

Post Office (Horizon System) Offences (Scotland) Bill

Explanatory Notes

Introduction

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Post Office (Horizon System) Offences (Scotland) Bill, introduced in the Scottish Parliament on 14 May 2024.
2. The following other accompanying documents are published separately:
 - a Financial Memorandum (SP Bill 47–FM);
 - a Policy Memorandum (SP Bill 47–PM);
 - a Delegated Powers Memorandum (SP Bill 47–DPM);
 - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 47–LC).
3. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
4. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

The Bill

5. The use of tainted evidence provided by the Post Office in criminal cases across the United Kingdom is considered to have resulted in a miscarriage of justice in a number of cases which is unprecedented in recent history. All of the nations of the UK experienced cases where evidence using information obtained from the Post Office's Horizon IT system infected the process of justice, with individuals pleading guilty to, or being found guilty of, offences they had not committed.

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6. This Bill, like the Post Office (Horizon System) Offences Bill which is being taken forward in the UK Parliament in respect of convictions in England and Wales, takes the unprecedented and wholly exceptional step of providing a blanket exoneration for those affected.

Crown application

7. Section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 provides that the Crown will be bound by an Act of the Scottish Parliament or Scottish statutory instrument unless the provision expressly exempts it. This Bill applies to the Crown in the same way as it applies to everyone else.

Commentary on provisions

Section 1 – Quashing of convictions for relevant offences

8. This section provides that those convictions for “relevant offences” which took place before the date on which the Act comes into force and which have not been considered by the High Court of Justiciary are to be quashed on the day on which the legislation comes into force. The quashing will happen automatically without the need for any further intervention. To quash a conviction means to discharge it or set it aside so that it is as if it had never existed.

Section 2 – Meaning of “relevant offence”

9. This section sets out what constitutes a “relevant offence”. This is defined by reference to several conditions. Under subsection (1), all of the conditions must be met in order for an offence to constitute a relevant offence.

10. The conditions are set out in subsections (2) to (6):

- Condition A is that the offence was alleged to have been committed in a specified period. This could be an offence alleged to have been committed on one or more dates within that period (paragraph (a)) or over a period of time which falls either wholly or partly within that period (paragraph b). The starting date for that period is 23 September 1996, which is the date on which the Horizon pilot system began to be rolled out to post office branches. The end date for that period is 31 December 2018, which is the point at which the rollout of the current version of the Horizon System (HNG-A), considered to be robust, was concluded and the earlier version entirely superseded.
- Condition B is that the offence is one of a list of specific offences. These are all offences of dishonesty which were prosecuted in Horizon-related cases, and include ancillary offences (defined in subsection (7)).
- Condition C requires the relationship between the individual and the Post Office to be of a certain type. At the time of the offence, the individual had to have been carrying on a post office business themselves (i.e. acting as a

postmaster) or working in a post office for someone else for the purpose of the post office business. There does not need to have been a contract of employment in place so those who worked in a family post office business without any formalities in place are covered by this provision.

- Condition D is that the acts constituting the offence were carried out in connection with carrying on or working for the purposes of the post office business. This provision therefore excludes unrelated offences which individuals working in post offices might have coincidentally committed during the relevant time period (such as theft from a local supermarket).
- Condition E is that at the time of the offence, the Horizon system (as defined in section 9) was in use in the post office in which the person was working or carrying on post office business at the time.

11. Subsection (7) defines the ancillary offences falling within condition B. It should be noted that those who are convicted art and part of an offence are convicted for the principal offence and so their convictions are captured by convictions for the principal offences being covered by the Bill. Art and part liability is the principle that where two people are convicted of engaging together in the commission of a crime, each is guilty of the whole crime regardless of the part they play individually.

Section 3 – Determining when a conviction has been considered by the High Court

12. Section 3 specifies when a conviction for a relevant offence has been “considered by” the High Court of Justiciary for the purpose of section 1. Where one of the four specified cases applies, that conviction is not affected by this legislation – meaning that it is not quashed. It should be noted though that subsection (6) makes clear that nothing in this legislation prevents a further appeal against a conviction. As such, if there are any cases where the High Court has considered the conviction but it is felt that further consideration is appropriate in light of the information that is now known about the Horizon system, that avenue remains open via the Scottish Criminal Cases Review Commission (“SCCRC”)¹.

13. Where appeals in respect of convictions for relevant offences are in progress but none of the four cases set out in this section apply, the conviction will be quashed by section 1. Therefore, the following will still be quashed:

- convictions for relevant offences in respect of which the SCCRC is considering whether to refer the case to the High Court for an appeal but where a determination has not yet been made, or where an application for leave to appeal to the High Court has been made but has not yet been determined,
- convictions for relevant offences against which appeals are in progress but have not yet been determined,

¹ See section 194B(1) of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”).

