

Stage 1 Briefing

Post Office (Horizon System)
Offences (Scotland) Bill

May 2024



POST
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Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

The Post Office (Horizon System) Offences (Scotland) Bill¹ (“the Bill”) was introduced into the Scottish Parliament on 14 May 2023. On 15 May 2024, Parliament agreed to treat the Bill as an Emergency Bill,² with the stage 1 debate expected to take place on 21 May 2024 and stage 2 expected to take place on 23 May 2024.

We welcome the opportunity to consider and provide comments on the Bill ahead of the Stage 1 debate.

General Comments

As a matter of principle, we agree with the Policy Memorandum³ that indicates that “*anyone wrongly convicted as a result of the impact of the defective Horizon IT system should have their conviction quashed and as a result be entitled to UK Government compensation*”.

We noted that the approach taken by the Scottish Government aims to be consistent with the proposed UK legislation⁴ applicable in England, Wales, and Northern Ireland. If enacted, the Bill will allow all people affected in Scotland access to the financial redress scheme subject to the same conditions as their counterparts in the other UK jurisdictions.

We noted that a legislative blanket exoneration of those wrongly convicted is unusual in Scots Law. While there exist historical examples of legislation to pardon convicted people⁵, their legal effect was different from that proposed in the Bill.

We are of the view that it should be a matter for the Scottish Courts rather than the Scottish Parliament to review and quash, when appropriate, wrongful

¹ [Post Office \(Horizon System\) Offences \(Scotland\) Bill – parliament.scot](#)

² https://www.parliament.scot/-/media/files/chamber-office/minutes-of-proceedings/may-2024/chamber_minutes_20240515.pdf

³ [Post Office \(Horizon System\) Offences \(Scotland\) Bill – Policy Memorandum](#), para 10.

⁴ [Post Office \(Horizon System\) Offences Bill](#).

⁵ [Historical Sexual Offences \(Pardons and Disregards\) \(Scotland\) Act 2018](#) and [Miners' Strike \(Pardons\) \(Scotland\) Act 2022](#).



convictions. However, we recognise that the cases related to the Horizon IT system dramatically affected a significant number of people, who have been seeking justice for many years. Having a case-by-case approach to a significant number of convictions will be a slow mechanism that may impede those affected in obtaining the recognition and compensation that they deserve.

While we understand that Scottish sub-postmasters wrongfully convicted deserve to be treated in accordance with their peers across the UK, we highlight that the emergency legislation procedure limits the opportunity for Parliament to fully scrutinise the Bill. The Scottish Government did not launch any consultation on the matter, and the Scottish Parliament will consider the Bill within a very limited timescale. It is of some considerable concern that the UK Government and the Scottish Government were not able to engage in setting up consistent legislative timescales, respecting the devolution powers granted in the Scotland Act 1998.

Comments on sections of the Bill

Section 1

Section 1 provides for the quashing of convictions for relevant offences. Relevant offences are defined in section 2. The Act applies to convictions which took place before the coming into force of the Act, and which have not been considered by the High Court.

We note that this is the same approach taken by the proposed UK legislation applicable to England, Wales, and Northern Ireland. The provisions contained in Section 1 will assure that wrongful convictions in Scotland will receive the same treatment as those in other parts of the UK.

Section 2

Section 2 sets out the meaning of “relevant offences” for the purposes of the Bill. An offence is a “relevant offence” where the five conditions set out in subsections (2) to (6) are met. Condition A is related to the period in which the offence was committed. Condition B is related to the offences that will be covered. Condition C states the relationship that the person convicted should have had with the Post Office. Condition D indicates that the alleged offence should be committed in connection with the post office business. Condition E is related with the use of the Horizon IT system for the post office business.

As with Section 1, the approach taken in the Bill is quite similar to the UK legislation. It seems reasonable to have some differences in the offences covered in the Bill (condition B) in order to adapt the wider UK approach to the Scottish context.

In our view, the definition of the “relevant offences” may cover offences in respect of which there was a safe conviction. It seems that the Scottish Government has



considered this possibility and makes reference to the comments of the Chair of the Group Litigation Order (GLO) Compensation Scheme that *“whilst a small minority of these people were doubtless genuinely guilty, it would be worth their acquittal in order to deliver justice to the majority, which would not otherwise happen”*⁶.

Section 3

Section 3 specifies when a conviction for a relevant offence has been “considered by” the High Court for the purpose of section 1. A conviction has been considered by the High Court if one of the cases in subsections (2) to (5) applies.

We welcome the approach taken in the Bill as it respects the High Court’s decisions regarding wrongful convictions. As we indicated in our general comments, we believe in the principle that quashing convictions should be a matter of the High Court.

Section 4

Section 4 makes provision for identification and notification of quashed convictions, and places certain duties on the Scottish Ministers and the convicting court.

It seems sensible that the Scottish Ministers have the responsibility of identifying the cases that will be quashed and notifying the Courts and interested parties.

We noted that the Scottish Criminal Case Review Commission (SCCRC) has identified approximately 80 convicted individuals involved in a case related to the use of the Horizon IT system in the Post Office context. The number was considered in the Financial Memorandum of the Bill⁷ to quantify the potential cost of the Bill’s implementation.

Section 5

Section 5 makes provision for deletion of details of alternatives to prosecution for relevant offences, and places certain duties on the Scottish Ministers and the chief constable. The meaning of an alternative to prosecution for the purposes of this section is set out in subsection (5).

We have no comments on this section.

Section 6

Section 6 makes provision for information sharing and gives Scottish Ministers a power to require a person to provide them with information the person holds

⁶ [Post Office \(Horizon System\) Offences \(Scotland\) Bill – Policy Memorandum](#), para 48.

⁷ [Post Office \(Horizon System\) Offences \(Scotland\) Bill – Financial Memorandum](#), para 31.



which the Scottish Ministers consider is necessary for the carrying out of their functions under the Bill.

We appreciate that the Scottish Ministers may want to engage with different authorities to obtain the information required to carry out their functions in the terms of the Bill. The Financial Memorandum indicates that it is expected engagement will take place with the Crown Office and Procurator Fiscal Service (COPFS), the SCCRC, the Scottish Courts and Tribunals Services (SCTS), and Police Scotland.

Section 7

Section 7 deals with consequential provisions. Subsection (1) provides that, except as otherwise provided by section 4, a person whose conviction is quashed by section 1(1) is to be treated as if, on the coming into force of this Act, the conviction had been quashed by the High Court on an appeal by the convicted person. Subsection (2) provides that in section 133 of the Criminal Justice Act 1988 (compensation for miscarriages of justice), the reference in subsection (5) to a conviction having been quashed (or set aside) on an appeal out of time includes a reference to a conviction having been quashed by section 1(1).

In our view, this provision captures one of the main objectives of the Bill, which is to assure all wrongly convicted sub-postmasters obtain compensation, with a consistent approach with other UK legislation.

Section 8

Section 8 sets out ancillary provisions for Scottish Ministers to make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to the Bill, by regulations. Such regulations are subject to the affirmative procedure if they add to, replace or commit any part of the text of an Act, and otherwise are subject to the negative procedure.

We are of the view that it is a good practice in law reform to fully scrutinise new legislation. While we understand that not all eventual further provisions related to the purposes of the Bill will require primary legislation some consideration should be given to limiting the power to make significant changes to the criminal justice system by regulations.

Section 9

Section 9 is an interpretation provision.

We have no comments on this section.

Section 10

Section 10 provides that the Bill will come into force the day after Royal Assent.



We have no comments on this section.

Section 11

Section 11 provides for the short title.

We have no comments on this section.



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