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Post Office (Horizon System) Offences (Scotland) Bill: Consideration prior to Stage 3

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Stage 3 proceedings for the Post Office (Horizon System) Offences (Scotland) Bill are scheduled to take place on 30 May 2024. This briefing outlines the main issues considered during Stages 1 and 2.



POST
OFFICE

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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 the other parts of the UK has been passed by the UK Parliament. It received Royal Assent on 24 May 2024, becoming the Post Office (Horizon System) Offences Act 2024.

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

The Scottish Bill was amended at Stage 2 to remove a provision, relating to cases where an appeal has already been considered by the High Court, which could have excluded some convictions from being quashed.

Introduction

The Scottish Government introduced the [Post Office \(Horizon System\) Offences \(Scotland\) Bill](#) (the Scottish Bill) ¹ on 14 May 2024. It seeks to respond to miscarriages of justice resulting from the use of information obtained from the Post Office's Horizon IT system. The [Policy Memorandum](#) ² 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, convictions in Scotland for relevant offences will be quashed on the day the legislation comes into force (the day after Royal Assent). Criminal records will be changed to reflect those convictions being quashed. The correction of records will also apply to situations where a person was dealt with by an alternative to prosecution for a relevant offence.

The Scottish Parliament agreed to deal with the Scottish Bill under emergency bill procedure - allowing for an accelerated scrutiny process by the whole Parliament. [Stage 1](#) took place on 21 May 2024, ³ with the general principles being agreed.

[Stage 2](#) took place on 23 May 2024. ⁴ This was followed by publication of the [Scottish Bill as amended at Stage 2](#). ⁵

Stage 3 proceedings (final consideration) are scheduled to take place on 30 May 2024.

Similar legislation relating to miscarriages of justice in England, Wales and Northern Ireland has been passed by the UK Parliament - the [Post Office \(Horizon System\) Offences Bill](#) (the UK Bill). ⁶ It received Royal Assent on 24 May 2024, becoming the Post Office (Horizon System) Offences Act 2024. The latter stages of its parliamentary scrutiny were accelerated to allow for its passage before the dissolution of the UK Parliament (in advance of the general election on 4 July 2024).

Neither the Scottish Bill nor the equivalent UK legislation seek to establish compensation schemes. However, the intention is that people who have their convictions quashed under the provisions of either will be able to apply for compensation. It is anticipated that applications will be made under bespoke UK-wide arrangements set up by the UK Government for Horizon IT convictions.

The quicker than expected conclusion of parliamentary scrutiny of the UK Bill has allowed Stage 3 proceedings for the Scottish Bill to be held earlier than previously envisaged. The Scottish Government had not wanted to complete Stage 3 until the equivalent UK Bill had been passed. This was to allow the Scottish Parliament to consider any amendments to the UK Bill and make equivalent amendments where appropriate (e.g. to ensure that the Scottish legislation does not diverge from that applying in other parts of the UK to such an extent that people who have their convictions quashed in Scotland might be unable to access the UK Government compensation scheme).

In fact, apart from the extension of the UK Bill's provisions to cover Northern Ireland (as introduced it applied to England and Wales only), amendment of the UK Bill during parliamentary scrutiny was quite limited.

An independent public inquiry is looking into the failings associated with the Horizon IT system - the [Post Office Horizon IT Inquiry](#).⁷

A [SPICe briefing on the Bill as introduced](#)⁸ includes information on:

- the Post Office Horizon IT scandal
- miscarriages of justice in Scotland
- issues raised during scrutiny of the UK Bill.

The Scottish Bill

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 information obtained from the Post Office's Horizon IT system. Under its provisions, convictions in Scotland for relevant offences will be quashed on the day the legislation comes into force (the day after Royal Assent). Criminal records will be changed to reflect those convictions being quashed. The correction of records will also apply to situations where a person was dealt with by an alternative to prosecution for a relevant offence.

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. There are however some differences between the two bills, including one resulting from changes made to the Scottish Bill at Stage 2 (discussed below).

Stage 1

[Stage 1](#) consideration of the Scottish Bill took place on 21 May 2024,³ following which its general principles were agreed.