This document relates to the Post Office (Horizon System) Offences (Scotland) Bill (SP Bill 47) as introduced in the Scottish Parliament on 14 May 2024

- convictions for relevant offences where an application or appeal in respect of the conviction has been abandoned.

14. The cases where a person's conviction for a relevant offence is treated as having been considered by the High Court (and therefore is not quashed) are as follows:

- case 1: a case where the High Court has heard an appeal against the conviction and has dismissed the appeal²,
- case 2: a case where the conviction for a relevant offence has been imposed as a result of the High Court substituting an amended verdict of guilty (whether that is guilty of a different relevant offence arising out of the same facts as the original conviction, or guilty of the same relevant offence but, for example, altering the value of the theft)³,
- case 3: a case where the High Court has considered an application for leave to appeal and refused to give leave to appeal against the conviction⁴,
- case 4: a case where an application for leave to appeal has been considered and refused by a single judge of the High Court, and the High Court has not subsequently given leave to appeal against the conviction (i.e. leave was not sought following the initial refusal – as leave being sought and refused would be caught by case 3)⁵.

Section 4 – Identification and notification of quashed convictions

15. Section 4 provides for aspects of the administrative process for identifying which convictions have been quashed by section 1. It also provides for relevant individuals to be notified following the quashing of their convictions.

16. Subsection (1) places a duty on the Scottish Ministers to take all reasonable steps to identify the convictions which are quashed by section 1. This might include, but is not limited to, reviewing information held by Police Scotland, the Scottish Courts and Tribunals Service, Post Office Limited, and the Crown Office and Procurator Fiscal Service.

17. Subsection (2) places a duty on the Scottish Ministers to notify the convicting court of the details of any identified quashed convictions. Under subsection (3), the convicting court will then be obliged to update its records by removing the record of conviction and substituting a record that the conviction was quashed by this legislation.

² See section 118(1)(a) of the 1995 Act for solemn convictions and section 183(1)(b) of the 1995 Act for summary convictions.

³ See section 118(1)(b) of the 1995 Act for solemn convictions and section 183(1)(c) of the 1995 Act for summary convictions.

⁴ See section 107(5)(b) of the 1995 Act for convictions on indictment. For summary convictions, see section 180(5)(b) of the 1995 Act (which applied to the High Court prior to the establishment of the Sheriff Appeal Court).

⁵ See section 107(1)(b) of the 1995 Act for convictions on indictment. For summary convictions, see section 180(1)(b) of the 1995 Act (which applied to the High Court prior to the establishment of the Sheriff Appeal Court).

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18. Subsection (4) places a further duty on the Scottish Ministers to take all reasonable steps to notify anyone whose conviction has been quashed (or, if they are no longer alive, their personal representatives) of the quashing of their conviction. If it is not reasonably practicable to notify either the convicted person or, where applicable, their personal representative, then the Scottish Ministers must take all reasonable steps to identify another person whom they consider it appropriate to notify, and notify that person. For example, this might involve contacting the person's next of kin in a case where the convicted person has died and the executors in their estate are either untraceable or have also died. It might also involve contacting a person's next of kin if the person themselves is untraceable.

19. Subsection (5) places a duty on the Scottish Ministers to consider representations made by a convicted person, or by someone else (whether acting formally on their behalf or simply as a third party), that the person has been convicted of a relevant offence. This will ensure that where a conviction is not identified by the Scottish Ministers under subsection (1), but a person believes that their conviction satisfies the criteria and is therefore quashed, the Scottish Ministers are obliged to consider representations made on that person's behalf. If that consideration leads to the conclusion that the conviction is one to which section 1 applies, the duties in sections 4(2), 4(3) and 4(4) apply to that conviction.

Section 5 – Deletion of details of alternatives to prosecution for relevant offences

20. This section sets out the process for deleting details of alternatives to prosecution given before the date on which the Act comes into force for relevant offences. An alternative to prosecution includes a warning, a fiscal fine, and other ways in which a person can avoid prosecution by undertaking to do a particular thing instigated by the procurator fiscal.

21. Where the Scottish Ministers become aware of alternatives to prosecution that have been given for relevant offences, subsection (1) places a duty on them to notify Police Scotland and direct the chief constable to delete the relevant entry in the criminal history database. Subsection (2) requires the chief constable to do as directed as soon as reasonably practicable.

