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GENERAL COMMITTEES

Public Bill Committee

PUBLIC AUTHORITIES (FRAUD, ERROR AND RECOVERY) BILL

Ninth Sitting

Tuesday 11 March 2025

(Morning)

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Saturday 15 March 2025

The Committee consisted of the following Members:

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

† 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

Tuesday 11 March 2025

(Morning)

[Matt Western *in the Chair*]

Public Authorities (Fraud, Error and Recovery) Bill

9.25 am

The Chair: I remind Members to send their speaking notes by email to hansardnotes@parliament.uk and to switch all electronic devices to silent. Tea and coffee are of course not allowed during sittings.

Clause 75

Eligibility verification: independent review

Steve Darling (Torbay) (LD): I beg to move amendment 37, in clause 75, page 41, line 25, 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 further oversight into the appointment of the "Independent person".

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

Amendment 38, in clause 75, page 41, line 29, leave out "person" and insert "board".

This amendment would replace the "independent person" with an independent board.

Amendment 39, in clause 75, page 41, line 32, leave out "person" and insert "board".

This amendment is consequential on Amendment 38.

Amendment 40, in clause 75, page 42, line 19, leave out subsection (7) and insert—

"The Secretary of State may by regulations appoint persons to, and confer functions upon, an independent board for the purposes of securing compliance with subsections (1) to (6)."

This amendment is related to Amendment 38.

Amendment 41, in clause 75, page 42, line 23, leave out first "person" and insert "board".

This amendment is consequential on Amendment 38.

Amendment 42, in clause 75, page 42, line 24, leave out "person" and insert "board".

This amendment is consequential on Amendment 38.

Clause stand part.

Steve Darling: It is a pleasure to serve under your chairmanship, Mr Western. We have touched previously on having an independent overview of the activities that will take place under the Bill, and this is another opportunity to have the checks and balances I have alluded to on a number of occasions. Of course, all Members in the room are reasonable people, but we see in world politics what happens when people are unreasonable. Given that the United Kingdom's constitution is unwritten, beginning to build those checks and balances into legislation is important. Amendment 37 would hardwire them into the Bill, and I ask that the Minister give it serious consideration. I have heard hints that it may be taken into account in one way or the other when the Bill goes to the other place, but I would welcome some reassurance, if possible, that that is the case.

John Milne (Horsham) (LD): It is a pleasure to serve under your chairmanship, Mr Western. As my hon. Friend the Member for Torbay said, the amendment is about checks and balances. We appreciate that the Bill has been introduced in the context of the Government's desire to cut the benefits bill, but the Treasury deeming something to be financially necessary does not necessarily make it right.

The percentage lost to fraud and error is relatively modest, but of course the sums are huge because the overall number is huge. We need to remember that these measures will not get anywhere near recovering all that money, so the question is: is the action proportionate, considering the sacrifice we are making in terms of civil liberties? It is vital that we get the best value from public money, but the amount expected to be recovered is just 2% of the estimated annual loss to fraud and error of £10 billion, and just a quarter of what is lost to official error at the Department for Work and Pensions.

As drafted, the clause empowers the Minister to appoint an independent person to carry out reviews of the Secretary of State's function under schedule 3B to the Social Security Administration Act 1992. There is no external oversight, and that undermines the credibility of the role. Our amendment states:

"Prior to appointing an independent person, the Minister must consult the relevant committee of the House of Commons",

which means

"a committee determined by the Speaker of the House of Commons."

Without proper scrutiny, the role's independence is undermined, potentially damaging trust in the process.

The Committee previously heard evidence from Dr Kassem of Aston University, who stated:

"I would recommend a board rather than an individual, because how sustainable could that be, and who is going to audit the individual? You want an unbiased point of view. That happens when you have independent experts discussing the matter and sharing their points of view. You do not want that to be dictated by an individual, who might also take longer to look at the process. The operation is going to be slower. We do not want that from a governance perspective—if you want to oversee things in an effective way, a board would be a much better idea." —[*Official Report, Public Authorities (Fraud, Error and Recovery) Public Bill Committee,* 25 February 2025; c. 13, Q15.]

A board would ensure that the appointment is truly independent and subject to parliamentary scrutiny. We therefore propose that the Minister must consult the relevant House of Commons Committee before making such an appointment. That simple steps would ensure genuine independence and parliamentary scrutiny, and would strengthen transparency and public confidence.

Rebecca Smith (South West Devon) (Con): It is a pleasure to serve under your chairmanship this morning, Mr Western. As we have just heard, Liberal Democrat

amendments 37 to 42 would mean that, before appointing an independent person, the Minister had to consult a Committee of the House of Commons nominated by Mr Speaker. Amendments 38 to 42 seek to replace an independent person with an independent board, and therefore to allow the Secretary of State to appoint persons to, and confer functions upon, the board.

I have a couple of questions for the hon. Member for Torbay. What greater independence do the Liberal Democrats think will be gained by changing the requirement, given that both the independent board and the independent person would be appointed by the Secretary of State? What practical difference will the amendments make to improve the review process and ensure that it is high quality?

The Parliamentary Under-Secretary of State for Work and Pensions (Andrew Western): It is a pleasure to serve under your chairship, Mr Western. With your permission, I will speak to amendment 37 before speaking to amendments 38 to 42. I will then speak to why the unamended clause 75 should stand part of the Bill.

Before I begin, I will respond to a couple of the comments made by the hon. Member for Horsham on the relatively small amounts of fraud and error we see. With this particular measure, as he is aware, we are initially targeting the three benefits with the highest levels of fraud and error. To take universal credit as an example, it is £1 in every £8 spent, which is a tremendously high number and one we must do everything we can to bring down. However, it is worth recognising and explaining to colleagues that the measures in the Bill are part of a broader package to tackle fraud, which reached £8.6 billion across the relevant period. This is not the beginning and end of the Department's work on fraud across that period, but it is the part of that overall package that requires legislation.

Returning to my substantive notes on the question of a "board" versus a "person", I think there may be some misunderstanding of definitions here. Amendment 37 seeks to oblige the Secretary of State to consult a relevant Committee of the House of Commons before appointing the independent overseer of the eligibility verification measure. I believe that the amendment is unnecessary and I will be resisting it.

We recognise the importance of appointing the right person or body to oversee the use of the eligibility verification measure. That is why we have made it a requirement that the overseer report annually on the use of the power directly to the Secretary of State, who will then lay the report before Parliament. We have included that key safeguard to ensure the effective and proportionate use of this power and to introduce greater transparency in the use of it. The person or body will be appointed following a fair and public recruitment process, which will be carried out under the guidance of the Commissioner for Public Appointments.

I assure the Committee today that we will abide by the governance code on public appointments throughout the process. Whether this role is subject to pre-appointment scrutiny will be governed by the code, and we will follow its guidance at all times. The final decision on who will oversee this measure will, in all cases, be made by the Secretary of State. That is because the governance code on public appointments points out:

"The ultimate responsibility for appointments and thus the selection of those appointed rests with Ministers who are accountable to Parliament for their decisions and actions."

We will keep the House informed about the process at all key stages, including when the process is set to begin and on the proposed final appointment.

Neil Coyle (Bermondsey and Old Southwark) (Lab): Am I right in thinking that the Work and Pensions Committee will be entitled to call any witness, including whoever is appointed to this role, to give evidence to it and to be scrutinised by its members?

Andrew Western: My hon. Friend is entirely correct. The Select Committee always has that power, and were it to have any concerns whatever, it would look to exercise that power at the earliest opportunity.

I recognise that the amendment has been tabled with good intentions. However, because of our commitment to an open and transparent recruitment process, and because we will be abiding by the requirements of the governance code on public appointments, it is unnecessary and I will resist it.

I will now turn to amendments 38 to 42, which seek to remove the term "person" and insert the term "board" in reference to the appointment of an independent reviewer of the eligibility verification measure, as set out in clause 75. I recognise the intent behind the points raised, but the amendments are unnecessary and I will resist them. It is probably useful to clarify that, legally, the term "person", as referred to in the clause, can refer to an individual person, a body of people or a board, as per the Interpretation Act 1978. I therefore reassure the Committee that any reference to "person" in the Bill includes a body of persons, corporate or incorporated, that is a natural person, a legal person or, for example, a partnership.

