

Stage 3 Briefing

Post Office (Horizon System)
Offences (Scotland) Bill

May 2024



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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.

We previously prepared a briefing ahead Stage 1 debate on the Post Office (Horizon System) Offences (Scotland) Bill (“the Bill”) in May 2024¹. We now welcome the opportunity to provide a briefing for the Stage 3 debate on the Bill scheduled for 30 May 2024.

General comments

We reiterate our comments provided in our Stage 1 briefing on the Bill related to the limitations that the emergency legislation procedure impose on full scrutiny of the Bill.

We note that the Bill was amended at Stage 2 to remove Sections 1(2)(b) and 3. These sections of the Bill as introduced excluded convictions which had been considered by the High Court from the scope of the Bill. That exclusion has now been removed. This amendment both widens the scope of the Bill, and represents a significant departure from the approach for the rest of the UK set out in the Post Office (Horizon System) Offences Act 2024.

A debate took place in the House of Lords regarding the Post Office (Horizon System) Offences Bill on 24 May 2024. We agree with the comments made by Lord Offord of Garvel regarding a similar proposed amendment to the UK Bill: “*The Bill is unprecedented and constitutionally sensitive. It is therefore vital that we legislate carefully, respecting the separation of powers and the independence of the judiciary as far as possible*”².

In addition to our concerns regarding the separation of powers, we have concerns on whether extending the scope of the Bill in the terms of the amendments approved at Stage 2 increases the risk that sound convictions may be overturned. The current Scottish legal system has a remedy for those who do not meet with the conditions established in the Bill as introduced: they could still have used

¹ [Post Office \(Horizon System\) Offences \(Scotland\) Bill – Stage 1 briefing \(lawscot.org.uk\)](https://www.lawscot.org.uk/post-office-horizon-system-offences-scotland-bill-stage-1-briefing)

² [Post Office \(Horizon System\) Offences Bill – Debated on 24 May 2024 at the House of Lords \(parliament.uk\)](https://www.parliament.uk/post-office-horizon-system-offences-bill-debated-on-24-may-2024-at-the-house-of-lords)



further appeal routes or gone back to the Scottish Criminal Cases Review Commission if new evidence came to light.

We acknowledge, however, the arguments presented by the Cabinet Secretary for Justice and Home Affairs (“the Cabinet Secretary”) related to the removal of Section 1(2)(b) and Section 3 at Stage 2 and the pressing policy reasons for quashing the wrongful convictions of sub-postmasters by way of legislation.

Despite these concerns, we are pleased that the Cabinet Secretary has looked for and obtained assurances from the UK Government regarding divergence from the wider UK approach to the Post Office convictions and the compensation scheme. As the Cabinet Secretary indicated in the Stage 2 debate: “*The assurance that I received cleared the way for me to lodge the amendments and ensure that postmasters who previously sought to appeal their convictions are not treated less favourably than their peers*”³. As we indicated in our Stage 1 Briefing on the Bill, we strongly believe that Scottish sub-postmasters wrongfully convicted deserve to be treated the same as their counterparts in the other UK jurisdictions and therefore if the Bill proceeds on this basis, it is important that this is also reflected in the scope of the compensation scheme.

We would welcome a wide-spread public information campaign to ensure that all people that meet the conditions stated in the Bill are aware of the legislation and their entitlements.

We have some concerns about the lack of clarity on the numbers of wrongly convicted persons in the scope of the Bill. We appreciate that the numbers of the Scottish Criminal Cases Review Commission were considered for the estimation of cases contained in the Financial Memorandum⁴. However, we still consider that it is not clear how the estimation between 100 and 300 cases was reached.

We have the following comments on specific Sections of the Bill.

Specific comments on the Bill

Section 1

We note that the Bill was amended at Stage 2 to remove the section 1 2(b) of the Bill as introduced, which indicated that the Bill would not apply to convictions that have been considered by the High Court. We have mentioned above our views on this point.

Section 2

Section 2 contains the definition of “relevant offence” for the purposes of the Bill. We note that during Stage 2 proceedings, there was some discussion on the

³ [Meeting of the Parliament Committee of the Whole Parliament – Draft Official Report \(parliament.scot\)](#), page 58.

