

Post Office (Horizon System) Offences (Scotland) Bill

[AS INTRODUCED]

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THE FOLLOWING ACCOMPANYING DOCUMENTS ARE ALSO PUBLISHED:
Explanatory Notes (SP Bill 47-EN), a Financial Memorandum (SP Bill 47-FM), a Policy Memorandum (SP Bill 47-PM), a Delegated Powers Memorandum (SP Bill 47-DPM) and statements on legislative competence (SP Bill 47-LC).

Post Office (Horizon System) Offences (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to provide for the quashing of certain convictions for offences of dishonesty connected to the carrying on of a post office business at a time when the Horizon system was in use; to provide for the deletion of details of alternatives to prosecution in relation to such offences; and for connected purposes.

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Quashing of convictions

1 Quashing of convictions for relevant offences

- (1) Every conviction to which this Act applies is quashed on the coming into force of this Act.
- (2) This Act applies to a conviction in Scotland for a relevant offence where—
 - (a) the conviction took place before the coming into force of this Act, and
 - (b) the conviction has not been considered by the High Court (see section 3).

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2 Meaning of “relevant offence”

- (1) For the purposes of this Act, an offence alleged to have been committed by a person is a “relevant offence” if conditions A to E are met.
- (2) Condition A is that the offence was alleged to have been committed—
 - (a) on a date or dates falling within the period that begins with 23 September 1996 and ends with 31 December 2018, or
 - (b) at any time during a period that falls wholly or partly within the period mentioned in paragraph (a).
- (3) Condition B is that the offence is one of the following—
 - (a) embezzlement,
 - (b) fraud,
 - (c) theft,
 - (d) uttering,
 - (e) an ancillary offence (see subsection (7)).

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- (4) Condition C is that, at the time of the alleged offence, the person—
- (a) was carrying on a post office business, or
 - (b) was working in a post office (whether under a contract of employment or otherwise) for the purposes of a post office business.
- 5 (5) Condition D is that the person was alleged to have committed the offence in connection with carrying on, or working for the purposes of, the post office business.
- (6) Condition E is that, at the time of the alleged offence, the Horizon system was being used for the purposes of the post office business.
- (7) In this section, “ancillary offence” means—
- 10 (a) an offence of attempting or conspiring to commit an offence specified in any of paragraphs (a) to (d) of subsection (3) (a “specified offence”),
- (b) an offence of inciting a person to commit a specified offence, or
 - (c) an offence of aiding, abetting, counselling or procuring the commission of a specified offence.

15 **3 Determining when a conviction has been considered by the High Court**

- (1) For the purposes of this Act, a conviction has been considered by the High Court only if one of the cases in subsections (2) to (5) applies.
- (2) The first case is where the High Court has dismissed an appeal against the conviction.
- (3) The second case is where the conviction is by the High Court following its substitution of an amended verdict of guilty on appeal.
- 20 (4) The third case is where the High Court has refused to give leave to appeal against the conviction.
- (5) The fourth case is where—
- (a) a single judge of the High Court has refused to give leave to appeal against the conviction, and
 - (b) the High Court has not subsequently given leave to appeal against the conviction.
- (6) Nothing in this Act prevents a further appeal against a conviction that has been considered by the High Court.

4 Identification and notification of quashed convictions

- 30 (1) The Scottish Ministers must take all reasonable steps to identify the convictions quashed by section 1(1).
- (2) Where the Scottish Ministers identify that a person’s conviction has been quashed by section 1(1), the Scottish Ministers must notify the convicting court of the details of the conviction.
- 35 (3) As soon as is reasonably practicable after receiving notification under subsection (2), the convicting court must enter, instead of the record of conviction, a record that the conviction was quashed by this Act.

- (4) Where the Scottish Ministers identify that a person's conviction has been quashed by section 1(1), the Scottish Ministers—
- (a) must take all reasonable steps to notify the person, or, if the person is no longer alive, the person's personal representatives, that the conviction has been quashed, or
- (b) if it is not reasonably practicable to give a notification under paragraph (a), must take all reasonable steps to—
- (i) identify some other person whom the Scottish Ministers consider it appropriate to notify, and
- (ii) notify that person that the conviction has been quashed.
- (5) For the purpose of identifying convictions quashed by section 1(1), the Scottish Ministers must, in particular, consider any representations made to the Scottish Ministers which claim that a person has been convicted of a relevant offence, whether or not made by that person.
- (6) In this section, "the convicting court", in relation to a person's conviction, means the court by or before which the person was convicted.