I reassure the Committee that the Secretary of State will appoint the most appropriate and suitable independent oversight for the measure. That might be an individual expert, which is consistent with the approach taken for oversight of the Investigatory Powers Act 2016, or it might be a group of individuals who form a board or committee. As the Cabinet Office's governance code on public appointments clearly sets out, Ministers

"should act solely in terms of the public interest"

when making appointments, and I can assure the Committee that we will do just that.

To offer further reassurance, I confirm that the appointment process for the independent person or body will be open, fair and transparent, adhering strictly to the governance code on public appointments, which ensures that all appointments are made based on merit, fairness and openness. The Government will of course notify the House of the appointment. I therefore resist these amendments.

I will now turn to clause 75. Independent oversight is one of several safeguards for the eligibility verification measure, and I remind the Committee of the others that we discussed on Thursday. First, we are initially pursuing the measure with just three benefits in scope. Others can be added by regulations, but not, in any circumstances, the state pension, which is specifically excluded from the Bill. Furthermore, limits on the data that can be collected are set out in the Bill. For instance, no transactional

[Andrew Western]

data or special category data can be shared. Finally, as we discussed at length on Thursday, a human decision maker will be in place to determine whether any fraud has been committed.

Clause 75 provides a vital safeguard for the eligibility verification power. By inserting proposed new sections 121DC and 121DD into the Social Security Administration Act 1992, it establishes a requirement for independent oversight of the power, to ensure accountability, compliance and effectiveness. We recognise the importance of safe and transparent delivery of the eligibility verification measure, which is why we are legislating to make it a requirement for the Secretary of State to appoint the independent person to carry out annual reviews.

As per proposed new section 121DC(2), the person must prepare a report and submit it to the Secretary of State. And as per new subsection (3), the Secretary of State must then publish the report and lay a copy before Parliament. New subsection (4) outlines that the first review must relate to the first 12 months after the measure comes into force, and new subsection (5) outlines that subsequent reviews must relate to each subsequent period of 12 months thereafter. Those annual reviews and reports will ensure transparency in the use of the measure and its effectiveness.

To ensure that the eligibility verification measure is exercised in a responsible and effective manner, in accordance with the legal framework, new section 121DC further details what each review must consider during the review period. That includes compliance with the legislation and the code of practice, and actions taken by banks and other financial institutions in complying with eligibility verification notices. The review must also cover whether the power has been effective in identifying, or assisting in identifying, incorrect payments of the benefits covered during the review period. In new subsection (7), there is provision for the Government to bring forward regulations to provide relevant functions to the independent reviewer to enable them to perform their duties under the clause.

In order to ensure that the independent reviewer is able to fulfil their duties, clause 75 also 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 the purposes of carrying out the review. That can be found in new section 121DD, which is inserted by clause 75. Data protection provisions in new sections 121DD(2) to (4) make it clear that such sharing must comply with data protection legislation and other restrictions on the disclosure of information.

In conclusion, the clause represents a key safeguard in relation to the new power and confirms a previous commitment to Parliament to establish oversight over it and ensure its proportionate and effective use. On that basis, I propose that clause 75 stand part of the Bill.

Rebecca Smith: Apologies, Mr Western, because I probably should have spoken to clause 75 stand part when I made my earlier remarks—it was just 9.20 am. Thank you for letting me speak now.

As we have discussed, clause 75 amends the Social Security Administration Act 1992, adding provisions for a review of the powers given through clause 74, which we debated last week. The Secretary of State must appoint an independent person to carry out the reviews, and a report must be submitted, published and laid before Parliament. I am grateful to the Minister for his assurances that, by definition, a "person" could be a body, a board or a panel. That has precluded quite a lot of the notes I was going to read out this morning, but it is good to hear that that definition is included in the Interpretation Act 1978.

However, it is worth again putting on record some of the evidence that we heard, and the fact that that definition caught the attention of some of those who gave evidence during our initial sittings. Some experts were concerned to have the eligibility verification reviewed by, potentially, a panel to ensure that it was both sustainable and auditable and that an unbiased viewpoint could be presented. Dr Kassem said:

> "Personally, I would recommend a board rather than an individual, because how sustainable could that be, and who is going to audit the individual? You want an unbiased point of view. That happens when you have independent experts discussing the matter and sharing their points of view. You do not want that to be dictated by an individual, who might also take longer to look at the process. The operation is going to be slower. We do not want that from a governance perspective—if you want to oversee things in an effective way, a board would be a much better idea." —[*Official Report, Public Authorities (Fraud, Error and Recovery) Public Bill Committee,* 25 February 2025; c. 13, Q15.]

Clearly, the Minister addressed that in his comments, but it does raise the question of what volume of work he envisages the independent person, panel or body having to assess. I appreciate that that could well be a "How long is a piece of string?" exercise at this point, but does it have any bearing on whether the Secretary of State will appoint one person or several people at the point at which this body is instituted? I ask that question to reflect the concerns about volume, speed and the ability to get the review produced in the right amount of time, and also to provide clarification to those who gave evidence.

Finally, we heard from Helena Wood that she had concerns that the Bill is a "very blunt instrument", specifically in relation to its powers on eligibility verification. What consideration has the Minister given to those comments, especially about the proportionality and reasonableness of the measures in the Bill, to ensure that it does not get used as the blunt tool it appears to be? What more information about how the powers in the clause are to be exercised will be set out in the code of practice in due course?

Andrew Western: I acknowledge what the hon. Lady said about the evidence we heard and the preference for a board. If I am being absolutely transparent with the Committee—as I would be expected to be—I am entirely open-minded at this point about where we may end up. I do not have a person, body or group in mind. That is why I hope that the open and transparent process yields the best possible result in terms of the qualifications and specialisms of the individual or individuals who may ultimately be appointed. A range of skills would be of use to us—specialisms in data and human rights, and in welfare, obviously—so I am open-minded about where we end up in relation to who takes this work forward for us.

On the question as to the volume of work, the hon. Lady is correct that it is something of a "How long is a piece of string?" question. However, in terms of the

bare essentials, the requirement is to produce an annual report to be laid before Parliament, so I would not expect the volume of work to be at the extreme end in terms of how onerous it would be.

9.45 am

On Helena Wood's evidence, she also acknowledged, on the question of proportionality and reasonableness, the significant additional oversight that we have put in place. I will quote what she said, to provide assurance to the Committee:

"If we compare this Bill with the predecessor Bill that was put forward by the previous Government, the concerns have been listened to. There is much more significant oversight and much more limited scope."—[*Official Report, Public Authorities (Fraud, Error and Recovery) Public Bill Committee,* 25 February 2025; c. 17, Q22.]

That speaks to proportionality, in terms of the way the scope has been narrowed, but also to the work that we have taken to address the concerns, which are understood and heard, about the extent of these powers even with the additional safeguards that we have built in. There have been a number of fair challenges, but I acknowledge and agree with Helena's points about the safeguarding and oversight that have been built in.

Steve Darling: I am pleased to have had the debate. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 75 ordered to stand part of the Bill.

Clause 76

ENTRY, SEARCH AND SEIZURE IN ENGLAND AND WALES

Andrew Western: I beg to move amendment 34, in clause 76, page 43, line 38, leave out from "the individual" to end of line 1 on page 44 and insert

"is an official of a government department and—".

This amendment clarifies that to be an authorised investigator an individual must be an official of a government department and be of the specified grade.

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

Clause stand part.

Clause 77 stand part.

Government amendments 4, 5 and 33.

Schedule 4.

Clause 78 stand part.

New clause 3—*Application of the Police and Criminal Evidence Act 1984 to investigations conducted by the Department for Work and Pensions*—

"(1) The Secretary of State must, within six months of the passing of this Act, introduce regulations for the purpose of applying certain powers of the Police and Criminal Evidence Act 1984, subject to such modifications as the order may specify, to investigations of offences conducted by the Department for Work and Pensions.

(2) The powers to be applied must include—

(a) the power of arrest;

(b) any other such powers that the Secretary of State considers appropriate.

(3) Regulations made under this section shall be made by statutory instrument."

