

Post Office (Horizon System) Offences (Scotland) Bill

Delegated Powers Memorandum

Introduction

1. This Delegated Powers Memorandum has been prepared by the Scottish Government in accordance with Rule 9.3.3B of the Parliament’s Standing Orders in relation to the Post Office (Horizon System) Offences (Scotland) Bill (“the Bill”). It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers.

2. The following other accompanying documents are published separately:

- Explanatory Notes (SP Bill 47–EN);
- a Financial Memorandum (SP Bill 47–FM);
- a Policy Memorandum (SP Bill 47–PM);
- statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 47–LC).

3. This Memorandum has been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Parliament.

Outline of Bill provisions

4. Section 1 provides that convictions for “relevant offences” to be quashed when the Bill comes into force, provided that the convictions were made in Scotland and have not been considered by the High Court.

5. Section 2 defines what is meant by a relevant offence. It sets out five conditions that must be met for the conviction to be quashed by the Bill:

- Condition A – the offence must have been committed between 23 September 1996 and 31 December 2018.
- Condition B – the offence was embezzlement, fraud, theft, or an ancillary offence.

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- Condition C – at the time the offence occurred, the person was carrying on a post office business, or working in a post office for the purpose of a post office business.
- Condition D – the person was alleged to have committed the offence in connection with carrying on or working for the purposes of a post office business.
- Condition E – at the time of the alleged offence, the Horizon system was being used for the purposes of that post office business.

6. Section 3 provides for how to determine when a conviction has been considered by the High Court (and is therefore not quashed by the Bill). It also specifies that nothing in the Bill prevents a further appeal against a conviction that has been considered by the High Court.

7. Section 4 explains the process for the Scottish Ministers in identifying those convictions quashed by the Bill, securing the amendment of the records of those convictions, and notifying relevant individuals. The convicting court must update records of a relevant conviction to record that the conviction was quashed.

8. Section 5 sets out a process for the deletion of details of alternatives to prosecution for relevant offences, where the Scottish Ministers become aware of them. It also provides for notification to affected individuals.

9. Section 6 allows the Scottish Ministers to impose a requirement on any person (which is broader than individuals and includes legal persons) to provide information which they hold, which the Scottish Ministers consider is necessary for the fulfilment of their functions under this legislation, and which is the subject of a written notice issued by the Scottish Ministers.

10. The remaining provisions are all categorised under the heading of “final provisions”. Section 7 makes consequential provision; section 8 provides a power to make ancillary provision; section 9 includes definitions and clarifications to support interpretation of the Bill; section 10 provides that the Bill will come into force on the day after Royal Assent; and section 11 provides for the Bill’s short title.

Rationale for subordinate legislation

11. The Bill contains only one delegated power, which is explained in more detail below. In deciding whether provisions should be in a Bill or in subordinate legislation, the Scottish Government gives due regard to:

- the need to strike a balance between the importance of the issue and providing flexibility to respond to changing circumstances,
- the need to make appropriate use of valuable Parliamentary time, and

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- the need to deal with the unexpected, which might otherwise frustrate the purpose of the provision in primary legislation approved by the Parliament.

12. In this case, the provision made by the Bill is intended to take effect the day after Royal Assent is granted (albeit that the notification to affected individuals of records being updated will not occur instantly). As such, the provision made by the Bill generally requires to be made without reference to delegated powers.

Delegated powers

Section 8: Ancillary provision

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative if amending primary legislation, otherwise negative

Provision

13. This section provides that the Scottish Ministers may make regulations to make any incidental, supplementary, consequential, transitional, transitory or saving provision that they consider appropriate for the purpose of, in connection with or for giving full effect to the Bill.

Reason for taking power

14. While the Scottish Government has given careful consideration to the provisions of the Bill, the Bill may give rise to a need for ancillary provision. The power to make such provision is common in Bills to provide flexibility to make any adjustments in light of experience in relation to the operation of the Act as timeously as possible. The Scottish Government considers that it is appropriate to take a power to deal with any ancillary matters that might emerge in the course of implementing the Bill, so that any unexpected issues which require ancillary provision to be made can be dealt with effectively and so that the purpose of the Bill is not inadvertently obstructed.

Choice of procedure

15. Regulations made under this section which contain a provision which adds to, replaces or omits any part of the text of an Act are subject to the affirmative procedure. Otherwise, regulations made under this section are subject to the negative procedure. This approach is typical for ancillary powers of this type and is considered to provide an appropriate level of Parliamentary scrutiny.

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