The debate reflected broad support for the approach being taken in the Scottish Bill. Issues covered in the debate included:

- the justification for using legislation to overturn convictions imposed by the courts, rather than relying on the courts themselves to reconsider those convictions during appeals
- potential areas for amendment
- whether the Crown Office and Procurator Fiscal Service (COPFS), which was responsible for prosecuting cases in Scotland based on Horizon IT evidence, could have acted earlier to review prosecutions based on such evidence
- the role of specialist reporting agencies - organisations which can investigate and report cases directly to the COPFS for potential prosecution, without involving the police
- whether the UK Bill should have applied to Scotland.

Stage 2

[Stage 2](#) consideration of the Scottish Bill took place on 23 May 2024.⁴

Two amendments were agreed to, both put forward by the Scottish Government. Together they removed a provision in the Scottish Bill as introduced which could have excluded some convictions from being quashed.

Under the provisions of the Scottish Bill as introduced, all of the following criteria would have had to be met for a conviction to be quashed:

- the conviction was for a 'relevant offence' (as defined in section 2 of the Scottish Bill)
- the conviction took place before the coming into force of the Scottish Bill
- the conviction has not already been considered by the High Court.

The final bullet point related to the role of the High Court as a court of appeal, with detailed provisions set out in the now deleted section 3. For example, a conviction would not have been quashed if the High Court had refused leave to appeal against the conviction or had dismissed such an appeal. This third criteria was removed by the Scottish Government's amendments.

During Stage 2, the Cabinet Secretary for Justice and Home Affairs explained why the Scottish Government was seeking to amend the Scottish Bill in this way (col 57):

“ I have listened to the concerns raised by members about how section 3 gives rise to unequal treatment, in that those people who protested their innocence the most would be penalised. If we were to leave in that section, those who unsuccessfully contested their conviction on appeal, or unsuccessfully sought leave to appeal, would not have their conviction quashed, whereas those who, in effect, accepted their conviction and chose not to appeal, or abandoned their appeal, would have their conviction quashed.”

And that:

“ We also know now that, in many appeal cases, members of the judiciary will not have been aware of the Horizon system issues at the time of appeal decisions, and even if an appeal was considered after the problems with Horizon were known about, any convictions considered on appeal will have been subject to a different test from convictions that are quashed by this bill. The amendments in this group will ensure that every person whose conviction meets the criteria in the bill will be treated equally and will have their conviction quashed, regardless of previous appeal decisions.”

On the issue of convictions already considered by a court of appeal, the approach in the Scottish Bill as introduced was similar to that taken in the UK Bill as introduced. However, the UK Bill was not amended to remove the relevant restriction. The possibility of making equivalent changes to the UK Bill was considered by the [House of Lords on 23 May 2024](#),⁹ but relevant amendments were disagreed or not moved. In setting out the UK Government's reasons for not supporting those amendments, Lord Offord of Garvel (Parliamentary Under-Secretary of State in the Department for Business and Trade) said (col 1198):

“ 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. The Court of Appeal cases are excluded from the Bill because we believe the Government must tread carefully [where] judges in the senior appellate courts have considered a case.”

And that (col 1199):

“ We recognise that this approach may leave individuals in question concerned about the way forward for their cases. In cases where the Court of Appeal has upheld a conviction, the usual routes of appeal remain available to them, and the Criminal Cases Review Commission stands ready to consider these cases, should the individuals concerned wish to pursue a further appeal.”

As noted earlier, the approach taken in the Scottish Bill is intended to allow people, who have convictions quashed under its provisions, access to the UK Government's compensation scheme. Given that the above amendments to the Scottish Bill represent a divergence from the UK Bill, the Cabinet Secretary for Justice and Home Affairs noted during Stage 2 that she had (col 58):

“ sought assurances from the United Kingdom Government minister Kevin Hollinrake that the amendments, which deviate from the approach of the UK Government bill, would not jeopardise sub-postmasters' access to the UK compensation scheme. 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.”

A range of other potential amendments were considered by the Scottish Parliament but not agreed at Stage 2. These included ones lodged by Fergus Ewing MSP (amendment 18) and Russell Findlay MSP (amendment 22) which would both require the Scottish Government to report on the operation of the legislation. During Stage 2, the Cabinet Secretary for Justice and Home Affairs indicated that this issue could be taken forward at Stage 3 (col 89):

“ Although I cannot support amendment 22 as drafted, I make it clear that I am very happy to work with Mr Findlay to develop a reporting obligation to bring back at stage 3, and to work with Mr Ewing on his amendment 18, which covers similar territory. That would include a commitment to publish a report to be laid before Parliament within 12 months of royal assent.”

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