Deletion of details of alternatives to prosecution

5 Deletion of details of alternatives to prosecution for relevant offences

- (1) If it appears to the Scottish Ministers that an alternative to prosecution has, before the coming into force of this Act, been given to a person for a relevant offence, the Scottish Ministers must direct the chief constable of the Police Service of Scotland to delete the details, contained in the criminal history database, of the alternative to prosecution.
- (2) As soon as is reasonably practicable after receiving a direction under subsection (1), the chief constable must delete the details of the alternative to prosecution.
- (3) Where the Scottish Ministers give a direction under subsection (1) in relation to an alternative to prosecution given to a person, the Scottish Ministers—
- (a) must take all reasonable steps to notify the person, or, if the person is no longer alive, the person's personal representatives, that the direction has been given, or
- (b) if it is not reasonably practicable to give a notification under paragraph (a), must take all reasonable steps to—
- (i) identify some other person whom the Scottish Ministers consider it appropriate to notify, and
- (ii) notify that person that the direction has been given.
- (4) For the purposes of this section, the Scottish Ministers must, in particular, consider any representations made to the Scottish Ministers which claim that a person has been given an alternative to prosecution for a relevant offence, whether or not made by that person.
- (5) An alternative to prosecution has been given to a person for a relevant offence within the meaning of subsection (1) if the person—
- (a) has been given a warning in respect of the offence by a constable in Scotland or a procurator fiscal,
- (b) has accepted, or is deemed to have accepted—
- (i) a conditional offer issued in respect of the offence under section 302 of the Criminal Procedure (Scotland) Act 1995, or

- (ii) a compensation offer issued in respect of the offence under section 302A of that Act,
 - (c) has had a work order made against the person in respect of the offence under section 303ZA of that Act, or
 - (d) has accepted an offer made by a procurator fiscal in respect of the offence to undertake an activity or treatment or to receive services or do any other thing as an alternative to prosecution.
- (6) In this section, the “criminal history database” means the criminal history database of the Police Service of Scotland held for the use of police forces generally.

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*Information-sharing***6 Provision of information**

The Scottish Ministers may, by notice in writing, require a person to provide them with information which—

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- (a) the person holds, and
- (b) the Scottish Ministers consider is necessary for the carrying out of their functions under this Act.

*Final provisions***7 Consequential provision**

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- (1) 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.
- (2) 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).

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8 Ancillary provision

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- (1) The Scottish Ministers may by regulations 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 this Act.
- (2) Regulations under this section may—
 - (a) modify any enactment (including this Act),
 - (b) make different provision for different purposes.
- (3) Regulations under this section—
 - (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act,
 - (b) otherwise are subject to the negative procedure.

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9 Interpretation

(1) In this Act—

“conviction” means—

- (a) a conviction by or before a court, or
- (b) a finding in any criminal proceedings (including a finding linked with mental disorder or in respect of which an admonition or absolute discharge is made) that a person has committed an offence or done the act or made the omission charged,

and “convicted” is to be read accordingly,

“Horizon system” means any version of the computer system known as Horizon (and sometimes referred to as Legacy Horizon, Horizon Online or HNG-X) used by the Post Office, other than the version referred to as HNG-A,

“postal services” has the same meaning as in the Postal Services Act 2011 (see section 27 of that Act),

“Post Office” means any of the following—

- (a) the Post Office,
- (b) Post Office Limited or Post Office Counters Limited (registered number 02154540),
- (c) Royal Mail Group Limited, Consignia Public Limited Company or Royal Mail Group plc (registered number 04138203),

“post office” means any premises or vehicle in Scotland from which postal services are provided (whether alone or with other services) directly to the public,

“post office business” means the business of providing postal services (whether alone or with other services) from a post office,

“relevant offence” has the meaning given by section 2.

(2) Nothing in this Act affects any power of a court to quash a conviction to which this Act does not apply.

10 Commencement

This Act comes into force on the day after Royal Assent.

11 Short title

The short title of this Act is the Post Office (Horizon System) Offences (Scotland) Act 2024.

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[AS INTRODUCED]

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