiny. Parliament will scrutinise the independent person's report, which the Minister is obliged to lay in Parliament. There is also an established process for agreeing posts that should be subject to pre-appointment scrutiny by Select Committees without the need for legislative provision. That process is to reach agreement on posts suitable for pre-appointment scrutiny between my Department and the Chair of the relevant Select Committee. We will be following that process for the appointment of the independent chair. We hope that offers assurance to the

hon. Member for Torbay. The appointment of the independent reviewer will also fully comply with the governance code on public appointments which is overseen by the Commissioner of Public Appointments.

Mike Wood: Clause 64 sets out that the independent person has responsibilities to prepare and submit a report on the review. We welcome that element of transparency, but are conscious that we need to balance those publications against the privacy of individuals. It is covered within the legislation, but could the Minister further detail the measures that are being taken to ensure that the independent person's reviews do protect the privacy of individuals involved, especially where there may not have been a legal process in which someone has been found guilty of an offence?

What sort of person is considered an independent person for these purposes? Is the provision intended to create a team of civil servants in the Department who do these reviews, or will it be an individual? What oversight will there be of the independent reviewers, and what resources will they have? Will they have any other responsibilities beyond the report that they produce at the end of the period that the Minister sets out?

Clause 65 allows the Minister to give direction

"as to the period to be covered"

by the review, and provides that the Minister

"may disclose information to the independent person, or to a person acting on behalf of the independent person".

Even if the Minister is only able to set timeframes for reviews, I would still like clarity as to how independent that person is intended to be from the PSFA, the Cabinet Office and the Minister. We understand why information will need to be shared between the Minister and the independent person if they are to carry out that function, but what protections are in place to maintain privacy and protect against the sharing of unnecessary personal information that goes beyond what the independent person will require?

We have some sympathy for amendment 31, tabled by the Liberal Democrats. There is clearly a need to ensure a proper and open appointment process, as choosing the right person will shape the effectiveness of many of the review mechanisms. It is therefore vital that that decision is right. The involvement of Parliament does seem to be one way of achieving that oversight, in the absence of any better proposal in the legislation. While we recognise that this role may be rather different from the others that are set out in annex D of the Cabinet Office guidance on pre-appointment scrutiny, we would be more comfortable knowing that there is going to be that scrutiny rather than relying, at some point after the legislation is passed, on conversations between whoever happens to be in the Cabinet Office at the time or whoever happens to be Chairing whichever Committee the Speaker feels is most appropriate to be conducting any such hearings.

12.15 pm

We are minded to support that amendment, while recognising that better mechanisms may be put forward at later points in the passage of the legislation.

Georgia Gould: Let me address those questions. The first thing to say on personal or sensitive information is that the teams will of course remain subject to data protection legislation and fulfil all their obligations under the law. Only information that is pertinent and necessary to the review or inspection process will be shared with external bodies, and that will be done in accordance with information handling rules.

The team in the Cabinet Office will be a small, separate team that does not undertake day-to-day investigations; the team will be created to exercise the reviewing powers in the Bill. Its members will take direction from, and report to, the independent chair. They are intended to carry out the day-to-day oversight work as well as to support the functioning of the independent chair, both administratively and in conducting their formal reviews. A similar approach is taken by other independent persons who have a duty to conduct independent reviews or monitoring, and who require support from a Department —for instance, the independent Prevent commissioner for the Home Office. There is provision within the Bill for the PSFA to become a statutory body that will further separate out these functions. I reiterate the point that I made in response to the amendment: we do expect, as is normal process, that there will be a parliamentary role in the appointment of the chair, but we will continue to stay open to all suggestions as the Bill progresses.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 10.

Division No. 2]

AYES

Berry, Siân	Milne, John
Darling, Steve	Smith, Rebecca
Dewhirst, Charlie	Wood, Mike

NOES

Baxter, Johanna	Jones, Gerald
Coyle, Neil	McKee, Gordon
Egan, Damien	Payne, Michael
Gould, Georgia	Welsh, Michelle
Jameson, Sally	Western, Andrew

Question accordingly negatived.

Clauses 64 and 65 ordered to stand part of the Bill.

Clause 66

AUTHORISED OFFICERS

Question proposed, That the clause stand part of the Bill.