22. Subsections (3) and (4) make equivalent provision for alternatives to prosecution as subsections (4) and (5) of section 4 do for convictions: namely, they impose requirements in relation to notification to an appropriate person of a direction having been given in relation to correction of records, and they impose a requirement on the Scottish Ministers to consider any representations made to them that a person's records ought to be corrected. See paragraphs 18 and 19 of these notes for more details of the equivalent provision in relation to convictions.

23. For the most part, details of alternatives to prosecution which have been given will not have any implications for the recipient after this length of time and this section will therefore be of little practical impact. For example, the details of an alternative to

prosecution would not form part of a person's record of 'previous convictions' tendered to a criminal court after this length of time. However, spent alternatives to prosecution are, in very limited circumstances, able to be disclosed in higher level disclosures (such as police vetting) so there will be a real life, if narrow, practical impact of these being deleted.

Section 6 – Provision of information

24. Section 6 allows the Scottish Ministers, by notice in writing, to require a person to provide them with information the person holds which Ministers consider is necessary for the carrying out of their functions under this legislation. The Scottish Ministers' functions under this legislation relate to the identifying of convictions which have been quashed by section 1, the identifying of details of alternatives to prosecution which ought to be deleted, the notification to the courts/police (as applicable), and the notification to those directly affected of the fact that the conviction has been quashed or, as the case may be, that the police have been directed to delete the details of the alternative to prosecution. In particular, paragraph 16 of these notes provides details about information which the Scottish Ministers may require access to. The ability to obtain information under this section would of course be subject to data protection legislation.

Section 7 – Consequential provision

25. Subsection (1) provides that a person whose conviction is quashed by this legislation is to be treated (except for the purpose of section 4) as if, on the day on which the Act comes into force, their conviction was quashed by the High Court of Justiciary on an appeal made by the person. Section 4 is excepted here as, for accuracy, the process set out there for the correction of records provides for the details of the quashing to be stated to have been given effect to by this legislation rather than by a court.

26. The effect of subsection (1) is to put the convicted person in the same position, with respect to various legislative provisions, as they would have been had their conviction been quashed instead by the High Court of Justiciary. For example, if they paid a fine then this becomes repayable under section 122(3) of the Criminal Procedure (Scotland) Act 1995. If they were imprisoned then they become entitled to pension credits in respect of that period under regulation 9D of the Social Security (Credits) Regulations 1975.

27. Subsection (2) provides that convictions quashed by this legislation are to be treated as "convictions quashed on an appeal out of time" for the purposes of section 133 of the Criminal Justice Act 1988 which deals with eligibility for compensation for miscarriages of justice. This ensures that a person whose conviction is quashed by section 1 is not excluded from the compensation for miscarriages of justice scheme where the criteria for that scheme are met.

Section 8 – Ancillary provision

28. This section empowers the Scottish Ministers, by regulations, to make various types of ancillary provision for the purposes of, in connection with, or to give full effect to the Act.

29. Regulations under this section may modify any enactment (including the Bill itself once enacted). The word “enactment” is defined in schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010 and includes Acts of the Scottish or UK Parliaments as well as secondary legislation.

30. If regulations under this section textually amend an Act then they are subject to the affirmative procedure, but otherwise they are subject to the negative procedure (see sections 28 and 29 of the Interpretation and Legislative Reform (Scotland) Act 2010).

Section 9 – Interpretation

31. Subsection (1) of this section provides definitions for various terms used in the Bill. In particular—

- “conviction” is defined as both a conviction before a court and findings in criminal proceedings that a person has committed an offence or done the act or omission charged (which can include where a finding was made about the acts but there was no conviction on grounds of mental disorder, or where the outcome was only the giving of a judicial admonition or an absolute discharge⁶),
- “Horizon system” is defined as versions of the Horizon software excluding HNG-A (see the discussion of condition A at paragraph 10 of these notes),
- the “Post Office” is defined with reference to the several different companies and organisations in relation to whose business individuals were convicted of offences as part of the Horizon scandal.

32. Subsection (2) clarifies that nothing in the Bill affects any power of a court to quash a conviction which is not covered by this legislation.

Section 10 – Commencement

33. This section provides that the provisions of the Bill, once enacted, will come into force (i.e. take effect) automatically on the day after the Bill receives Royal Assent.

⁶ Were it not for the inclusion of absolute discharge within the definition of “conviction” here, section 247 of the 1995 Act would have the effect that a person who was convicted but absolutely discharged by the court (i.e. given no punishment) would not be treated as having a conviction, meaning they would not benefit from it being quashed.

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Section 11 – Short title

34. This section provides for the resulting Act (if the Bill is passed and given Royal Assent) to be known as the Post Office (Horizon System) Offences (Scotland) Act 2024.

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