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Post Office (Horizon System) Offences (Scotland) Bill

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The Post Office (Horizon System) Offences (Scotland) Bill seeks to respond to miscarriages of justice resulting from the use of tainted evidence obtained from the Post Office's Horizon IT system. It includes provisions which would quash relevant convictions.



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Summary

The [Post Office \(Horizon System\) Offences \(Scotland\) Bill](#) (the Scottish Bill) seeks to respond to miscarriages of justice in Scotland resulting from the use of tainted evidence obtained from the Post Office's Horizon IT system. Similar legislation relating to miscarriages of justice in other parts of the UK is being taken forward in UK Parliament. The Scottish Parliament has agreed to deal with the Scottish Bill under emergency bill procedure - allowing for an accelerated scrutiny process.

The Horizon IT system was piloted from 1996 and rolled out in 2000. Errors in the system wrongly indicated shortfalls in sub-postmasters' accounts. This led to demands for the repayment of sums not actually owed and prosecutions. An independent public inquiry is looking into the failings associated with the Horizon IT system - the [Post Office Horizon IT Inquiry](#).

Under the provisions of the Scottish Bill, relevant convictions in Scotland would be quashed on the day it comes into force (the day after Royal Assent). Criminal records would be changed to reflect convictions being quashed. The Scottish Bill also provides that the correction of records would apply to situations where a person was dealt with by an alternative to prosecution for a relevant offence.

Neither the Scottish Bill, nor the equivalent legislation being considered by the UK Parliament, seek to establish compensation schemes. However, the intention is that people who have their convictions quashed under the provisions of either bill would be able to apply for compensation. There are UK-wide compensation arrangements specifically for people affected by the Post Office Horizon IT scandal.

Introduction

The Scottish Government introduced the [Post Office \(Horizon System\) Offences \(Scotland\) Bill](#) (the Scottish Bill) in the Scottish Parliament on 14 May 2024.¹

Documents published along with the Scottish Bill include [Explanatory Notes](#),² a [Policy Memorandum](#),³ and a [Financial Memorandum](#).⁴

The Scottish Bill seeks to respond to miscarriages of justice in Scotland resulting from the use of information obtained from the Post Office's Horizon IT system. The Policy Memorandum states that (para 5):

“ The use of tainted evidence provided by the Post Office in criminal cases across the United Kingdom is one of the largest miscarriages of justice that has occurred in recent history. All of the nations of the UK experienced cases where evidence using information obtained from the Horizon IT system infected the process of justice, with a horrendous effect on the lives of those who were incorrectly convicted of offences.”

Under the provisions of the Scottish Bill, all relevant convictions in Scotland would be quashed on the day it comes into force (the day after Royal Assent). The criteria for being a relevant conviction are considered below when looking at the provisions of the Scottish Bill in more detail.

Criminal records would be changed to reflect convictions being quashed. The Scottish Bill also provides that the correction of records would apply to situations where a person was dealt with by an alternative to prosecution for a relevant offence.

The Policy Memorandum states that the Scottish Bill is based on the policy approach taken by the UK Government in similar legislation applying to other parts of the UK - the [Post Office \(Horizon System\) Offences Bill](#) (the UK Bill).⁵ It goes on to note that (para 20):

“ In bringing forward this Scottish legislation, the Scottish Government aims to provide, insofar as possible, that Scottish sub-postmasters are treated equally to those in England and Wales in respect of the quashing of convictions. The Scottish Government seeks to ensure that those who are caught by the provisions of this Bill are able to access the UK Government compensation scheme.”

The UK Bill was introduced in the House of Commons on 13 March 2024. As introduced, it applied to relevant convictions in England and Wales only, but was amended to also cover convictions in Northern Ireland. It had its Second Reading in the House of Lords on 13 May 2024. The Committee stage in the Lords is scheduled to take place from 3 June 2024.

