

DELEGATED POWERS AND REGULATORY REFORM COMMITTEE PUBLIC AUTHORITIES (FRAUD, ERROR AND RECOVERY) BILL

Supplementary Memorandum

A. INTRODUCTION

1. This Supplementary Memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee by the Cabinet Office and the Department of Work and Pensions.
2. It details amendments to delegated powers in those government amendments to Schedule 2, page 70, line 18 and Schedule 6, page 123, line 23 tabled in the House of Lords on 8 October 2025.

B. ANALYSIS OF DELEGATED POWERS BY CLAUSE

PART 1: Functions Exercisable on Behalf of Public Authorities

Schedule 2, new Part A1

Power conferred on: The Minister for the Cabinet Office

Power exercised by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative resolution

Context and Purpose

3. The new regulation-making powers contained in the amendment to Schedule 2, page 70, line 18 replace those currently in Paragraph 21 of Schedule 2 to the Bill.
4. The new regulation-making powers allow the Minister for the Cabinet Office to transfer the functions in Chapters 1 to 5 of Part 1 of the Bill (except regulation making powers and the provisions on codes of practice) either to a new statutory body (the PSFA) or to another public authority. The powers allow for the transfer to another public authority and subsequently to a standalone statutory body (the PSFA).
5. To support the transfer of powers and ensure they can operate in their destination, the regulation-making power allows the Minister for the Cabinet Office to make modifications to Part 1 of the Bill and to the constitution, funding and functions of a destination public authority. The Committee's attention is drawn to this as it is a Henry VIII power.
6. The regulation-making power also allows the Minister for the Cabinet Office to give general or specific directions on the exercise of the powers.

Justification

7. The Bill envisages the investigatory powers in Part 1 of the Bill being placed at arm's length from Ministers. During passage, Ministers have been clear that this will not happen immediately, but will happen after a test and learn period and when it is proportionate to do so (see, for example, the debate on clause 69 in the House of Commons Committee stage).

8. The purpose of replacing the existing regulation-making power in Paragraph 21 of Schedule 2 of the Bill with the power in the amendment to Schedule 2, page 70, line 18 is to provide flexibility to allow the functions and powers in Part 1 of the Bill to be placed at arm's length from Ministers either through the creation of the PSFA or through the transfer of the powers to an existing public authority.
9. This flexibility could support the placing of powers at arm's length from Ministers while limiting the number of arm's length bodies, or enabling the powers to be placed at arm's length even if the number of staff made the creation of a new arm's length body disproportionate. The capacity to place the powers at arm's length by transfer to another public authority and subsequently to a standalone statutory body (the PSFA) could support placing the powers at arm's length in stages, for example if changes in the number of staff made a standalone statutory body initially disproportionate.
10. The power to make modifications to Part 1 of the Bill and to the destination public authority's constitution, funding and functions ensures the powers in Part 1 can successfully be deployed at arm's length from Ministers. It is likely to be necessary, for example, to replace references in Part 1 to "the Minister" with references to the destination authority to reflect the change in responsibilities. This scope of the power is typical of delegated powers which allow for the transfer of functions by way of secondary legislation.

Justification for procedure selected

11. Given that the power can be exercised to make regulations which amend primary legislation and to do so in relation to the establishment of a new body existing body corporate that is being transferred functions for the first time, it is considered appropriate for the additional scrutiny of the affirmative procedure to apply. This also replicates the procedure in the existing power in paragraph 21 of Schedule 2 of the Bill, which is being replaced.

PART 2: DWP

Clause 93, Schedule 6

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Negative procedure

Context and Purpose

12. The Bill amends the Social Security Administration Act 1992 by inserting into that Act a new section 80C and new Schedule 3ZB (as found in Schedule 6 of the Bill). These provisions will allow DWP to apply to a court for a court order disqualifying a debtor from driving where they have failed, without good reason, to repay the money owed. The Schedule makes detailed provision for how and when those orders can be made.
13. The new regulation-making power contained in the amendment to Schedule 6, page 123, line 23 adds to the power currently in paragraph 7(4) of new Schedule 3ZB. It allows the Secretary of State to make regulations about the making of applications under new

Schedule 3ZB to a magistrates' court, including appeals from the magistrates' court, in England and Wales. This power would make provision to (for example) allow the application to be made by laying a complaint, to apply relevant aspects of existing court procedure.

Justification for taking the powers

14. The regulation making power allows the Secretary of State to specify supplementary procedures for applications made under new Schedule 3ZB (Schedule 6 of the Bill). This power will ensure that the courts are able to properly deal with applications when they arise by applying appropriate procedures to the applications, and that existing procedural rules can be applied or engaged where appropriate (potentially without needing to make a new set of rules specific to this Schedule). The power cannot disapply or alter procedural matters or safeguards contained within Schedule 6 itself, such as the opportunity for the liable person to make representations or the right of appeal.

Justification for procedure

15. DWP considers that the negative resolution procedure is appropriate due to the limited nature and effect of the regulations this power would permit. The power can be used to ensure supplementary procedures relating to applications, in support of the aims and policy intent of the provisions contained in Schedule 6 of the Bill, are engaged. It does not risk prejudicing the rights of others or providing controversial results, such that the active consent of Parliament is necessary.
16. The addition to the driving disqualification regulation making power does not contain a Henry VIII power.