Andrew Western: Clause 76 will insert a new section 109D to the Social Security Administration Act 1992 to make provision for specialist DWP staff to apply to the courts for a warrant to enter a premises for the purposes of search and seizure. That is one of the five overarching powers that we are looking at in the Bill. It is a new power for the Department, but not uncommon across Government more broadly. These actions may be exercised only by an authorised investigator—an individual who has received authorisation from the Secretary of State and completed industry standard training.

As drafted, subsection (6) of proposed new section 109D could be interpreted as requiring an authorised investigator to be either an official of a Government Department or of at least higher executive officer grade. Amendment 34 makes it explicit that an authorised investigator must be both an official of a Government Department and an HEO, for the purpose of these powers in England and Wales. That is an important clarification and is in line with our original policy intent. I trust that the amendment is welcome, as it ensures that there are clear criteria in place and that only those who hold the right office and grade may be authorised to exercise the powers in clause 76 and schedule 4.

I turn to clause 76 itself, and the substance of the powers of entry, search and seizure for the DWP. The clause will insert new section 109D and schedule 3ZC into the Social Security Administration Act 1992, which will provide DWP-authorised investigators with the power to apply for warrants, enter a premises, search it and seize items. It will also give authorised investigators power to apply for an order to gain access to certain types of materials that refer to business or personal records, defined in the Police and Criminal Evidence Act 1984 as "excluded material" under section 11 or "special procedure material" under section 14.

The ability to undertake this activity will play a crucial role in gathering and securing evidence to bring serious and organised benefit fraudsters to justice. Currently, DWP investigators must rely on the police to undertake all this activity—securing the warrant from the court and exercising it—on their behalf. The clause changes that. It means that DWP-authorised investigators will be able to apply directly to a court for a warrant to enable them to enter, search and seize items from premises, but only during a serious and organised criminal investigation.

I can assure the Committee that DWP-authorised investigators will be required to meet the same legal requirements when submitting an application as the police. That includes undertaking all activities in compliance with the Home Office code of practice on entry, search and seizure. In addition, independent inspections of the DWP's use of the power may be conducted by His Majesty's inspectorate of constabulary and fire and rescue services in England and Wales or by His Majesty's inspectorate of constabulary in Scotland. That is addressed in clause 87, which we will consider later, and will be in addition to the internal safeguards, including clear processes for signing off warrants, that the DWP will have in place to ensure that the powers are used appropriately, safely and lawfully.

Clause 77 will insert new section 109E and new schedule 3ZD into the Social Security Administration Act 1992, and will provide equivalent entry, search and seizure powers for DWP-authorised investigators carrying

[Andrew Western]

out investigations of serious and organised fraud in Scotland. The powers enabling entry, search and seizure in England and Wales are primarily provided by PACE, and that is addressed in clause 76; however, there is no equivalent Act in Scottish law to provide the basis for these powers, so the powers in relation to Scotland are set out in this Bill. New schedule 3ZD to the 1992 Act —inserted by clause 77 and schedule 4 to the Bill—provides the basis for applying for a warrant for entry, search and seizure and exercising that warrant in Scotland. Those powers are similar to those set out in clause 76 and schedule 4 for England and Wales.

Clause 77 enables a DWP-authorised investigator to apply for and execute a warrant or a production order—a court-authorised directive requiring an individual to promptly disclose information relevant to a criminal investigation—in Scotland. It also provides for the DWP to search premises and seize items when that action is authorised by a sheriff in Scotland. The clause is intended to achieve parity between the nations, and I commend it to the Committee.

Government amendments 4 and 5 are minor and technical and aim to deliver the original policy intent of schedule 4, relating to entry, search and seizure for the DWP in Scotland. Their effect is to provide that where an authorised investigator who is exercising a search warrant identifies materials or items that have a bearing on any offence under investigation, they should seize them only if taking a copy or record, such as a photograph, is deemed to be not appropriate. That will ensure that items or materials are seized only where necessary, and will apply the same safeguard in Scotland as is currently the case in England and Wales.

As the Bill is drafted, the requirement to take a copy where possible, rather than seizing something, would apply only to an item and not to material. The amendments will deliver the original policy intent, which was not to differentiate. They will also ensure that no seizure, copies or records should be made where an item or material is subject to legal privilege or defined as "excluded" or "special procedure" material. I hope that my explanation assures Members that the amendments are minor and technical, and will ensure that schedule 4 works correctly and is in line with the existing approach taken by the police. I commend Government amendments 4 and 5 to the Committee.

Government amendment 33, which is very similar to Government amendment 34, makes it clear that an authorised investigator must be both an official of a Government Department and of HEO grade, but this time in relation to the use of these powers in Scotland, under schedule 3ZD, which is set out in schedule 4 to the Bill. I trust that the amendment will be welcomed like amendment 34.

Schedule 4 outlines modifications to the Police and Criminal Evidence Act 1984 for entry, search and seizure operations in England and Wales, and includes equivalent legislation for operations that take place in Scotland. The schedule sets out the essential modifications and practical details needed for DWP-authorised investigators to fully execute powers of entry, search and seizure. It outlines new schedule 3ZC to be inserted into the Social Security Administration Act 1992, to modify certain provisions in PACE to provide the relevant policing powers to DWP-authorised investigators in England and Wales.

The schedule sets out the minimum grade required to be an authorised investigator, which is the minimum civil service equivalent of a police constable. The DWP will require 250 authorised investigators to be trained to industry standards, and they will be subject to internal management checks. The schedule also restricts the use of the powers so that they are exercisable only for the purpose of investigating a DWP offence, as defined in clause 84 of the Bill. It permits others to accompany an authorised investigator on to the premises named in the warrant and limits a DWP-authorised investigator's authority so that they can conduct searches only of "material" and not of people. The schedule also makes technical modifications to PACE, to allow the DWP to carry out entry, search and seizure activity in the same way as the police.

Schedule 4 also outlines new schedule 3ZD to the 1992 Act, which makes provision for entry, search and seizure in Scotland. As far as possible, this replicates the approach taken in England and Wales, except where an alternative approach is needed to account for the different legal system in Scotland. The primary differences between schedule 3ZC and 3ZD are the process that must be followed when executing a warrant in Scotland, which includes providing a copy of the warrant to persons on the premises; the process for issuing receipts for items seized; the legal requirements for making applications for Scottish production orders and Scottish warrants for special procedure material.

Clause 78 replicates the approach taken in legislation governing police actions in respect of the Crown and Crown premises. It sets out how the law applies in the unlikely event that the DWP needs to obtain a warrant to enter Crown premises. It provides for a DWP-authorised investigator to apply for a warrant to search the locker of a suspect who works in, for example, a Government Department, but it prohibits the use of these powers in the interests of national security once the Secretary of State has certified that this is the case, and with regard to any private estates belonging to His Majesty and the Houses of Parliament. The package of measures in the Bill will leave very few places for organised criminals and the gangs who attack the DWP to conceal the evidence of their crimes, but clause 78 keeps us in line with other similar legislation.

Rebecca Smith: The DWP has fewer powers than other organisations, such as His Majesty's Revenue and Customs and the Gangmasters and Labour Abuse Authority, which are tasked with investigating economic crime. We know that it does not have the power to arrest or to conduct search and seizure. Clause 76 will allows DWP-authorised investigators to apply for and execute a court warrant with or without police involvement in England and Wales. The aim is to help the DWP investigate and disrupt serious and organised fraud by giving investigators the power to make searches and seizures. That will allow them to deal with, for example, cases where universal credit claims are made using false identity documents.

We in the official Opposition want the Bill to work and the DWP to be able to successfully identify and tackle benefits fraud. DWP estimates of fraud and error in the welfare system exceeded £8 billion in each

financial year from 2020-21 to 2023-24, with a combined total of £35 billion overpaid. For the financial year 2023-24, the DWP's central estimate is that benefit overpayments totalled £9.7 billion, which is 3.7% of all benefit expenditure. Of that overpayment figure, £7.4 billion, or 76%, was due to fraud, £1.6 billion, or 16%, was due to claimant error, and £0.8 billion, or 8%, was due to official error, or 8%. It is clear that fraud costs the DWP the most, yet we worry that the Bill will be more effective at tackling error than fraud. We therefore support the powers in clause 76 to tackle fraud.