On 15 May 2024, the Scottish Parliament agreed to deal with the Scottish Bill under emergency bill procedure - allowing for an accelerated scrutiny process. The Stage 1 debate is set to take place on 21 May and Stage 2 on 23 May 2024. A date for Stage 3, the final parliamentary stage, was not set. The Scottish Government explained that it wished to hold Stage 3 after the final form of the UK Bill is known, thus allowing the Scottish Parliament to take account of any relevant amendments to the UK Bill.

Background

The Post Office Horizon IT scandal

Post Office

The Post Office is a limited company owned entirely by the UK Government. The running of its day-to-day operations is the responsibility of the Post Office's board of directors and executive team.⁶ The UK Government provides some funding, monitors performance and oversees key decisions. The Post Office separated from the Royal Mail in 2012.

Further information on the structure of the Post Office is set out in a House of Commons Library [briefing on the the Post Office](#) (October 2021).⁷ It notes that:

“ The vast majority of post offices (99%) are operated by franchise partners or sub-postmasters, who are independent business people.”

Horizon IT scandal

The [Policy Memorandum](#), published with the Scottish Bill, notes that (para 6):

“ From 1996 onwards, the Post Office introduced the Horizon software, an online accounting system engineered by Fujitsu, in some of its branches, and this software was rolled out across the network of branches in 2000. Faults in the software meant that some sub-postmasters' accounts showed false shortfalls, and the Post Office obliged sub-postmasters to 'repay' these shortfalls.”

It goes on to say (para 7):

“ Some sub-postmasters were suspended and/or dismissed, and others were prosecuted for offences of dishonesty with a number being convicted and in some cases imprisoned. These prosecutions were brought by the Post Office itself or by the Crown Prosecution Service (CPS) in England & Wales, and by the Crown Office and Procurator Fiscal Service (COPFS) in Scotland. Estimates suggest that nearly 1,000 individuals were convicted on the basis of evidence from the Horizon system across the United Kingdom over a 20 year period.”

Thus, the use of false information from the Horizon IT system led to wrongful convictions, as well as impacting on sub-postmasters who may not have been prosecuted but were wrongly told that there were shortfalls in their accounts.

An independent public inquiry is looking into the failings associated with the Horizon IT system - the [Post Office Horizon IT Inquiry](#).⁸ It was, following commitments made by the UK Government, established on a non-statutory basis in September 2020. It was converted to a statutory inquiry, with powers to compel witnesses to give evidence, in June 2021. The inquiry website includes information about its [terms of reference](#) and an [indicative timeline for hearings](#).

The ITV drama [Mr Bates vs The Post Office](#),⁹ screened in early January 2024, brought greater public attention to what had happened.

Further background information on the Horizon IT scandal is provided in two House of Commons Library briefings from earlier this year - one on [the UK Bill](#)¹⁰ and the other on [the management culture of the Post Office](#).¹¹

Miscarriages of justice in Scotland

In Scotland, prosecutions using information obtained from the Post Office's Horizon IT system were taken forward by Scotland's public prosecution service - the Crown Office and Procurator Fiscal Service (COPFS).

The normal route for challenging a conviction is by the convicted person appealing through the criminal court system. In cases where the basis for an appeal may not be apparent at the time of conviction, such as with convictions based on the Horizon IT system, this may involve cases being reviewed by the [Scottish Criminal Cases Review Commission](#).¹² It can then refer appropriate cases to the appeal court for consideration.

Role of the Post Office

The Post Office has been one of a range of [specialist reporting agencies](#)¹³ which can investigate and report cases directly to the COPFS for potential prosecution in the criminal courts.

On 16 January 2024, the Lord Advocate as head of the COPFS made a [statement](#) to the Scottish Parliament about Horizon IT prosecutions (see cols 11-15).¹⁴ She said that the Post Office had failed in its obligations:

“ The relationship between a prosecution authority and an investigating agency must be based on absolute candour and trust. As an investigating agency, the Post Office must act fairly, and this includes an obligation to reveal to prosecutors all material which may be relevant to the issue of whether the accused is innocent or guilty. It is clear that the Post Office failed in its duty of revelation and as a result some individuals were prosecuted when they should not have been.”