Georgia Gould: The powers in the Bill are conferred on the Minister, but they will be exercised by officials specifically authorised by the Minister and termed "authorised officers". The clause is an essential element of the legislation. It sets out the decisions that, if not made by the Minister personally, may be undertaken by an authorised officer only: deciding to give an information notice; deciding to give a recovery notice; deciding to make or vary a direct deduction order; deciding to make or vary a deduction from earnings; deciding to give a notice of intent to impose a civil penalty; and imposing a civil penalty.

Furthermore, the clause details some fundamental safeguards on the use of the powers. First, to be appointed as an authorised officer, the individual must be employed

[Georgia Gould]

in the civil service within the Cabinet Office. That is to ensure strict control over who may use the powers. The clause also defines who may conduct internal reviews, a protection offered widely in the Bill. Any internal reviews must be undertaken by an authorised officer at least one grade senior to the officer involved in the initial decision, or by the Minister. That ensures that officers cannot review their own decisions when challenged for an internal review.

Authorised officers form the backbone of the Government's approach to taking the powers. The officers will need to complete a rigorous bespoke training programme, which will cover all aspects of investigative practice, including the relevant powers under the Police and Criminal Evidence Act 1984 for authorised investigators. That will be to the same standard as for other public bodies using the same powers. Only after the training conditions have been met will an individual be put forward to the Minister for authorisation to act as an authorised officer and then may use the powers. Their use of the powers must follow strict processes, guidance and codes of practice. They will be subject to internal and external independent oversight of their use of the powers.

The clause is essential, as it provides a statutory gateway for PSFA officials to use the powers under the Bill. Without the clause, the Government's intention to improve counter-fraud enforcement would either be impractical, or the powers would be given to more individuals than is absolutely required. I commend the clause to the Committee.

Mike Wood: As the Minister says, the clause sets out those decisions that can be taken by an individual authorised by the Minister on their behalf. It specifies that the authorised officer must be a civil servant in her Department. Where there is a review, it must be taken by an authorised officer of a higher grade than the one who took the original decision. As we said when debating earlier clauses, the level of the original officer seems to be set at a rather lower level than in the equivalent decision-making processes in the police and other similar organisations. The measures set out in the clause appear to be sensible, but we have one or two questions about their practical aspects.

In particular, how many of the decisions referred to in the clause does the Minister expect an officer to be likely to make on a weekly basis? When we were debating civil penalty notices, the Minister suggested that it might only be a few a year. This clause covers a rather wider range of notices, so some idea of the workload to be expected of authorised officers will help us to form a better picture of the detail of what we expect authorised officers to be considering. Similarly, does the Minister have any expectation at this stage of how many authorised officers across the different grades will be fulfilling these functions?

Georgia Gould: I thank the hon. Gentleman for those questions. Critically, we have been clear that the team will be small. However, as I have said, if the practical use of these powers goes well—we expect it to, because they are widely used in government—there is the opportunity to grow the team. Importantly, these will be highly trained officers who are specialists in this work. They will have that breadth of experience. In the first instance, we expect around 40 cases a year, but as I said, that is subject to change as time goes on.

The team will be higher executive officers or above in the PSFA. Authorised investigators must also be higher executive officers or above. That means that they will receive further training on PACE powers. Where PACE stipulates that a decision must be made by an officer with a rank of inspector or above, schedule 1 states that it will be taken by an authorised investigator of senior executive officer grade or above. That is proportionate. These are highly trained officers. We specifically ask that the powers not be given out widely, but to a group of people who will have a huge amount of training and oversight to be able to exercise them proportionately, and in a way that recovers fraud but also safeguards those being investigated.

Question put and agreed to.

Clause 66 accordingly ordered to stand part of the Bill.

Clause 67

Disclosure of information etc: interaction with external constraints

Georgia Gould: I beg to move amendment 3, in clause 67, page 36, line 10, leave out "disclosure, obtaining or use" and insert "processing".

This amendment clarifies that clause 67(3) applies in relation to all processing of information and makes it consistent with clause 67(1) and (2)).

The Chair: With this it will be convenient to discuss clause stand part.

Georgia Gould: The clause is essential in protecting specific information, preventing potential harm to individuals and upholding ethical standards in situations where unauthorised sharing could cause damage. The clause ensures that the powers adhere to current data protection legislation by safeguarding data from misuse, damage and unauthorised access. It also ensures that a person's legal professional privilege rights are protected. The clause safeguards an individual's rights and prevents them from being forced to provide information that could incriminate them.

Amendment 3 is necessary to clarify that this power applies to all processing of information, and to provide consistency with clauses 67(1) and (2). It would replace "disclosure, obtaining or use" of information with "processing". It would create no additional effect and ensures clear comprehension that clause 67(3) applies in relation to all processing of information.