10 am

Currently, the DWP investigatory team is its economic, serious and organised crime team, which forms part of the counter fraud, compliance and debt team. Will it be officials in the economic, serious and organised crime division who are able to use the powers in clause 76? The Bill allows the Secretary of State to designate the investigators. Can the Minister confirm what level of seniority the investigators will have? It appears from the Bill that they will be higher executive officers, but can the Minister confirm that? How much are higher executive officers paid in comparison with police officers? Is the seniority equivalent?

The Minister has previously reassured the Committee that there will be adequate training for investigators, but what training will DWP investigators have to ensure that the powers in clause 76 are used appropriately, and what might be the equivalent qualification level? Is it the sort of qualification that could be transferred elsewhere?

Clause 77 sets out equivalent powers to those in clause 76 for the DWP in Scotland. It allows the DWP to seek a court warrant, enabling DWP-authorised investigators to carry out these actions with or without police involvement in Scotland. Clause 78 sets out how the entry, search and seizure powers should be interpreted and the restrictions that apply for premises linked to the Crown, Parliament and national security limitations.

Government amendments 33 and 34 clarify that to be an authorised investigator, an individual must be an official of a Government Department and be of the specified grade. Government amendments 4 and 5 clarify respectively that paragraphs 2(3) and 2(4) of proposed new schedule 3ZD to the Social Security Administration Act 1992, as inserted by schedule 4 to the Bill, apply in relation to any item or material. The Minister has set out his position on each of those provisions. We acknowledge that Government amendments 4 and 5 are minor drafting corrections to reflect what should have been in the Bill when it was introduced, so we have no issues with them.

Schedule 4 specifies how certain terms in PACE are to be interpreted in the context of their use by authorised investigators, and makes amendments that are consequential on clause 76. We support the schedule, but we have tabled new clause 3 to add the power of arrest to the powers given to DWP investigators by clause 76. It seems illogical that the Government want to give DWP investigators the power to enter and search a premises, seize, retain and dispose of material, obtain sensitive material and use reasonable force, but not to arrest someone if the evidence shows that is necessary.

Can the Minister explain why the Bill gives powers to use reasonable force to DWP investigators but not to Public Sector Fraud Authority investigators? The Government state in their explanatory notes that that the power

"will be limited to using reasonable force against things not people."

However, that is not specified in the Bill itself. What will be the safeguards on the use of the power, and why they are not included in the Bill? Finally, can the Minister explain why DWP investigators have not been given a power to arrest suspects?

Steve Darling: The power to seize items, down in the weeds of an investigation, is essential to ensuring that we hold the right people to account. However, I am alive to the fact that seized items are often kept for a long time. Our mobile phones often contain our whole lives. Not that long ago, a resident in Torbay who was accused of a criminal offence and was under investigation had his mobile phone seized by Devon and Cornwall police for a very long time—a matter of months. What assurance can the Minister give that when the power of seizure is used—particularly when it is used to seize a mobile phone—items will be returned in a timely manner? What timescale does he plan to set for civil servants to return such items?

Andrew Western: Let me begin with some of the questions from the Opposition spokesperson, the hon. Member for South West Devon. Her comments setting out the challenge and her commitment to wanting the Bill to work are incredibly welcome. She is right to set out the scale of the challenge. That is why we are taking the powers that we are proposing.

On whether the requests and the use of the powers of search and seizure will be reserved to members of our staff working in serious and organised crime only, the answer is yes. On the level of seniority of team members executing those powers, it is HEO-grade officers that do that. In terms of salary equivalent, salary can be quite a crude comparison for a number of reasons. Police officers undertake shift work and an element of their salaries is higher as a result. Obviously, as members of the emergency services, there is a level of risk to their work. The National Crime Agency suggests that an HEO grade is the equivalent of a police sergeant, although in salary terms, it is probably more akin to a police constable.

On training, they will receive the industry standard training, equivalent to the training that police receive in this area. On safeguards more broadly, for the power in the Bill, a lot of the safeguards in place relate to the fact that a warrant is granted by a judge. There is always that specialist person making a determination in terms of appropriateness and proportionality. All warrant applications and all warrants would be exercised in compliance with the Home Office code of practice for entry, search and seizure. That is specifically limited to serious and organised crime only—that is multiple people working together to commit complex fraud, typically resulting in higher value overpayments.

As I said, everybody executing this power would be of HEO grade. They would have had the industry standard training. Investigations will also be subject to independent inspections, which will report on the DWP's use of the powers, and any serious complaints can be reported to the Independent Office for Police Conduct. A range of safeguards is built into the proposals.

If I may, I will come later to the question from the hon. Member for Torbay about the return of information. There are specific provisions to enable us to keep items for as long as is needed, but there is a desire to return

[Andrew Western]

things as soon as possible. Elsewhere in the Bill, we speak to the specific powers that would be required were we wanting to go further and not return an item. There is a commitment to return, unless specific powers are required to prevent further criminality based on evidence found on phones. I cannot give a specific timeline—something would be kept for the length of time necessary for the purposes of the investigation—but I hear the point, particularly about mobile phones.

I stress again that this is about serious and organised crime. If I think of some of the cases I have seen—Operation Volcanic, for example—we are talking about going into buildings where there are several dozen, if not hundreds, of pay-as-you-go mobile phones set up expressly for the purposes of fraudulent activity and criminality. I would perhaps be less sympathetic to the swift return of those phones, and I hope the hon. Gentleman understands why.

I turn to new clause 3. I appreciate the explanation of the rationale from the hon. Member for South West Devon, but I do not share her view. I gave great consideration to the question of whether to take powers of arrest when first having discussions about the scope and shape of the Bill. The Bill enables trained DWP investigators to apply for a search warrant to enter a premises, search it and seize items or material that may have a bearing on the DWP case being investigated. Put bluntly, it gives us the right tools to do the job effectively.

Crucially, it enhances police efficiency by allowing the DWP to handle warrant applications and carry out search and seizure activity, freeing the police from those administrative and investigative tasks that they currently undertake for the DWP. No longer will DWP investigators always need to rely on the police for search warrants, take up police time briefing them on the specifics of the warrant applications or always be restricted to simply advising the police as to what items may be relevant during a search, only for them to then be seized by the police and later transferred to the DWP.

On efficiency, we are taking the powers we need to smarten up our processes. The current process is clearly imperfect. It is inefficient for both the DWP and the police, as well as burdensome in terms of resource, and the Bill resolves that situation. There is a clear rationale for the powers set out in the Bill, but the same cannot be said for the amendment.

To close, I will explain why it is not appropriate for the DWP to undertake arrests as well. I am concerned about the safety impacts; the police have expertise that equips them to carry out arrests. The policy intent is to facilitate more effective investigations and smoother administration, striking the right balance between activities undertaken by the DWP and the police. A power to arrest would require the DWP to take on roles that go beyond those that are administrative and evidence gathering in nature.

Not only that, but it is common for a serious organised DWP offence to involve other types of serious and organised crimes. As a result, a suspect is likely to be involved in wider criminality than just a DWP related offence, such as firearms, drugs or being involved in people trafficking. It makes sense that the police would conduct the arrest in such a situation and, after that, DWP investigators could focus their time on searching the scene for relevant evidence related to the DWP offence.

In addition, for the DWP to be able to operate independently of the police would require the DWP, for example, to have appropriate vehicles for transporting an arrested person and custody suites for detaining them. Currently that is not the case and, to be clear, we are not moving in that direction. We do not operate extensively in that area and allocating resources there is unlikely to be efficient or make sense.

The powers in the Bill promote effective collaboration between the DWP and the police, bring some genuine efficiencies and allow each team to focus on its strengths, which is the right approach. This amendment would not serve the same purpose and it would add a layer of complexity to the DWP's work that we are not equipped to deal with, either in terms of the expertise of our team or the equipment that we have. For this reason, I must resist new clause 3.

Amendment 34 agreed to.

Clause 76, as amended, ordered to stand part of the Bill.

Clause 77 ordered to stand part of the Bill.

Schedule 4

Social security fraud: search and seizure powers etc

Amendments made: 4, in schedule 4, page 91, line 28, after "item" insert "or material".