And that:

“ Where miscarriages of justice have happened, it is because prosecutors in Scotland accepted, as they were entitled to, evidence and explanations at face value from the Post Office.”

She added that she had sought urgent advice on the continued status of the Post Office as a specialist reporting agency. In a [further statement](#)¹⁵ to the Scottish Parliament on 16 May 2024, the Lord Advocate stated that the Post Office's status as a specialist reporting agency has been removed. Thus, in relation to Scotland, it will now have to report any allegations of criminality to the police for investigation.

Potential level of wrongful convictions

In her [statement](#) of 16 January 2024, the Lord Advocate advised that in September 2020 the Scottish Criminal Cases Review Commission (SCCRC) had written to 73 individuals who may have been convicted in Scotland on the basis of unreliable evidence from the Horizon IT system. Her understanding was that 16 individuals had then contacted the SCCRC, leading to seven referrals to the appeal court and four convictions being overturned. The Financial Memorandum published with the Scottish Bill states that six convictions had been quashed as of 1 May 2024.

The Lord Advocate added that the COPFS was carrying out additional checks to "ensure that no possible miscarriage of justice is missed", but that most of those identified had already been written to by the SCCRC.

She went on to suggest that the fact that only a small proportion of those written to by the SCCRC had responded "may be indicative of the fact that not every case in which Horizon evidence is present will represent a miscarriage of justice".

Following her statement, the Lord Advocate responded to a range of questions from MSPs. These included questions on whether the COPFS could have acted earlier to review prosecutions based on Horizon IT evidence, and possible reasons for victims of miscarriages of justice not coming forward.

In her [further statement](#) to the Scottish Parliament on 16 May 2024, the Lord Advocate provided an update on appeals as well as seeking to give more clarification around the actions of the COPFS in Horizon cases.

In relation to the number of people potentially affected, the Scottish Bill's [Policy Memorandum](#) comments that (para 13):

“ The number of cases referred to the High Court by the SCCRC only represents those who have come forward to have their cases considered. A number of the cases affected by the Horizon IT failings are over 20 years old, with some of the victims having passed away. Many others are in declining health or have lost faith in the justice system and do not wish to engage further with it. The current system relies on sub-postmasters choosing to lodge an appeal, which many will not want to do given their lack of trust in the system. It also relies on there being evidence that the conviction is unsafe and in many cases that evidence no longer exists.”

For the purposes of estimating the financial costs arising from the operation of the Scottish Bill, the [Financial Memorandum](#) suggests that (para 33):

“ a reasonable estimate of the number of convictions that may be quashed through the Bill would be 200. This is a central estimate based on the numbers of cases identified in earlier reviews and allowing for the objective criteria set out in the Bill and the removal of the barrier of interacting with the justice system which may have suppressed participation in the pre-existing processes. An upper estimate would be 300 (+50%) and a lower estimate would be 100 (-50%). These estimates carry a significant degree of uncertainty.”

The Financial Memorandum seeks to distinguish these estimates from the number of cases highlighted by the SCCRC (para 32):

“ It is not, however, possible to read directly across between the number of cases the SCCRC cited as being potential Horizon cases and the operation of the criteria in the Bill. This reflects, amongst other matters, the fact that the Bill is not undertaking a process of assessing whether a case meets the threshold for a miscarriage of justice (which is the High Court assessment when considering whether to quash a conviction and was the focus of the SCCRC's work). Instead, the Bill uses simple, factual criteria to identify cases where convictions will be quashed by the legislation.”

Compensation

Neither the Scottish Bill nor the equivalent UK Bill seek to establish compensation schemes. However, the intention is that people who have their convictions quashed under the provisions of either bill would be able to apply for compensation.