Mike Wood: The clause sets out how the provisions relate to data protection legislation. It is clearly an important provision to reinforce the data protection framework, given the number of concerns raised, particularly by Opposition Members, about the protections for individual privacy. The clause sets out some protection, albeit at a baseline of the existing legal provisions, to prevent breaches of any obligation of confidence owed by the people making disclosure, or of other restrictions including legal privilege. It seems eminently sensible,

but will the Minister detail further the oversight mechanisms that will ensure that the safeguards are followed? What processes and avenues are available if someone believes that the requirements set out in the clause have not been followed? How should that be pursued?

As the Minister said, Government amendment 3 is a technical amendment. We have no objection to it.

12.30 pm

Georgia Gould: As I set out previously, the PSFA will collect personal data necessary only for the relevant purposes and will ensure that it is not excessive. Any data not relevant to the stated purposes will be erased in line with the data retention policy, which specifies that data connected to a suspected fraud is held for up to five years following resolution. Data that is not connected is held for up to two years. The use of the powers will be governed by the Data Protection Act 2018 and other data protection legislation.

Amendment 3 agreed to.

Clause 67, as amended, ordered to stand part of the Bill.

Clause 68

CROWN ETC APPLICATION

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clauses 70 and 71 stand part.

Georgia Gould: Clause 68 sets out how the powers in part 1 of the Bill variously apply or do not apply to the Crown, to Parliament and to the King and his estates, and in circumstances of grounds of national security. The clause sets important boundaries on the scope of part 1. As such, it is essential that it stands part of the Bill.

The clause ensures that the Crown is bound by specific powers and provisions in the Bill. It applies in relation to premises used or held on behalf of the Crown —for example, a building owned by a Government Department—in the same way as any other premises. For instance, an authorised investigator could, if necessary, apply to a court for a warrant to enter, search and seize evidence from Crown premises. However, it does not bind the Crown in respect of some powers, specifically those in clauses 16 to 37, relating to recovery orders and recovery from bank accounts, and chapter 5, relating to civil penalties. If it did, the effect would be the Crown recovering money from itself or imposing a penalty on itself that it would pay to itself, simply moving money within its own accounts.

Subsection (4) creates a power for the Minister to certify that it appears appropriate in the interests of national security that the powers of entry conferred by this part should not be exercised on Crown premises specified in the certificate. Authorised investigators could not seek a warrant to enter those premises to search for evidence. This carve-out exists because there are certain Crown premises where searching may compromise national security. It is important that this is respected. In that event, the PSFA would discuss with the relevant Department or agency what alternative approach may be possible.

Finally, the clause states that the power of entry conferred by this part cannot be exercised on His Majesty's private estates or premises occupied for the purposes of either House of Parliament. The King's private estates are those held by His Majesty as a private person. This does not mean the Crown Estate—the sovereign's public estates, which are managed by the Crown Estate commissioners on behalf of the Crown. In the incredibly unlikely event that evidence suggested that it was necessary to search the King's private estates or either House of Parliament, the PSFA would request to be invited by the appropriate authority, which would be the Speaker or the Lord Speaker in the case of this House and the other place, respecting the privileges of Parliament.

Clause 70 is the interpretation clause, which sets out the meaning of terms used in part 1. I do not propose to run through the whole list of terms. Many of them are straightforward and refer back to previous clauses we have debated, but some are important to understand the scope of this part or are used in a novel way. I will say a few words about them so that the Committee can understand them in the correct context.

The first term is "authorised officer", which we covered in clause 66. In this part, authorised officer has the meaning given in clause 66, which as we have already seen says that they must be employed in the civil service in the Minister's Department. This means that other types of public sector workers, such as consultants or contractors, cannot be authorised officers, which is a safeguard on the use of the powers.

The clause defines "fraud" as including

"the offences in sections 1 and 11 of the Fraud Act 2006…and…the offence at common law of conspiracy to defraud."

The Committee will recall that we discussed this in the debate on clauses 1 and 2, and I can repeat the assurances that I gave then. The definition sets the scope of fraud in relation to the core functions of a Minister in clause 1, and it covers the three main fraud offences: fraud by false representation, fraud by failing to disclose information and fraud by abuse of position. It also covers the common-law offence of conspiracy, which requires that two or more individuals dishonestly conspire to commit a fraud against a victim. Together, these give the scope needed to tackle the key forms of public sector fraud.