This amendment clarifies that paragraph 2(3) of new Schedule 3ZD of the Social Security Administration Act 1992 (as inserted by Schedule 4 of the Bill) applies in relation to any item or material.

Amendment 5, in schedule 4, page 91, line 31, after "item" insert "or material".

This amendment clarifies that paragraph 2(4) of new Schedule 3ZD of the Social Security Administration Act 1992 (as inserted by Schedule 4 of the Bill) applies in relation to any item or material.

Amendment 33, in schedule 4, page 93, line 32, leave out from "individual" to end of line 33 and insert

"is an official of a government department and—".—*(Andrew Western.)*

This amendment clarifies that to be an authorised investigator an individual must be an official of a government department and be of the specified grade.

Schedule 4, as amended, agreed to.

Clause 78 ordered to stand part of the Bill.

Clause 79

Offence of delay, obstruction etc

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

10.15 am

Andrew Western: I am sure colleagues will be pleased to know that this speech will be brief.

Cases of serious and organised fraud against the DWP can amount to millions of pounds being stolen from the taxpayer. Clause 79 provides for consequences when those suspected of serious and organised fraud intentionally attempt to delay or obstruct an investigation.

A suspect can be prosecuted if they intentionally try to frustrate a DWP investigation, and if convicted, they can be fined up to £1,000. Without this important provision, DWP fraud investigations into serious and organised criminal attacks on the social security system could be wilfully manipulated by those suspected of carrying out the fraud, which would be an untenable situation.

Rebecca Smith: I am sure the Committee will be pleased to hear that I will also be brief.

It is an offence under section 111 of the Social Security Administration Act 1992 to intentionally delay or obstruct an authorised officer, and conviction for a failure to comply may result in a fine of up to £1,000. Clause 79 means that obstructing an authorised investigator will be treated in the same way as obstructing an authorised officer, which means that obstructing an authorised investigator will be a criminal offence carrying a fine of up to £1,000. We are happy for the clause to stand part of the Bill.

Question put and agreed to.

Clause 79 accordingly ordered to stand part of the Bill.

Clause 80

DISPOSAL OF PROPERTY

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

Andrew Western: This clause gives the DWP a clear legal path to seek court approval to dispose of property that has come into its possession when executing a search warrant. In most cases, the seized items will be returned to their rightful owner as soon as they are no longer required by a criminal investigation. However, as I alluded to in responding to the hon. Member for Torbay, there are certain circumstances in which this may be either not possible or not desirable.

An order may be sought when a seized item does not belong to the suspect and where it is not possible to identify the rightful owner, where there is a high risk that returning the seized item means it could be used for the furtherance of crime or where information needs to be deleted before the item is returned to prevent a further offence. This will prevent the risk of, for instance, returning a seized smartphone that contains data relating to hijacked or stolen identities that may enable fraud and the distribution of information that could be used for criminal gain. With the increasing use of technology, it will be ever more critical to ensure this does not happen. This clause allows the DWP to act in the same way as the police.

To avoid the risk of incorrect disposal of seized items, applications for any action of this kind must be made to, and must be approved by, a court. In addition, there are restrictions on how quickly seized material can be disposed of. In all cases, six months must elapse from the approval of an application by a court before a seized item can be destroyed.

Finally, any person with an interest in an item can make an application to the court. This could be the DWP, the item's rightful owner or the person from whom it was seized. The clause sets out specific criteria in relation to any challenges that may be brought and the procedures that apply. If an order has been given for the item to be destroyed, the order cannot be revoked. However, the timeframe for the item to be destroyed may be challenged.

This clause creates a legal and proportionate gateway for the DWP to deal with seized items appropriately. This ensures that the DWP can act in the same way as the police when concluding fraud investigations.

Rebecca Smith: Where DWP investigators seize items from a premises, they will generally be returned to the owner if they are no longer needed for an ongoing investigation. As we have heard, it may not be appropriate to return an item in certain cases, such as if the person from whom the item was taken is not the actual owner or if the owner cannot 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. We acknowledge that clause 80 gives the DWP a lawful basis for disposing of the items. Clause 80 stipulates that items cannot be destroyed until six months have passed from when the magistrate approved the application to destroy them. Why is six months the chosen timeframe, and what are the precedents for other evidence seized in criminal investigations?

We support the provision allowing someone with an interest in the item to request the court to alter an approved action in relation to the item. We believe that is sensible. Can the Minister give an example of the sort of scenario that might refer to, just for the benefit of the Committee? What will the timeframe be for such applications? Finally, how will interested parties be made aware of items they may wish to take court action over? I assume it will not be a police lost property office, but ultimately it is one of those questions of how someone will know that there is something in which they might have an interest.

Andrew Western: I will briefly answer those questions. The period of six months is the same as set out in the Police (Property) Act 1897. We want to ensure alignment where we can to make the process between the police and the DWP as seamless as possible, so that serious and organised fraudsters do not recognise any difference.

On the question of how someone will know if we were intending to destroy their items, the clause does not require the DWP to inform any relevant person of any intended action in relation to the seized item. That is commensurate with how the 1897 Act works for the police in similar circumstances, but anyone who has an interest in the seized goods will have the same access right as the Secretary of State to apply to a court for a particular course of action to be taken. That could include seeking an extension before the seized item is destroyed. In all cases, a notice to occupier information notice will be left at the property, which will provide information about the search, the items seized and relevant points of contact.

Question put and agreed to.

Clause 80 accordingly ordered to stand part of the Bill.

Clause 81

AMENDMENTS TO THE CRIMINAL JUSTICE AND POLICE ACT 2001

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

Andrew Western: Clause 81 applies only to Scotland and amends the Criminal Justice and Police Act 2001 to enable DWP-authorised investigators to seize an item from a premises and scrutinise it off site to determine its relevance to the investigation. This will apply in circumstances where it is challenging or even impossible to determine the relevance of an item to an investigation while on site. In some cases, large volumes of documents could be found that may comprise valuable evidence, but that will take a long time and need detailed scrutiny to assess. A locked electronic device may be found that could have evidence stored on it. This clause gives DWP-authorised investigators the ability to deal with those kinds of situations in the same way as the police by seizing items and taking them off site for sifting or further examination elsewhere. Without the authority granted by this clause, vital evidence could be missed, lost or even destroyed if left on site. In all instances, the DWP will seek to return seized items as soon as possible to the owner, where they are no longer needed or found to be irrelevant to an ongoing investigation. Those are the main provisions in clause 81, and I commend it to the Committee.

Rebecca Smith: Clause 81 amends the Criminal Justice and Police Act 2001 to deal with situations where authorised investigators cannot ascertain whether an item or material contains information relevant to that search, such as when dealing with large volumes of materials or files or electronic devices. That material therefore may need to be taken to be examined elsewhere, and we recognise that the clause allows for material to be seized and then sifted, rather than sifted and then seized. For that reason, we are happy for the clause to stand part of the Bill.

Steve Darling: I seek the Minister's guidance as to how DWP officers, when they undertake these acts, will ensure that seize and sift will not be the standard modus operandi and that it is used only in appropriate cases. When will the Government publish a code of conduct? What guidance will be given? It might be tempting to undertake trawling operations for information rather than taking the spear-fishing approach that would garner the evidence more easily. I would welcome the Minister's reassurance on that.

Andrew Western: I am grateful to the hon. Member for South West Devon for her support and to the hon. Member for Torbay for his questions. By way of reassurance, the DWP cannot just seize anything and everything from a place it has entered with a warrant; it can seize only items that are directly relevant to the investigation. Other oversight is built in, given the ability to make complaints to the IOPC and the oversight powers we are affording to HMICFRS, and people will be trained to the industry standard and so on, but fundamentally they must be able to demonstrate that a seizure is directly relevant to the investigation.

Question put and agreed to.

Clause 81 accordingly ordered to stand part of the Bill.

Clause 82

Incidents etc in England and Wales

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

The Chair: With this it will be convenient to debate clause 83.