A general scheme of compensation for miscarriages of justice exists under section 133 of the Criminal Justice Act 1988. It is not limited to particular types of offence. Section 7(2) of the Scottish Bill seeks to ensure that people who have convictions quashed under its provisions are covered by this general scheme of compensation. However, it is anticipated that people who have their convictions quashed under the provisions of the Scottish Bill (or the equivalent UK Bill) will instead seek compensation under bespoke arrangements for Horizon IT convictions.

There are UK-wide compensation arrangements specifically for people affected by the Post Office Horizon IT scandal. These include arrangements to compensate people who have not been convicted but have suffered financially, as well as those with Horizon-related convictions. Information on these compensation schemes is provided in a House of Commons Library [briefing on the UK Bill](#) (see pages 43 to 48).¹⁰

In a [press release](#) on 13 March 2024,¹⁶ the UK Government said that it would be responsible for delivering a new Horizon Convictions Redress Scheme which would make compensation payments to those who have their convictions quashed under the UK Bill.¹⁶ It added that it aims to have the scheme open for applications as soon as possible once the UK Bill has been passed. The UK Bill does not apply to Horizon-related convictions in Scotland. However, the press release stated that:

“ Regardless of where or how convictions are quashed, redress will be paid to victims across the whole of the UK on the same basis. ”

The Scottish Government's intention in bringing forward the Scottish Bill is that people who have their convictions quashed under its provisions can apply to the UK Government compensation scheme.

The UK Government's press release noted that there is a risk that people who were genuinely guilty of a crime might have their convictions quashed under the provisions of the UK Bill, but said that it would seek to ensure that its compensation scheme is targeted on those wrongly convicted. And that:

“ Before receiving financial redress, sub-postmasters will be required to sign a legal statement vowing that they did not commit the crime for which they were originally convicted. Any person found to have signed a statement falsely in order to gain financial redress may be guilty of fraud. ”

The UK Bill

The [Post Office \(Horizon System\) Offences Bill](#) (the UK Bill) was introduced in the House of Commons on 13 March 2024.⁵ It had its Second Reading in the House of Lords on 13 May 2024. The Committee stage in the Lords is scheduled to take place from 3 June.

As introduced, the UK Bill applied to relevant convictions in England and Wales only. It was, however, amended to also cover convictions in Northern Ireland. It does not apply to convictions in Scotland. A UK Government [press release](#) explained its reasons for wanting to extend the scope of the UK Bill to Northern Ireland but not Scotland.¹⁷

A House of Commons Library [briefing on the UK Bill as introduced](#) (and so not reflecting the extension to Northern Ireland) was published on 18 March 2024.¹⁰ A House of Lords Library [briefing](#) was published on 8 May.¹⁸

The main provisions of the UK Bill, and some of the issues considered during its scrutiny, are outlined below.

Main provisions

The UK Bill provides that its provisions come into force on the day it is passed. On that day, all relevant convictions in England, Wales and Northern Ireland would be quashed.

To be a relevant conviction (not a term used in the UK Bill) all of the following criteria would have to be met:

- the conviction was for a 'relevant offence'
- the case was prosecuted by certain bodies (e.g. the Post Office or Crown Prosecution Service in England and Wales)
- the conviction took place before the coming into force of the UK Bill
- the conviction has not been considered by the Court of Appeal in either England and Wales or Northern Ireland (e.g. by refusing an appeal against the conviction).

The definition of a 'relevant offence' includes reference to:

- when the offence was alleged to have been committed (i.e. wholly or partly during the period 23 September 1996 to 31 December 2018)
- the type of offence (e.g. false accounting or fraud)
- the circumstances of the alleged offence (e.g. the convicted person was at the time carrying on a post office business where the Horizon IT system was being used).

These criteria are intended to ensure that a conviction relates to a period where the Horizon IT system was in use and was not for an unrelated offence.

