

Big Brother Watch and JUSTICE Joint Briefing on Public Authorities (Fraud, Error and Recovery) Bill for Consideration of Amendments in the House of Commons

Summary

This joint briefing on the Public Authorities (Fraud, Error and Recovery) Bill ("the Bill") ahead of Consideration of Amendments in the House of Commons focuses on three amendments passed by the House of Lords that would establish important safeguards to the controversial new powers afforded to the Department for Work and Pensions ("DWP").

Throughout the Bill's passage, parliamentarians across the political spectrum expressed concerns about the 'eligibility verification measure' ("EVM"), which will require banks to identify welfare overpayments arising from fraud or error and share related account information with the DWP. Additionally, Peers raised concerns about giving authorised DWP officers the power to use force when exercising their powers of search, entry and seizure.

The House of Lords passed several amendments to the Bill. We urge MPs to support the following three amendments tabled by Lord Vaux and receiving cross-party support, as important and constructive safeguards to the controversial new powers:

EVM power

1. Amendment 84 – Clarifies that being flagged by the EVM does not alone constitute reasonable grounds for suspicion, meaning those who have been overpaid due to error - including the DWP's own mistakes - will not be treated as guilty of wrongdoing. The amendment also ensures that a human must be involved in any decision to amend a benefit or undertake intrusive investigations, ensuring that the measure cannot be fully automated.
2. Amendment 43 – Extends the scope of the independent reviewer to ensure that the costs to banks are proportionate and any unintended adverse consequences to benefits recipients are identified.

Use of force during search, entry and seizure powers

3. Amendment 97 – Ensures that DWP officers exercising entry, search and seizure powers can only use force against things (i.e., filing cabinets) not people.

Briefing

Eligibility verification measure (EVM)

The EVM requires banks to algorithmically scan the accounts of its customers to identify benefits recipients who appear to have been incorrectly paid benefits - whether due to fraud or error. During the passage of the Bill, civil society groups warned that this population-wide scanning is likely to result in wrongful flags, investigations and burdensome appeals that disproportionately affect disabled people, older people, carers, single parents and those living in poverty. They also raised concerns that the measure could, in time, become fully automated, with little or no human input.

Two amendments tabled by Lord Vaux in the House of Lords seek to introduce important safeguards in relation to the EVM powers:

1. Amendment 84 - Reasonable suspicion and appropriate review of EVM information

A recurring concern expressed during the debates on the Bill is what the DWP would do with the data retrieved from the EVM. A broad coalition of civil liberties, disability rights, older people's advocacy groups and anti-poverty organisations warned that algorithmic error is likely to lead to innocent people being wrongfully flagged, investigated and subjected to burdensome appeals processes.

The government has repeatedly reiterated that data retrieved from the EVM will not be treated as evidence of wrongdoing and a human will always be involved in decision-making. This safeguard is also reflected in its draft Code of Practice. However, it is not explicit in the language of the Bill. It is imperative that legislation accurately reflects the government's stated policy intentions.

The DWP promises that the data retrieved from the EVM alone will not be treated as evidence of wrongdoing. Instead, it will be cross-referenced against existing known information about the claimant to identify anomalies. However, this does not address the concern that, where no other evidence exists, a flag could still be treated as suspicious. For example, if a pensioner is identified by the EVM as temporarily travelling abroad, but no other information available to the DWP suggests wrongdoing, there should be a legislative safeguard to ensure that would not automatically give rise to suspicion of fraud. The recent scandal of HMRC freezing child benefit after 23,000

families were erroneously flagged for travelling abroad in a data error shows the risks of automatically assuming suspicion of fraud when an individual is algorithmically flagged.¹ Even if the DWP's current "business as usual" practices mean that, as a policy, they would not consider this type of data alone as suspicion of fraud, there is nothing in the Bill preventing it from being treated as such in future. Amendment 84 ensures that being identified by the EVM alone will not lead to full-scale fraud investigation.

We remain concerned about the potential for the EVM to become fully automated, making determinations about incorrect benefit payments without human oversight. Following recommendations from Big Brother Watch and other civil society groups, the government tabled amendments during Committee Stage in the House of Lords to ensure that the EVM can only ever be used to "assist in identifying" benefits overpayments (Amendments 41, 42 and 80). Whilst we welcome this amendment, in practice it does not go far enough to ensure that the power cannot ever be fully automated. As Baroness Sherlock, the Minister responsible for the Bill in the House of Lords, explained amendments 41, 42 and 80 clarify that the "DWP must consider other information which can help verify whether benefits have indeed been incorrectly paid."² In other words, information retrieved from the EVM must not be considered in isolation alongside other DWP data sources. However, merely requiring the consideration of additional data does not guarantee meaningful human involvement; indeed, a complex algorithm could consider several sources of information to automatically determine whether a benefit has been paid incorrectly. Amendment 84 guards against that automated eventuality, ensuring that a DWP officer of appropriate seniority reviews information retrieved from an EVM.