Andrew Western: Clause 82 amends part 2 of the Police Reform Act 2002 and will insert proposed new section 26H, which provides for the IOPC to investigate any serious complaints or serious harm related to the use of the powers of entry, search and seizure. There are multiple safeguards—including industry-standard training for all authorised investigators—to minimise the risk of the Bill's entry, search and seizure powers being used incorrectly. I assure Members that the likelihood of a serious complaint, particularly anything that involves death or serious harm, is extremely unlikely. However, an effective and independent complaints process is essential when it comes to powers of this nature.

Whenever a search warrant is executed, information will be provided setting out how to raise a complaint and what to do in the unlikely event that the complaint is serious or involves death or serious harm. The clause aligns the DWP's approach to serious complaints and incidents relating to entry, search and seizure with that of other bodies with similar powers, including the police. That is why we have agreed with the Police Investigations and Review Commissioner that they will investigate serious incidents that occur in Scotland related to the use of the powers of entry, search and seizure by the DWP under clause 83.

If a complaint is not of a serious nature, as defined in IOPC guidelines, it can still be raised via the existing departmental complaint procedures. It will be investigated internally, and if an individual is not happy with the complaint response, they can ask for their complaint to be reviewed by a more senior manager. If an individual remains dissatisfied with the Department's final response, they may escalate their concern to the independent case examiner.

Clause 83 amends articles 2, 3 and 4 of the Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013. It mirrors the provisions of clause 82, which applies to England and Wales, and provides for similar independent investigation arrangements for serious incidents in Scotland. I again reassure Members that robust safeguards will be in place, including investigators having comprehensive training, robust internal governance with clear processes for signing off warrants, and the external independent authorisation of all warrants by the courts.

In the very unlikely event that a fatality is associated with the DWP's use of the powers, the Police Investigations and Review Commissioner can be directed to investigate by the Crown Office Procurator Fiscal Service, which is Scotland's public prosecution service and death-investigation authority. We expect that, in almost all cases, incidents relating to the DWP's use of the powers will fall outside of the scope of being serious in their nature. In such cases, the Department's existing complaint procedures will be used, as I set have out.

It is crucial to build trust in the Department, especially when serious incidents happen. The public must know that their concerns will be handled with importance and impartiality. Clauses 82 and 83 provide that assurance by establishing a transparent and accountable investigation process that is independent of the Department. Having outlined their main provisions, I commend the clauses to the Committee.

Rebecca Smith: Clause 82 specifies that 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 DWP's use of the powers under proposed new section 109D in relation to DWP offences. That will be done through a regulation-making power, so will the Minister explain what modifications might be made to how the IOPC oversees complaints when its functions are extended to DWP investigators? How much additional funding does the Minister anticipate the IOPC will need to take on those functions?

10.30 am

The clause also provides that the Secretary of State may disclose information to the director general, or a person acting on the director general's behalf, for the purposes of the exercise, by the director general or any person acting on their behalf, of the DWP complaints function. What sort of information does the Minister think it will be necessary for the Secretary of State to divulge? Will he provide some illustrative examples? What is the range of individuals who might act on the director general's behalf, to whom it will be appropriate to disclose the information?

Clause 83 provides for an independent complaints route for when the DWP exercises the powers in proposed new section 109E and proposed new schedule 3ZD to the social Security Administration Act 1992. Less serious complaints or incidents will be handled using existing DWP processes. The Police Investigations and Review Commissioner independently investigates incidents and complaints involving policing bodies in Scotland, and will be responsible for handling and investigating serious incidents relating to the use of section 109E powers by the DWP.

We welcome the measures in the clauses to provide a route for complaints where needed. Will the Minister set out for the Committee the process for someone to make a complaint about DWP investigators? How quickly do the Government anticipate that such complaints will be resolved? Will that be included in a future code of practice, or is that outside the scope of such a code? What redress will there be for complainants when the IOPC or the PIRC finds against the DWP? What assessment has been made of the cost of the process, and who is liable for the costs?

Andrew Western: On the question of funding for the IOPC and the PIRC, we are in ongoing discussions with them about what the exact costs will be. We clearly do not expect the costs to be excessive because it is not a massive shift from the work they undertake already.

On the question of what modifications are required to the IOPC role, the regulations will set out how the functions will work for the DWP. It is important to remember that we envisage that the IOPC will look at cases only where there have been serious complaints and deaths, so we are not talking huge numbers.

There could be a range of ways in which people can refer. It may even be that we would self-refer if there has been a death. One of the principal reasons why I did not consider it prudent to take the power of arrest is that that minimises the likelihood of our finding ourselves in that position. Where arrests are undertaken, clearly the police will be on site with us and responsible for that.

I do not envisage the process for making the complaints to be set out explicitly in the code of practice, but clearly if someone contacted the Department and wanted to make a complaint of that nature about something very serious that was outside the scope of internal complaints—for instance, if there had been harm or death—we would immediately refer the person and the case to the IOPC. As I say, the costs are not expected to be excessive, but we would expect to meet them ourselves.

Question put and agreed to.

Clause 82 accordingly ordered to stand part of the Bill.

Clause 83 ordered to stand part of the Bill.

Clause 84

DWP OFFENCE

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

Andrew Western: The clause creates a new definition of "DWP offence", expanding on the existing definition of "benefit offence" set out in the Social Security Administration Act 1992. The DWP must have the power to respond to the different types of fraud we find. We know that, for example, the misuse of national insurance numbers can be a gateway to wider fraud. If criminals steal the identities of honest people and misuse their details to make false benefit claims, that is unacceptable and we need the power to act.

Fraud is not just contained to the most claimed benefits, like universal credit—as we saw with kickstart, grant payments intended to support people when they need extra help can also be abused—yet DWP investigative powers are limited when investigating other types of crime. By providing a new definition of a DWP offence, the clause ensures that fraudulent activity relating to grants, loans, national insurance numbers and other financial support issued by the DWP is explicitly captured in the law. It allows any offences linked to the payments to be met with firm action. The new definition works hand in hand with our enhanced investigation and entry, search and seizure powers in the Bill, thereby giving the DWP the ability to obtain critical evidence needed to prove or disprove allegations of fraud, in a fair and proportionate way.

The clause is about ensuring that every pound lost to fraud, and taken away from those who genuinely need support, is pursued with all the powers we have, whatever the nature of the payment may have been. I commend the clause to the Committee.

Rebecca Smith: I thank the Minister for outlining the plans around the clause, which would establish the definition of a "DWP offence" to allow any offence relating to a benefit payment, credit or grant that the DWP administers to be included under the new information-gathering powers. It would also include offences related to national insurance numbers.

We support the clause, which should hopefully allow DWP to gather information more holistically and lead to more successful prosecutions, but I have a couple of

[Rebecca Smith]

brief questions. What assessment has been made of the scale of prosecutions that could be made? What assessment has been made of the cost of exercising the new power?

Andrew Western: I thank the hon. Lady for her support and her questions. I would not want to put a specific number on the prosecutions—as I said, we have not had the powers to investigate these crimes in full before—but we think that by bringing these areas it into scope not only will we find significant offences that we need to clamp down on but there will be a deterrent effect. Having both levers together makes this an important tool to have in our arsenal.

On the costs, they would be broadly similar to those we already bear for investigating any other type of offence. They would not be materially different in terms of the implications for our budget.

Question put and agreed to.

Clause 84 accordingly ordered to stand part of the Bill.

Clause 85

DISCLOSURE OF INFORMATION ETC: INTERACTION WITH EXTERNAL CONSTRAINTS

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

Andrew Western: The clause is an important safeguard for the DWP's information-gathering powers. It sets out the kinds of information that a DWP-authorised officer cannot compel from an information holder. The exemptions are similar to those set out in the Social Security Assistance (Investigation of Offences) (Scotland) Regulations 2020. They are designed to prevent information from being obtained that is particularly sensitive, or if it would be inappropriate for the DWP to do so. For instance, as with the existing legislation, exemptions apply to legally privileged material and to information that could lead to the self-incrimination of the person or their spouse or civil partners.

In addition, the clause sets out exemptions for excluded material and certain special procedure material, as defined in the Police and Criminal Evidence Act 1984. This includes material such as medical records, records about counselling that an individual may have received, and journalistic material. The clause also prevents information notices from being issued for personal information about the use of organisations that provide free advice and advocacy services—including, for example, charities that provide refuge from abuse—thereby ensuring that vulnerable people can seek help without fear that their information will be disclosed.