The Secretary of State in relation to England and Wales, or Department of Justice in Northern Ireland, would be required to identify and notify individuals whose convictions

have been quashed. Court records would be changed to reflect convictions being quashed. There are also provisions relating to the deletion of police cautions (a type of out-of-court disposal) used in relation to relevant offences.

Issues raised during scrutiny

Given the scale and impact of the Horizon IT scandal, there has been broad support in both the House of Commons and House of Lords for the general approach taken in the UK Bill. However, a range of potential concerns and suggestions for change have been considered. These have included the following.

Territorial extent

On introduction in the House of Commons, the UK Bill applied to relevant convictions in England and Wales only. During scrutiny in the Commons:

- it was amended to also cover relevant convictions in Northern Ireland
- Marion Fellows MP (SNP) sought unsuccessfully to have it extended to Scotland.

The question of whether it should be extended to Scotland was debated in the Commons on [29 April 2024](#).¹⁹

The issue of whether or not the UK Bill should extend to Scotland has also been raised in the Scottish Parliament. For example, see exchanges between Douglas Ross MSP and Keith Brown MSP on [30 April 2024](#) (cols 3 to 5).²⁰

Constitutional issues

[Explanatory notes](#) published along with the UK Bill describe the approach it takes in quashing convictions as "an unprecedented and wholly exceptional legal solution to a miscarriage of justice of unparalleled scale and impact" (para 21).²¹ Two UK Parliament briefings on the UK Bill include discussion of constitutional issues:

- a House of Commons Library [briefing](#) published on 18 March 2004 (pages 35 to 40)¹⁰
- a House of Lords Library [briefing](#) published on 8 May 2004 (pages 20 to 23).¹⁸

Constitutional questions have related to the appropriateness of using legislation to overturn convictions imposed by the courts, rather than relying on the courts themselves to reconsider those convictions during appeals. For example, in opening the Second Reading debate in the House of Lords on [13 May 2024](#),²² Lord Offord of Garvel (Parliamentary Under-Secretary of State in the Department for Business and Trade) said (col 421):

“ I am well aware that the approach we are taking in the Bill is novel. In the Bill, we are using legislation to fulfil a function that in normal circumstances is rightly reserved to the independent judiciary. I am equally aware that these are not normal circumstances. Given the number of postmasters involved, the passage of time since the original conviction, the loss of evidence over that time, and the loss of trust in the system - meaning that many affected simply will not come forward to appeal - it is right that the state provides an exceptional response.”

Those raising concerns included Lord Burnett of Maldon (Crossbench), who argued for special arrangements for dealing with relevant convictions through the appeal courts. Regarding the proposals in the UK Bill, he said (col 428):

“ It may be that this Bill can be improved by amendment, but its flaws are fundamental. It seeks to achieve a desirable outcome by a novel and unconstitutional route when a satisfactory alternative is available. It will provide food for academic debate and will long feature in university courses on the rule of law, the independence of the judiciary and the separation of powers.”

Lord Falconer of Thoroton (Labour) argued against the idea of a modified appeal process, suggesting that the necessary changes would involve "bending our justice system out of its normal shape" (col 433). He went on to express support for the approach in the UK Bill:

“ I favour legislation like this, because it best does justice, which is the best protection for the rule of law. It is no criticism of the courts. It involves neither a slur on the judges nor the setting of a precedent which undermines the rule of law to say that the exceptional facts of this case cry out for legislation and not appeals.”

Exclusion of convictions already considered by courts of appeal

During the Second Reading debate in the House of Commons on [20 March 2024](#),²³ Kemi Badenoch MP (Secretary of State for Business and Trade) was asked about the fact that the UK Bill would not quash convictions where an appeal has been refused. She responded (col 957):

“ That is also something that we considered carefully. It is part of the trade-off that we had to make in doing something unprecedented: Parliament overturning convictions. We respect the judgement of the Court of Appeal - it has gone to an appellate judge. We are willing to consider some of those cases individually just to ensure that nothing has been missed, but the Bill has been drafted in consultation with the Crown Prosecution Service and the judiciary. We want to ensure that we are bringing everyone with us.”

