

EXPLANATORY NOTES

Post Office (Horizon System) Offences (Scotland) Act 2024 (asp 6)

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POST OFFICE (HORIZON SYSTEM) OFFENCES (SCOTLAND) ACT 2024

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Post Office (Horizon System) Offences (Scotland) Act 2024. They do not form part of the Act and have not been endorsed by the Parliament.

2. These Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

THE ACT

3. 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 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.

4. This Act, like the Post Office (Horizon System) Offences Act 2024 which applies in respect of convictions in England, Wales and Northern Ireland, takes the unprecedented and wholly exceptional step of providing a blanket exoneration for those affected.

CROWN APPLICATION

5. 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 Act applies to the Crown in the same way as it applies to everyone else.

Section 1 – Quashing of convictions for relevant offences

6. This section provides that those convictions for "relevant offences" which took place before the date on which the Act comes into force are to be quashed on the day on which the legislation comes into force (14 June 2024). 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"

7. 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.

8. 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, for example, 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 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. Where the offence was alleged to have been committed at a particular time, the Horizon system needs to have been in use at the time of the alleged offence. Where the offence was alleged to have been committed at any time during a period as mentioned in subsection (2)(b), the Horizon system needs to have been in use for either all or part of that period. This reflects the fact that the period over which the offences were alleged can start earlier than the installation of the Horizon system or extend beyond the date on which it was removed.

9. 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 Act. Art and part liability is the principle that where two or more 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 – Identification and notification of quashed convictions

10. Section 3 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.

11. 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.

12. 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.

13. 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 representatives, 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.

14. 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 was 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 section 3(2), 3(3) and 3(4) apply to that conviction.

Section 4 – Deletion of details of alternatives to prosecution for relevant offences

15. This section sets out the process for deleting details of alternatives to prosecution given for relevant offences. It applies to those alternatives to prosecution which were given before the date on which the Act comes into force. 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.

16. 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.

17. Subsections (3) and (4) make equivalent provision for alternatives to prosecution as subsections (4) and (5) of section 3 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 13 and 14 of these notes for more details of the equivalent provision in relation to convictions.

18. 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 5 – Provision of information

19. Section 5 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),
- 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,
- reporting on the operation of the Act.

20. In particular, paragraph 11 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 6 – Report on the operation of the Act

21. Section 6 requires the Scottish Ministers to publish a report on the operation of the Act. The report must be published and laid before the Scottish Parliament as soon as reasonably practicable after one year has elapsed from the Act coming into force. The report will therefore cover the first year of operation of the Act.

22. The report may contain information about anything to do with the operation of the Act but it must include the type of information set out in subsection (2). That information is the number of notifications of quashed convictions that have been given to the convicting courts and the individuals themselves, and the steps taken by the Scottish Ministers to identify quashed convictions and to give notifications to the individuals concerned.

Section 7 – Consequential provision

23. Subsection (1) provides that a person whose conviction is quashed by this legislation is to be treated (except for the purpose of section 3) as if, on the day on which the Act comes into force (14 June 2024), their conviction was quashed by the High Court of Justiciary on an appeal made by the person. Section 3 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.

24. 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.

25. 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

26. 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.

27. Regulations under this section may modify any enactment (including the Act itself). 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.

28. 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

29. Subsection (1) of this section provides definitions for various terms used in the Act. 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 discharge[1]),
- "Horizon system" is defined as versions of the Horizon software excluding HNG-A (see the discussion of condition A at paragraph 8 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.

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

[1] 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.

Section 10 – Commencement

31. This section provides that the provisions of the Act come into force (i.e. take effect) automatically on the day after it receives Royal Assent. This means that it takes effect on 14 June 2024.

Section 11 – Short title

32. This section provides for the Act to be known as the Post Office (Horizon System) Offences (Scotland) Act 2024.

PARLIAMENTARY HISTORY

33. The following is a list of the proceedings in the Scottish Parliament on the Bill for the Act and significant documents connected to the Bill published by the Parliament during the Bill's parliamentary passage. The Act was passed under the procedure for Emergency Bills.

Proceedings and reports	***Reference***
Introduction	
Bill	SP Bill 47 Session 6 (2024)
Explanatory Notes	SP Bill 47-EN Session 6 (2024)
Policy Memorandum	SP Bill 47-PM Session 6 (2024)
Financial Memorandum	SP Bill 47-FM Session 6 (2024)
Delegated Powers Memorandum	SP Bill 47-DPM Session 6 (2024)
Statements on Legislative Competence	SP Bill 47-LC Session 6 (2024)
Stage 1	
Emergency Bill debate, 15 May 2023	Official report, cols 81 - 86
Consideration by the Parliament, 21 May 2024	Official report, cols 27 - 79
Stage 2	
Marshalled list of amendments for Stage 2	SP Bill 47 – ML Session 6 (2024)
Groupings of amendments for Stage 2	SP Bill 47 – G Session 6 (2024)
Consideration by the Parliament, 23 May 2024	Official report, cols 57 - 93
Bill as amended at Stage 2	SP Bill 47A Session 6 (2024)
Stage 3	
Marshalled list of amendments for Stage 3	SP Bill 47A – ML Session 6 (2024)
Groupings of amendments for Stage 3	SP Bill 47A – G Session 6 (2024)
Consideration by the Parliament, 30 May 2024	Official report, cols 62 - 107
Bill as passed	SP Bill 47B – Session 6 (2024)
Royal Assent	
Royal Assent – 13 June 2024	2024 asp 6

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