Any use of the powers must be compliant with obligations set out in data protection legislation, which requires that personal data is kept secure and is not misused. The powers cannot be used to obtain communications data. If the DWP seeks communications data as part of its investigation, it must follow the authorisations and processes under the Investigatory Powers Act 2016. Further detail on the safeguards will be in our code of practice, which will be consulted on before being laid before Parliament, and to which all authorised officers will be required to adhere. Having outlined the main provisions of clause 85, I commend it to the Committee.

Rebecca Smith: Clause 85 sets out that DWP's actions under part 5 of the Social Security Administration Act 1992 must comply with existing laws relating to the use of data and with the existing protections to protect confidential data and data prohibited under the Investigatory Powers Act. I have a brief question before I move on to subsection (8). Does the Minister envisage that clause 85 will provide much practical constraint on how the DWP is able to share information?

Subsection (8) states:

"A person who provides services on a not for profit basis in relation to social security, housing (including the provision of temporary accommodation) or debt, may not be required under the provision to give personal data about the recipients of the services."

I acknowledge what the Minister just said about the particularly vulnerable, who may be in refuges or places like that, but the provision feels quite broad, particularly in relation to debt recovery and support. Many organisations might have quite a lot of information that would be helpful to the DWP—I think particularly of, for example, Citizens Advice, which sees the records of quite of a lot of people. Why has that carve-out been included and what purpose does it serve, beyond protecting particularly vulnerable groups that we do not want to put in danger?

My other question is about whether the provision excludes local authorities, which often provide temporary accommodation, for example. Does the subsection mean that local authorities will not be part of the group that could be asked for information?

Andrew Western: First, I am not of the view that the protections overly constrain our ability to gather the information we need and execute fraud operations as effectively as possible. The provision significantly broadens the overarching information-gathering package, the number the organisations from which we can compel information and the nature of the information that we can receive, but it is important that we take the steps needed to rule out some of the obvious kinds of information that people would expect us to remove, such as medical records and journalistic material.

It will probably help if I clarify the matter of the special protection status for certain organisations—I apologise if I was not clear when I said this before. The clause does not exempt charities or any specific organisations; it exempts certain types of information, such as that from organisations that provide services free of charge in relation to social security, housing or debt. We can still ask them for information, but not in relation to the advice they have provided. The measure is therefore perhaps not as restrictive as it may seem. It is not that the organisations can never be asked for information; it is just that certain types of information, of the nature I outlined in my principal contribution, will be protected.

Local authorities are not exempt, and they will have a part to play in much of our investigatory work, as the hon. Member for South West Devon suggested.

Question put and agreed to.

Clause 85 accordingly ordered to stand part of the Bill.

Clause 86

GIVING NOTICES ETC

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

Andrew Western: The information-gathering powers set out under clause 72 will be amended to ensure that information can be compelled from third parties digitally. That is an important step forward for us. The updated information-gathering powers create a single, clear legal gateway so that the DWP can compel information from third parties, it is more straightforward to respond, and that information can be provided digitally.

The Department must ensure that provisions are in place so that, in the event of a failure of digital systems, investigations are not impacted. Therefore, under such rare circumstances, the DWP will retain the power to compel information in writing, as set out in clause 86 —*[Interruption.]* I think Jennie likes this one. The clause also confirms that the DWP giving an administrative penalty notice by post is sufficient to effect service, and also applies to the eligibility verification measure, enabling the DWP to issue a notice to financial institutions by post, if necessary.

10.45 am

Rebecca Smith: Clause 86 inserts the provision for the DWP to retain the ability to issue an information notice and receive relevant documents by post. The Minister will be pleased to hear that he has answered my questions. The only thing I would ask is: how often does he expect information notices to be issued digitally? I suppose the flip question is: are you expecting the system to work perfectly and the post option to be used very rarely? For example, with vulnerable and older groups, might the post option need to be used more broadly than digital in certain cases?

Andrew Western: Clearly, in individual cases, if someone were to request contact by post, we would want to bear that in mind, but without wishing, as the Minister for transformation, to sound over-confident about the digital capability of some of our systems, in my view we would need to use these powers extremely rarely. It would be digital by default, except in the instance of, for example, system failure.

Question put and agreed to.

Clause 86 accordingly ordered to stand part of the Bill.

Clause 87

INDEPENDENT REVIEW

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

Andrew Western: Clause 87 introduces an important safeguard by providing that all the criminal investigation powers in the Bill are independently inspected. As the Committee would expect, the DWP will make every effort to ensure that its criminal investigations are carried out to the letter of the law—through effective training, internal guidance and, for our entry, search and seizure powers, independent authorisation by the courts. However, it would not be right for the Department to simply mark its own homework. That is why the clause provides for an independent person to be commissioned by the Secretary of State to undertake inspections. This will ensure that there is a formal provision in place to establish that arrangement, and that it can be done in a way that is suitable for both the DWP and the independent person.

The independent person will be responsible for impartial inspection of the Department's effectiveness, and compliance with relevant codes of practice and guidance in its criminal investigations. That aligns with other Government bodies such as His Majesty's Revenue and Customs, the Gangmasters and Labour Abuse Authority and the National Crime Agency, which also use investigatory powers at different levels and are also subject to independent inspections.

I am pleased to say that the independent person the DWP intends to commission is His Majesty's inspectorate of constabulary and fire and rescue services for matters relating to investigations in England and Wales, and His Majesty's inspectorate of constabulary in Scotland for investigations in Scotland. Those well-established bodies are experts in conducting such inspections and independently assessing the use of criminal investigation powers. Their reports will be published and laid before Parliament, including any recommendations for improvements.

The clause ensures that the Department's criminal investigations will be conducted with transparency and accountability, demonstrating its commitment to fairness and transparency when exercising its criminal powers.

Rebecca Smith: Clause 87 provides for DWP investigation activity to be inspected and evaluated by an independent person or body. The Secretary of State will be able to appoint someone to inspect DWP criminal investigations, and to provide written reports and recommendations to the Secretary of State, which must be published and laid before Parliament. That review will also consider the DWP's compliance with the codes of practice, which we have not yet seen, as was much discussed in earlier sittings.

We welcome the transparency that clause 87 will bring to how the DWP is using these powers; however, unlike clause 75, the clause does not state how often reviews would have to be conducted. Is there a reason for that? The Secretary of State would give "directions" as to the period to be covered by each review, having first consulted the independent person. Can the Minister confirm how frequently the Secretary of State will ask the DWP investigation activity to be reported on, and will the independent person or body be able to carry out reviews on their own initiative or will they have to wait until directed to do so by the Secretary of State?

The Minister has already given the Committee an indication of who may be appointed to lead those reviews, and I assume the layout of the police and fire authorities relates to that particular question, so I will not restate that for the record, but can I also ask the Minister how quickly reviews are expected to be concluded once they have been initiated—referring back to the wording of clause 75? For these reviews to be meaningful, there must be a way for the DWP to learn lessons and

[Rebecca Smith]

improve practice, so how can the Minister reassure the Committee that there will be a process in place for that to happen?

The Chair: I remind Members to bob if they wish to catch my eye to speak, and to refrain from using the word "you", which refers to me as opposed to the Minister.

John Milne: My colleague has just partially asked my question. While we broadly welcome the clause, we are concerned by the absence of the code of practice. Could the Minister give any indication of the kind of guidance that it might contain? Also, at what stage of the parliamentary process will there be scrutiny of it, given that it will not be during this Committee?

Siân Berry (Brighton Pavilion) (Green): It is a pleasure to serve under your chairship, Mr Western. I want to raise the comments made by the Information Commissioner in relation to the Bill and the updates to the previous Government's proposals. I understood that they were more content with this Bill than the previous Bill. They were pleased that it brought data protection more tightly within the measures, and that it talked about data protection in a much more consistent way with the law. They said that the Bill more tightly scopes the types of information that can and cannot be shared. I understand that our debate on clause 85 covered some of those improvements.