Nevertheless, concerns have been expressed about the fairness of excluding those convictions. For example, during the Second Reading [debate](#) in the House of Lords, Lord Holmes of Richmond (Conservative) said (col 445):

“ Similarly, as other noble Lords have rightly stated, it seems inequitable for those who have already been to the Court of Appeal to be excluded from this legislation. They are effectively being punished for having been able to pursue their claims quickly and effectively, only to find themselves receiving no remedy and the outcome that the court, at that stage and on the evidence provided, delivered for them.”

Post Office's Capture accounting software

The UK Bill does not provide for the overturning of convictions based on evidence from Capture, an earlier accounting software system used by the Post Office.

In February 2024, the Post Office issued a [press release](#) stating that: ²⁴

“ We take very seriously any concerns raised about cases from before the Horizon system was first rolled out in 1999. Our current understanding is that Capture does not appear to have been 'networked', but the software was used by some Postmasters, alongside manual processes, for simplifying accounts before they were manually submitted.”

And that:

“ We are particularly concerned about allegations of prosecutions, and we are looking into this along with all available facts about Capture, including whether shortfalls could have been caused by faults in this software, and the potential impacts if so.”

The issue of convictions based on the Capture system was raised during the Second Reading [debate](#) in the House of Commons. In response to concerns, the UK Government Minister with responsibility for the Post Office (Kevin Hollinrake MP) stated that (col 1007):

“ we look at the Capture system slightly differently. Capture is a stand-alone spreadsheet rather than a network computer system. There is no remote access, for example. The key thing is that what we are doing here is exceptional and unprecedented. We have the body of evidence because it has been before a court. Part of the reason the court made its decision in 2019 was based on the Horizon issues, as it put it. We do not have that body of evidence with Capture.”

Potential for exonerating the guilty

The UK Government has acknowledged a risk that the approach taken in the UK Bill "could quash convictions of people who were genuinely guilty of a crime". ¹⁶ The [explanatory notes](#) published along with it comment that (para 25): ²¹

“ The criteria set out in the Bill for defining the category of convictions within its scope are intended to be unambiguous and capable of being applied without any element of judgement or discretion on the part of those whose job it is to notify those within scope that their convictions have been quashed.”

This is different from the process a court would go through when considering an appeal against conviction.

During the Second Reading [debate](#) in the House of Commons, David Davis MP (Conservative) expressed disappointment that the courts had not put in place a process for dealing quickly with Horizon IT appeals. He argued that the consequence of this was that (col 971):

“ the Bill represents the best of a bad job. Everybody has said it already; there is a difficult trade-off between natural justice and a fast, low-stress solution for the postmasters. That is what this Bill attempts to achieve.”

And that the UK Bill (col 972):

“ risks lumping the genuinely innocent majority with a very small potentially guilty minority. Each difficult case could have been dealt with on its individual merits rather than abandoning due process in the rush to bring this disgraceful episode to a close.”

During the Second Reading [debate](#) in the House of Lords, Lord Burnett of Maldon (Crossbench) noted that (col 427):

“ As Sir Robert Neill has pointed out, the Bill sets out to quash convictions 'even if Horizon evidence did not form part of the prosecution'. That is right. Condition E is simply 'that, at the time of the alleged offence, the Horizon system was being used for the purposes of the post office business' - not that it was being used by the defendant, nor that it was material to the conviction, but simply that it was there. There may be no Horizon evidence at all in many cases that this Bill would quash. This Bill would quash convictions not affected by the Horizon scandal.”

In response to this, the Lord Bishop of Manchester focused on the need to overturn the convictions of the innocent (col 436):

“ I note the arguments of the noble and learned Lord, Lord Burnett of Maldon, who reminded us that, unless cases are looked at individually, there is a risk that someone who had stolen money might now be let off. However, the principle that it is better that a guilty person go free than an innocent one be convicted lies at the root of our British justice system.”