The clause defines "public authority" as

"a person with functions of a public nature so far as acting in the exercise of those functions".

This sets out the scope of the Departments, bodies and agencies that the PSFA would be able to work with and on behalf of. The definition is deliberately wide to enable the PSFA to tackle public sector fraud wherever it may arise. It will allow the use of powers to investigate fraud against all central Government Departments and agencies—except HMRC and the DWP, because they already have existing powers—as well as local government and any arm's length delivery mechanisms that deliver functions of a public nature.

The clause defines "suspected fraud" as

"conduct which the Minister has reasonable grounds to suspect may constitute fraud".

We discussed this definition in the debate on clause 3. Reasonable grounds to suspect is an objective test meaning a belief based on specific evidence that a reasonable person would hold. It is not just based on the investigator's own subjective opinion. It is a reasonable test that asks,

[Georgia Gould]

"Would an ordinary, reasonable person"—like you or me, Sir Desmond—"being in possession of the same facts as the investigator, agree that it was reasonable to suspect that fraud had occurred?" This is a common standard to initiate an investigation.

Finally, beyond the definitions, the clause clarifies references to

"giving a notice or other document"

and sets out how court proceedings are considered to be finally determined. The clause is essential to ensure the correct understanding and interpretation of key terms used throughout part 1 of the Bill.

Clause 71 states that all regulations under this part should be made using statutory instruments. This ensures a structured approach to the regulatory framework. The clause allows for the creation of different types of provisions, such as consequential, supplementary, incidental, transitional or saving measures. This flexibility helps to adapt regulations to various circumstances.

The affirmative procedure requires that the regulations be approved by both Houses of Parliament, which ensures that there is oversight and accountability. The negative procedure allows regulations to be implemented promptly, but they can still be annulled by either House of Parliament if necessary. The option to convert regulations from the negative to the affirmative procedure ensures flexibility in response to the significance of particular regulatory provisions.

Clause 71 is essential for establishing a coherent and responsive regulatory framework in the legislation. By mandating the use of statutory instruments, it promotes a structured process that enhances accountability and keeps the regulatory system transparent.

Mike Wood: We fully support the measures in clause 68 on Crown premises and the Houses of Parliament—they seem perfectly sensible. As the Minister said, clause 70 specifies a whole string of definitions. Given the time, Members may be relieved to know that I do not have a specific response for each of them; there is very little in the definitions to quibble with.

Clause 71 sets out the regulations under this part. The Minister drew attention to subsection (5), which allows for the regulations specified in the Bill to be subject to either the negative or affirmative procedure. As we said earlier in Committee, many of the cases that have been outlined will be require regulations that have potentially far-reaching consequences, both for individuals and organisations. Such consequences would strongly justify the active participation of Parliament, rather than simply relying on the negative resolution, which lacks any guarantee of a debate on an attempt to pray against.

Regulations can be very difficult for Parliament to object to. We encourage the use of the affirmative procedure and hope the Government will detail their intentions on when it will be used for provisions that would otherwise be subject to the negative procedure. Beyond that, we have no objections to the clauses.

Georgia Gould: When I previously went through the different regulatory areas, I also went through which would be subject to the negative and affirmative procedures. I absolutely hear the point; the critical point for me is that the key provisions sit in the Bill. We do not expect changes made by regulation to change the key areas of oversight and the safeguards but, as the shadow Minister says, the provision for changes is there if necessary.

Question put and agreed to.

Clause 68 accordingly ordered to stand part of the Bill.

Clause 69

THE PUBLIC SECTOR FRAUD AUTHORITY

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss schedule 2.

Georgia Gould: The clause creates potential for the Public Sector Fraud Authority to be established as an arm's length statutory body, as defined in schedule 2. It contains provision for the establishment, constitution and operational framework of a new statutory body called the Public Sector Fraud Authority. It enables the transfer of the functions conferred on the Minister by the Bill to the new PSFA, and other practicalities.

The policy intention is not to commence the provisions for the independent PSFA immediately, but at a later date once a review of the effectiveness of the use of the powers has been undertaken. Providing the ability to establish the PSFA as a statutory body allows for future flexibility in how the Government conduct their counter-fraud activities. However, the decision to establish the PSFA as a new arm's length body should not be taken lightly, nor should any decision to create a new statutory body. The Government have assessed the case for doing so immediately and decided that it would be disproportionate at this time to do so, but that will be kept under review.