⁴ [Post Office \(Horizon System\) Offences \(Scotland\) Bill – Financial Memorandum](#), para. 33.



extension of Condition C related to the relationship that the convicted person should have had with the Post Office.

We agree with the Cabinet Secretary's position that the link between the convictions and the work or the business of the Post Office are a fundamental element of the definition of the relevant offences. As the Cabinet Secretary indicated in the Stage 2 debate, cases outside the scope of the Bill can still be considered by the Scottish Criminal Cases Review Commission for referral to the High Court.

As indicated in our general comments, we are of the view that the conditions contained in Section 2 should be narrowly drafted to ensure that they capture only those wrongful convictions caused by the failure of the Horizon system in the context of the Post Office.

We also support the position of the Cabinet Secretary regarding the UK compensation scheme operation if the conditions of the Bill are considerably different from the UK approach. We understand that one of the main purposes of the Bill is to assure that Scottish sub-postmasters have an appropriate compensation for the miscarriage of justice that they suffer. If this cannot be guaranteed, the effect of the Bill would be meaningless.

Section 4

Section 4 places certain duties on the Scottish Ministers to identify and notify convicted persons of quashed convictions.

We note that some MSPs have previously expressed concerns about the implementation of the Section 4 provisions, in particular, the reasonable steps that the Scottish Ministers must take to identify and notify convicted persons in the scope of the Bill.

We would welcome further clarity as to the timescales in which the Scottish Ministers will comply their obligations in the Bill. Wrongly convicted sub-postmasters have suffered the consequences of a huge miscarriage of justice and we consider it fair to set clear public expectations on the results expected of the Bill. We therefore welcome the amendment lodged by the Cabinet Secretary ahead of stage 3 proceeding to place reporting requirements on Scottish Ministers in respect of their obligations under the Bill.

We also note that the Financial Memorandum of the Bill identifies some institutions that could engage with the Scottish Government to identify the quashed convictions in the context of the Bill. Those institutions are the Crown Office and Procurator Fiscal Service⁵, the Scottish Criminal Cases Review Commission⁶, the

⁵ [Post Office \(Horizon System\) Offences \(Scotland\) Bill – Financial Memorandum \(parliament.scot\)](#), para. 40.

⁶ *Ibid*, para. 41.



Scottish Courts and Tribunal Service (SCTS)⁷, and Police Scotland⁸. We are of the view that the identification of the institutions that may have a significant amount of information for fulfilling the duties contained in the Bill is the first step to assure the correct implementation of Section 4 duties.

Subsection 5 indicates that representations may be made to the Scottish Ministers to claim that a person has been convicted of a relevant offence, whether by the person or a third party. This provision would allow for solicitors representing persons wrongly convicted to become involved.

As we indicated in our general comments, a wide-spread information campaign would assist in reaching people who consider that they meet the conditions of the Bill and have not been contacted by the Scottish Government. This could make them aware that they can make representations to the Scottish Ministers in the terms of the subsection 5.

Section 5

On a similar basis that Section 4(5), subsection 4 would allow representations from the person or a third party to be made to the Scottish Ministers to claim that a person has been given an alternative to prosecution for a relevant offence. As indicated earlier, this provision will allow for solicitors representing people that received an alternative of prosecution in the scope of the Bill. We reiterate our comments above regarding the importance of a suitable public information campaign.

Section 6

We don't have further comments on this section.

Section 7

We don't have further comments on this section.

Section 8

We replicate our comments from our Stage 1 briefing regarding the consideration that should be given to limiting the power to make significant changes to the criminal justice system by secondary legislation.

Section 9

We don't have further comments on this section.

Section 10

We don't have further comments on this section.

⁷ Ibid, para. 42.

⁸ Ibid, para. 47.



Section 11

We don't have further comments on this section.



For further information, please contact:

Liliana Torres Jimenez
Policy Team
Law Society of Scotland
LilianaTorresJimenez@lawscot.org.uk