Provisions of the Scottish Bill

The Scottish Government introduced the [Post Office \(Horizon System\) Offences \(Scotland\) Bill](#) (the Scottish Bill) in the Scottish Parliament on 14 May 2024. It seeks to respond to miscarriages of justice in Scotland resulting from the use of information obtained from the Post Office's Horizon IT system.

The [Policy Memorandum](#) notes that the Scottish Bill is based on the policy approach taken in the UK Bill. It goes on to say that this is intended to ensure that Scottish sub-postmasters are treated equally to those in other parts of the UK and that, where convictions are quashed, they are able to access the UK Government's compensation scheme.

Given the similarities between the Scottish and UK bills, consideration of at least some of the [issues highlighted above in relation to the UK Bill](#) may be relevant to the scrutiny of the Scottish Bill.

Quashing of convictions

Under the provisions of the Scottish Bill (as introduced), all relevant convictions in Scotland would be quashed on the day it comes into force - the day after Royal Assent.

To be a relevant conviction (not a term used in the Scottish Bill), all of the following criteria would have to be met:

- the conviction was for a 'relevant offence'
- the conviction took place before the coming into force of the Scottish Bill
- the conviction has not been considered by the High Court in its role as a court of appeal.

Unlike the UK Bill, there is no reference to the case having been prosecuted by certain bodies. In Scotland, any relevant prosecution would in practice have been taken forward by the Crown Office and Procurator Fiscal Service (the public prosecution service). Although private prosecution is possible in some limited circumstances, examples of this are very rare.

Relevant offences

What is meant by a 'relevant offence' is set out in section 2 of the Scottish Bill, and includes reference to:

- when the offence was alleged to have been committed (i.e. wholly or partly during the period 23 September 1996 to 31 December 2018)
- the type of offence (e.g. embezzlement or fraud)
- the circumstances of the alleged offence (e.g. the convicted person was at the time carrying on a post office business where the Horizon IT system was being used).

These criteria are intended to ensure that a conviction relates to a period where the

Horizon IT system was in use and was not for an unrelated offence. In this, it follows the approach in the UK Bill.

There are differences between the two bills in the specific offences listed. This reflects the different legal systems having different offences, with the intention being to identify those offences which would have been used to prosecute Horizon IT cases. The Policy Memorandum published along with the Scottish Bill notes that (para 32):

“ as with the list of offences contained within the UK Bill, the offences listed are those known to have been prosecuted in Scotland in cases involving evidence from the Horizon IT system.”

Not already considered by the High Court

A conviction would not be quashed under the provisions of the Scottish Bill where it has already been considered by the High Court. This restriction relates to the role of the High Court as a court of appeal, with detailed provisions set out in section 3 of the Scottish Bill. For example, a conviction would not be quashed if the High Court has refused leave to appeal against the conviction or has dismissed such an appeal.

It may be noted that the above provisions do not include reference to any appeals which might have been considered by the [Sheriff Appeal Court](#),²⁵ which was established in 2015.

In responding to questions, following a [statement](#) to the Scottish Parliament on 16 May 2024 relating to Horizon IT prosecutions,¹⁵ the Lord Advocate referred to there having been "no appeals in relation to cases refused by the court of appeal in Scotland" (col 74). However, it would appear that the Lord Advocate may have been referring to a particular group of appeals dealing with Horizon IT evidence. If so, this does not exclude the possibility that other appeals (including ones based on different grounds made before the problems with the Horizon IT system were widely known) may have been refused. Thus, the restriction on cases already considered by the High Court might still be expected to have a practical impact in real cases.