The PSFA is running a pilot enforcement function. There are a relatively small number of staff and cases, so we judge that turning the PSFA's limited enforcement function into an arm's length body would be disproportionate at this time, given the significant cost and administrative burden involved in the short term. The Government intend to focus instead on ensuring that the powers conveyed in the Bill are bedded in effectively and the oversight is strong, so that the PSFA's valuable work can benefit immediately from the additional investigative tools and debt recovery powers the Bill enables.

The Government will review the position on the PSFA as a statutory body once a suitable amount of time has passed to fully understand the required scope and scale of such a body. Schedule 2 ensures that, at the appropriate juncture, the Government will have the tools needed to create that body. It provides precise detail on constitution, make-up and remuneration of a board. It enables the PSFA to appoint staff. Remuneration, pensions and other payments shall be determined subject to the approval of the Minister.

Furthermore, the schedule imparts a duty on the PSFA to exercise its functions effectively, efficiently and economically. It allows for the PSFA to authorise a member of the PSFA, their staff authorised for that purpose, or a committee or sub-committee to exercise its functions. The independent PSFA must prepare a report on the exercise of its functions for the financial

year, to be sent to the Minister. The Minister must lay the reports before Parliament and publish them. The Minister may create appropriate transfer schemes for assets and liabilities to enable the independent PSFA to exercise its functions. The schedule also provides a regulation-making power to transfer the powers conferred by the Bill to the new body.

The schedule allows the Minister to amend part 1 of the Bill and other existing enactments amended by part 1. This is to ensure that part 1 of what will be the Act is fit for purpose when the PSFA is established as a statutory body. The Minister may make regulations that enable the Minister to give the PSFA general or specific directions regarding the exercise of its functions. This would allow the Minister to guide the PSFA's strategic priorities to align with Government priorities, or to direct the PSFA's future structural changes, for example.

12.45 pm

As I have noted, the Government intend to keep the establishment of the PSFA as a statutory body under review. In particular, as efforts to recover public money lost to fraud expand, it may become appropriate to commence the schedule, which provides the framework should such a course of action be decided on—although, as we discussed previously, there is a great deal of oversight in the existing operation of the powers. I commend clause 69 and schedule 2 to the Committee.

Mike Wood: The clause contains provisions on setting up the Public Sector Fraud Authority on a statutory basis. As I said at the beginning of Committee stage, we support the Government's work to strengthen the PSFA's role. The form in which it has been operating since it was established under the previous Government offers an opportunity to see how its functions can be exercised more effectively to recover a greater amount of public money that has been lost either to fraud or to error.

Although we have a range of concerns, which we have discussed, about the exercise of some of the functions and, in particular, about the oversight of some of them, we think the decision to have a Public Sector Fraud Authority is the right one, and agree that there may be future circumstances in which those functions could be performed more effectively were the authority placed on a statutory basis, so we do not oppose schedule 2.

As we have reached the end of part 1 of the Bill, and so probably the end my exchanges with the Minister, I thank her for the answers she has given. We will seek to follow up on some of those answers during the passage of the Bill, but for now we are happy for clause 69 and schedule 2 to be part of the Bill.

Siân Berry: In general, I very much support the move to make the PSFA an independent body, and the constitution in schedule 2 seems like a good start. However, looking through it I cannot see anywhere how the people appointed as the chair and executive of the PSFA will be subject to a code of conduct; to rules on transparency and registering interests; to requirements relating to compliance with the Nolan principles; and to the oversight of the Advisory Committee on Business Appointments relating to subsequent work after they leave the PSFA. The Minister, who is currently named in the Bill, is subject to all those requirements.

There is clear potential for conflicts of interests in the various roles, so it is important that they are put under that regime. Will the Minister be clear about how that will come about and whether that could be added to the constitution if it is not already there?

Georgia Gould: I echo the shadow Minister and thank him for his constructive line of questioning. It has been helpful to look into this part of the Bill in such detail. As he set out, I hope we will continue to have conversations about a number of areas, not least some of the commitments I made to look at the provision on 28 days in parts of the Bill. I appreciate the support for the provisions in this area.

On the process of establishing a statutory body, there is Cabinet Office guidance on the establishment of a public body that looks at a whole range of issues, and protections in the ministerial code require Ministers to maintain high standards of behaviour and to behave in a way that upholds the highest standards of propriety.

Question put and agreed to.

Clause 69 accordingly ordered to stand part of the Bill.

Schedule 2 agreed to.

Clauses 70 and 71 ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. —*(Gerald Jones.)*

12.51 pm

Adjourned till this day at Two o'clock.