However, at the end of their comments, the Information Commissioner talked about the review process, and said very clearly that they would like to explore with the Government the role that the Information Commissioner's Office can play in assisting with the review process. This clause does not set out the different offices and people with whom the independent reviewer needs to liaise in preparing their report. I wondered whether Ministers could comment on their thoughts surrounding that process, and consider setting out in the code of practice or further guidance how the independent reviewer might engage properly with data protection in their review.

Andrew Western: There were a number of questions there—I was scribbling at pace—so if I miss anything, please intervene. In terms of when and how often investigations will happen, it is expected that the period for each review will be set and carried out in mutual agreement with each of the bodies. On whether they can ask to undertake a review, it would need to be in consultation with the Secretary of State, but it is fair to say we would be doing ourselves no favours by refusing to bear their request in mind. Likewise, on timescales, it is all in collaboration with the Secretary of State.

On when we can expect to see the codes of practice, for search and seizure the Home Office's existing codes of practice will apply, but for information-gathering powers it will be the updated code of practice, which will be consulted on and laid in Parliament before being used. We anticipate that new codes of practice will be available before Committee stage in the House of Lords.

In relation to the response to inspections and how we would learn from them, once the independent body has produced its report the Secretary of State must publish it and lay it before Parliament. Although no legal obligation is placed on the Secretary of State to implement recommendations, we will respond to all recommendations promptly and, as a learning organisation, always look to make continuous improvements.

Rebecca Smith: I thank the Minister for answering those questions. The lack of stipulation on timeframe, frequency and so on begs the question of why this provision is in the Bill. Ultimately, what will trigger a review? That is the bit we probably have not touched on. Who will say to the Secretary of State, who no doubt is an incredibly busy woman, "This is what we need to be doing at this time"? I appreciate that it would be her officials, but this provision is buried in the middle of the Bill and there is no stipulation that a review has to happen after a 12-month period, every six months or whatever. How do we ensure that this transparency, which we welcome, will actually take place, and that the benefits of having a review come to pass?

Andrew Western: That is a reasonable question. Clearly, if there are incidents such as those that would bring into scope the IOPC powers, that would attract significant attention and it would be obvious and—dare I say it?—necessary for the Secretary of State to refer there. In relation to timescales and so on, much of that would depend on what has happened in a period. Were we to say that this was something that will be done every year or every other year and then something happened immediately, we would lack the flexibility to utilise the powers in the agile way we hope to do so. I appreciate that it may appear vague when compared with some powers that we have previously discussed, but that is so we can respond to events, rather than seek to dodge the use of the power.

Clearly, to an extent we will always work in collaboration. As I say, I would not intend at any point to resist a request from HMICFRS or any other body to look into work that we had undertaken, in particular in response to anything that may be considered controversial, not least because search and seizure powers are totally new for the DWP. We need to land them appropriately and build trust that we are able to execute the warrant powers properly.

The Information Commissioner's comments related primarily to the eligibility verification measures, as they pertain to a direct comparison to the third-party data powers in the Data Protection and Digital Information Bill. Obviously, the Information Commissioner has fairly wide-ranging powers to involve himself in any investigations. It is not something that we would look to resist. I think the channels are already in place for him to engage wherever he feels that it is appropriate.

Question put and agreed to.

Clause 87 accordingly ordered to stand part of the Bill.

Clause 88

ENFORCEMENT OF NON-BENEFIT PAYMENTS

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

Andrew Western: Clause 88 sets out the details of how an overpayment of a non-benefit payment, such as under the kickstart scheme that was used after the pandemic, will be made recoverable. This is necessary if we are to use the administrative penalty in connection with such cases to enable us to improve fairness, allowing the Department to address fraud wherever it occurs in the welfare system. As the Bill specifically seeks to extend the use of the administrative penalty—a penalty that is considered only after a criminal investigation of a suspicion of fraud—we are specifically extending the recovery of overpayments to cases of fraud against a non-benefit payment.

This means that, before we can recover overpayments of non-benefit payments, the DWP will need to have completed a thorough criminal investigation into a suspicion of fraud and either an administrative penalty is accepted or there is a court conviction. Once that has happened, the process for recovery of non-benefit overpayments will be the same as the long-established processes for social security overpayments. As with social security overpayments, a notice must be sent to the person who received the non-benefit overpayment. The notice sets the right to challenge the overpayment decision.

The overpayment decision can be challenged first by requesting a review by the Secretary of State, and if the decision is maintained, they can appeal to the first-tier tribunal. Individuals have one month to apply for a review and one month after the notification of the outcome of the review to appeal, as outlined in proposed new subsections 71ZK(2) and 71ZK(6). These time limits are the same as those for challenging benefit overpayment decisions. If the decision is not disputed or is upheld following a review or appeal, the non-benefit overpayment becomes recoverable in the same way as social security overpayments.

Clause 88 is fundamental. It ensures that there is fairness in the DWP's response to fraud, meaning our investigators and decision makers treat cases of fraud against any DWP payment in the same equitable way.

11 am

Rebecca Smith: Clause 88 sets out the mechanism for the recovery of non-benefit payments. This applies when a person misrepresents or fails to disclose a material fact, and as a consequence they or another person receives a non-benefit payment, or an amount of a non-benefit payment, that they would not otherwise have received. Subsection (2) provides a power to recover the overpayment.

Clause 88 also 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. The Secretary of State can issue an overpayment notice only if the person has been convicted of an offence set out in the legislation, or if it appears possible to institute proceedings against a person for an offence. The only grounds to appeal a notice are if there has been no overpayment of a non-benefit payment or if the amount stated in the notice is not correct. Any appeal must be made before the end of the period of one month, beginning the day after the day on which a person was given the notice.

This question has probably been answered in an earlier debate, but I will ask it anyway to get it on the record: will the notices be sent in the post or electronically? That links back to our debate on clause 86; how the Government ensure that the notices get to the right people is going to be particularly important. Finally, why is there no ability to extend the one-month period, and on what basis was one month decided?

Steve Darling: I just want some assurance on how it was decided that one month was long enough. For my sins, I served the people of Torbay in elected of office for 30 years before getting elected to Parliament. I am alive to the fact that some people have chaotic lives. I am only too aware of how sometimes people turn up to the citizens advice bureau with a couple of carrier bags full of unopened envelopes because due to their mental health challenges the only way they are able to deal with their world is by putting their head in the sand, sadly.

I wanted an assurance on whether there was a level of flexibility. It appears from the clause that there is a drop-dead proposal here. What flexibility is proposed? I look forward to hearing the Minister speak about those people who are perhaps more vulnerable than the rest of us.

Rebecca Smith: I was hasty in putting down my notes and I realised I left out a bit, so thank you for humouring me, Mr Western. Clause 88 also sets out that there is a right of appeal to the first-tier tribunal against the notice, unless it has been revoked on review. We welcome the ability to appeal to the first-tier tribunal, but can I ask the Minister whether any amounts recoverable will be paused during the appeal process? Again, there is only one month to appeal to the first-tier tribunal, so can he explain on what benefit this timeframe was chosen?

Andrew Western: On whether notices will be sent in the post, it will be a mixture, as in the case for benefits rather than grants. The means of communication may be electronic or by post—there is always a blend. When we follow up in instances where debt recovery is required, we always use a range of mechanisms, such as telephone, digital and post, to attempt to get hold of somebody when we need to.

On the question from the hon. Members for South West Devon and for Torbay regarding how we came up with the one-month period either side of the appeal, that is the existing practice in the case of benefits, and we feel that it is therefore appropriate for non-benefit grants. To give some assurance on flexibility and vulnerability, the characteristics of claimants that might make them vulnerable, such as mental health difficulties, disabilities and other mitigating circumstances, will always be factored in by the decision maker when deciding whether to opt for an administrative penalty in the first place. At present, that happens in the case of benefits, and we would be extending that practice to grants and other non-benefit issues.

If the customer is suspected of being vulnerable at any stage of the investigation, the team leader or higher-investigations leader, in consultation with the investigator, will decide on the appropriate next steps. On the question

[Andrew Western]

of the timeliness of recovery, recovery will not start before an appeal was made. If there is an appeal, there will have been no recovery.

Question put and agreed to.

Clause 88 accordingly ordered to stand part of the Bill.

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

11.6 am

Adjourned till this day at Two o'clock.