Where an appeal has not yet been determined by the High Court (e.g. because it is still ongoing), the conviction would still be quashed under the terms of the Scottish Bill if the other criteria are met. This also means that cases where the Scottish Criminal Cases Review Commission has decided not to refer a conviction to the appeal court for consideration, can be quashed under the provisions of the Scottish Bill.

The above provisions do not affect any further right of appeal through the courts which a person may have.

The approach in this area is similar to that taken in the UK Bill. There has been some discussion of the policy behind this restriction during scrutiny in the UK Parliament; with the suggestion that it is part of a balancing act in terms of how far the legislature should go in overruling the courts (e.g. see comments of the Secretary of State for Business and Trade during the House of Commons debate on [20 March 2024](#), at col 957).²³

Identification and notification of quashed convictions

Although relevant convictions would be automatically quashed when the provisions come into force, there needs to be a process to ensure that:

- people with such convictions (or their families) are identified and informed
- official records of those convictions are altered to reflect their being quashed.

Section 4 of the Scottish Bill would require the Scottish Government to "take all reasonable steps to identify the convictions quashed". In doing so, it would need to consider any representations made that a person had been convicted of a relevant offence - including representations from people with such convictions.

Where a conviction is identified as being quashed, the Scottish Government would then inform both the affected person and the convicting court. The latter would amend court records to reflect the quashing of the conviction.

The role of the Scottish Government under section 4 is supported by the provisions of section 6. That section states that the Scottish Government can require others to provide information needed for carrying out of its functions. The Policy Memorandum (para 32) states that section 6:

“ has no direct counterpart in the UK Bill and has been included on the basis that the Scottish Ministers will need to obtain information from other persons in order to successfully carry out their functions under the Bill.”

Section 6 does not state what consequences may follow if a person or organisation fails to provide the information required. However, Scottish Government officials have advised that there have been discussions with relevant Scottish justice organisations (e.g. Crown Office and Procurator Fiscal Service, Police Scotland and the Scottish Criminal Cases Review Commission), and that they have expressed a willingness to provide necessary information. In addition, the Scottish Government has received assurances from the UK Government that they will ensure that the Post Office (a company owned by the UK Government) cooperates.

Difference from pardons

It is worth noting the difference between a conviction being quashed and a person being pardoned. Whilst both can have great symbolic impact, the granting of a pardon does not overturn the conviction. The quashing of a conviction does overturn it, and thus may be seen as more appropriate where a conviction was based on tainted evidence.

The [Policy Memorandum](#) notes that (para 34):

“ The Scottish Parliament has previously passed legislation to pardon those convicted of offences in connection with the 1984 coal miners' strike and men convicted for offences relating to same-sex sexual activity between men that is now lawful. However, these pardons were essentially symbolic in nature and did not result in people becoming entitled to compensation for wrongful conviction or automatically having their convictions removed from the criminal history system.”

The legislation relating to same-sex sexual activity between men did, in addition, establish a process to allow people with relevant convictions to apply to have them formally disregarded and removed from public records. However, this was not an automatic consequence of being pardoned.

Alternatives to prosecution

In some cases, the police or Crown Office and Procurator Fiscal Service may offer a person various alternatives to being prosecuted in court for an alleged offence. These alternatives (sometimes referred to as 'direct measures') include warnings and financial penalties. Although they are not formal criminal convictions, they can appear on a person's criminal record.

Section 5 of the Scottish Bill would establish a process under which records of alternatives to prosecution relating to relevant offences can be deleted from the criminal history database.

The provisions of section 5 bear similarities to those for quashed convictions in section 4. In both situations, the Scottish Government would have a role in ensuring that criminal records are changed and in informing affected individuals. However, section 4 provides for a more proactive role for the Scottish Government, requiring that it takes "all reasonable steps to identify" quashed convictions. This is not replicated in section 5, although the Scottish Government would be required to consider any representations made that a person has received an alternative to prosecution for a relevant offence.

The UK Bill takes a similar approach in relation to the deletion of police cautions (a type of out-of-court disposal).

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