2. Amendment 43 – Scope of Independent Review of EVM

The legislation includes provision for an Independent Reviewer who will conduct an annual review of the Secretary of State's powers under the EVM (clause 76). Each review must consider the extent to which the Secretary of State and the financial institutions in receipt of an EVM notice have complied with the requirements when exercising the measure, and whether the EVM has been effective in assisting in identifying incorrect benefits payments (clauses 76(6)(a)-(c)).

¹ Rights Net, HMRC pauses child benefit crackdown after more than 23,000 families are caught up in data error, 29 October, <https://www.rightsnet.org.uk/now/post/68673>.

² Public Authorities (Fraud, Error and Recovery) Bill, 21 October 2025, vol 849, [https://hansard.parliament.uk/lords/2025-10-21/debates/F8FCF01C-FB91-42B7-8871-C227AD783E33/PublicAuthorities\(FraudErrorAndRecovery\)Bill](https://hansard.parliament.uk/lords/2025-10-21/debates/F8FCF01C-FB91-42B7-8871-C227AD783E33/PublicAuthorities(FraudErrorAndRecovery)Bill), col 667.

However, we are concerned that the scope of the review is insufficient as it fails to consider the consequences to financial institutions and benefits claimants. Amendment 43 seeks to expand the scope of the independent review of the EVM to ensure that the costs to banks are proportionate and any unintended adverse consequences are identified. It is essential that any consideration of the proportionality of the EVM takes into account the burden on financial institutions and the harm to individuals.

The amendment also ensures that the effects of reduced financial services for benefits recipients are taken into account within this scrutiny mechanism. Several MPs and Peers raised concerns that when institutions are obliged to comply with onerous requirements, there is a risk that they simply exclude affected cohorts from using their services – as in the case of politically exposed persons. This amendment ensures that the Independent Reviewer can develop a full picture of the impact of the EVM on benefits recipients – including an understanding of whether banks are less willing to provide banking services.

Amendment 43 also ensures that the Independent Reviewer is provided such information as they consider necessary to carry out the review, which is essential for transparency and accountability. It is essential that the Independent Reviewer has the correct information that they need to do their job and this amendment enables the Reviewer to flag that they do not have the information they require.

DWP use of force

The Bill gives Government officials from DWP and the new Public Sector Fraud Authority (PSFA) substantial powers to investigate and recover fraud. These powers include giving DWP and PSFA officers police powers: the power to enter private premises, search them, and seize property.

Clauses 77 (England and Wales) and 78 (Scotland) however go one step further for DWP authorised officers: the power to use “reasonable force” when exercising their new powers. This power is not to be given to the PSFA, just the DWP.

3. Amendment 97 – Use of force during exercise of entry, search and seizure powers

One of the most draconian and rights-infringing things an Act of Parliament can do is empower the state to inflict physical force on people and their property. This engages the right to private life, bodily autonomy and dignity and the peaceful enjoyment of property.³ The use of physical force marks a far more serious infringement than the powers of search, entry and seizure alone. The more serious the rights infringement, the more justification is required to show it is necessary and proportionate. We are concerned – and the Lords agreed – that there has been inadequate justification for giving DWP officers the power to use physical force, as opposed to leaving the use of force to appropriately trained police officers.

The Government has consistently stated it does not intend DWP officers to use force against people, just things, like a locked cabinet. However, the Bill's drafting did not reflect this policy. Instead, the Bill give the DWP the same use of force powers available to police officers, which do not differentiate between a filing cabinet or a person. If the policy intent is to give DWP the power to use force against things, not people, the Bill should read as such.

To not do so would leave the use of force against people legally open to the DWP. This is a highly discretionary power, and can lead to serious harm, including tackling an individual to the ground and dislocating an individual's hip.⁴ It is significant that the use of force is being sought for the DWP but not for the PSFA, the former being a section of the population recognised to experience several intersecting vulnerabilities and to live with disabilities at a higher rate than the population at large. As recently as May 2025, the DWP's approach to safeguarding vulnerable claimants was found by the Work and Pensions Committee to be "deficient" and lacking "coherence and direction."⁵

Against this background, giving the DWP the power to use physical force through such a broad measure, which does not distinguish between things and people - is extremely concerning.

The Lords agreed, and voted for amendment 97, which would prohibit DWP authorised officers from using force against people during the exercise of their entry, search and seizure powers. The amendment is carefully drawn to preserve the power of DWP

³ Part of Article 8 of the European Convention of Human Rights (ECHR), and Article 1 Protocol 1 of the ECHR, respectively.

⁴ For instance, *McDonnell v Commissioner of Police of the Metropolis* [2015] EWCA Civ 573; *Adorian v Commissioner of Police for the Metropolis Queen's Bench Division* [2010] EWHC 3861 (QB).

⁵ Work and Pensions Committee, Safeguarding Vulnerable Claimants, First report of Session 2024-25 (May 2025)

officers to use force against property, such as locked filing cabinets, and preserves the police's ability to use force, if necessary, under a DWP warrant. This should not be a controversial amendment since it simply reflects the Government's stated policy intent, as explained in the explanatory notes to the Bill – for the DWP to use force only against things, not people.⁶

⁶ Public Authorities (Fraud, Error and Recovery) Bill, Explanatory Notes, <https://publications.parliament.uk/pa/bills/cbill/59-01/0167/en/240167en.pdf>, p46.