

Post Office (Horizon System) Offences (Scotland) Bill

Financial Memorandum

Introduction

1. As required under Rule 9.3.2 of the Parliament's Standing Orders, this Financial Memorandum is 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:
 - Explanatory Notes (SP Bill 47–EN);
 - a Policy Memorandum (SP Bill 47–PM);
 - a Delegated Powers Memorandum (SP Bill 47–DPM);
 - statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 47–LC).
3. This Financial Memorandum has been prepared by the Scottish Government to set out the costs associated with the measures introduced by the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

Context for the Bill

4. This Bill is intended to replicate the provisions of the UK Government's Post Office (Horizon System) Offences Bill, subject to minor modifications for the operation of Scots law. As such, the same context arises in terms of the need for this Bill as it does for the UK Government Bill¹.
5. This context is that from 1996 the Post Office piloted the Horizon software in some of its branches. This software was introduced across the network of Post Office branches in 2000. The software had faults which meant that some postmasters' accounts showed false shortfalls. The Post Office obliged postmasters to "repay" these false shortfalls.

¹ <https://publications.parliament.uk/pa/bills/cbill/58-04/0181/230181.pdf>

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6. Some postmasters and others were suspended and/or dismissed. Others were prosecuted for dishonesty offences - in England and Wales by the Post Office itself or by the Crown Prosecution Service (CPS) and in Scotland by the Crown Office and Procurator Fiscal Service (COPFS). Some postmasters were convicted and even imprisoned.
7. Some postmasters were made bankrupt. Some postmasters lost their homes. Some postmasters suffered mental or physical health problems as a result of their treatment or of the financial consequences. Some postmasters were ostracised by their local communities.
8. All of these events affected postmasters in Scotland.
9. In 2016, a group of 555 people took the Post Office to the High Court in England and Wales in a case managed pursuant to a Group Litigation Order made in March 2017. This legal action led to two major judgments² which were very critical of the Post Office's software, its contracts with postmasters and its general behaviour.
10. The launch of a judicial inquiry by the UK Government was subsequently announced into the scandal, which was upgraded to a statutory inquiry in June 2021. This is currently taking place and being chaired by Sir Wyn Williams. In April 2021, the English and Welsh Court of Appeal overturned the convictions of 39 postmasters whose cases had been referred by the Criminal Cases Review Commission (CCRC). Further convictions have since been overturned in England and Wales.
11. In Scotland, as at 1 May 2024, six convictions of postmasters have been quashed by the High Court after being referred by the Scottish Criminal Cases Review Commission (SCCRC).
12. A number of the cases affected by the Horizon IT failings are over twenty years old, with some of the victims having passed away. For many others, they are in declining health or have lost faith in the justice system and do not wish to engage further with it.
13. The current approach to delivering justice relies on postmasters choosing to lodge an appeal, which many will not want to do given their lack of trust in the justice system. The system of delivering justice also relies on there being evidence that the conviction is unsafe and in many cases that evidence no longer exists. Continuing in this way therefore would not achieve the objective of ensuring all wrongful convictions are quashed.
14. On 10 January 2024, the UK Prime Minister announced³ new primary legislation to make sure that those convicted as a result of the Horizon scandal, widely described

² <https://www.judiciary.uk/wp-content/uploads/2019/12/bates-v-post-office-judgment.pdf> and <https://www.judiciary.uk/wp-content/uploads/2022/07/Hamilton-Others-v-Post-Office-judgment-230421.pdf>

³ <https://www.gov.uk/government/news/government-to-quash-wrongful-post-office-convictions>

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as the biggest miscarriage of justice in UK history, have their convictions swiftly quashed and can be compensated. On the same day, the Scottish First Minister announced⁴ that the Scottish Government would support UK-wide legislation to deliver justice for postmasters.

15. The UK Government decided to exclude Scotland from the extent of their Bill. As a result, this Bill, which is intended to replicate the provision of the UK Bill (subject to minor modifications for the operation of Scots law), is required.

16. The effect of the Bill is both symbolic and practical.

17. By quashing the convictions of postmasters, this removes the stain from those who were wrongly convicted.

18. However, it also has a practical effect. Under the Overturned Convictions scheme established by the UK Government⁵, anyone who was wrongfully convicted as a result of Horizon evidence is eligible to receive compensation of at least £600,000, but only once their conviction has been overturned. This means that many postmasters and others who were wrongfully convicted but have not appealed through the courts are unable to access the compensation that they deserve.

19. The UK Bill will remove this barrier to access for those who ought to be entitled to financial redress through the UK Government's compensation schemes. This Bill seeks to do likewise for Scottish postmasters.

What the Bill does

20. Section 1 relates to the quashing of convictions for relevant offences. Every conviction to which the Act applies is quashed on the date on which the Bill comes into force. It sets out that the Bill applies to a conviction for a relevant offence where the offence was prosecuted in Scotland, the conviction took place before the coming into force of the legislation, and that conviction has not been considered by the High Court.

21. Section 2 sets out when an offence is considered "relevant" for the purposes of the Bill. There is a list of five conditions that must be met.

22. Section 3 provides for when a conviction is to be excluded from the scope of the scheme because it has been considered by the High Court.

23. Section 4 provides that the Scottish Ministers are responsible for identifying convictions that have been quashed and notifying the convicted person of this (or

⁴ <https://www.gov.scot/news/steps-to-be-taken-to-ensure-scotland-is-part-of-a-uk-wide-approach-to-post-office-convictions/>

⁵ <https://corporate.postoffice.co.uk/en/horizon-scandal-pages/overturned-convictions-and-compensation-information-on-progress>

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notifying the convicted person's personal representative if the person is no longer alive). If it is not possible to do either of these things, the Scottish Ministers must take reasonable steps to notify such other person as they consider appropriate of the quashing of the conviction. Also, the Scottish Ministers must, in particular, consider any representations made to them by any person which claims that a person has a conviction for a relevant offence, with a view to taking reasonable steps to identify convictions quashed. The Scottish Ministers must also notify the convicting court that the conviction has been quashed, and the court must then update its records accordingly.

24. Section 5 makes similar provision as is made in section 4 but in relation to alternatives to prosecution rather than convictions.

25. Section 6 allows the Scottish Ministers to impose a requirement on any person 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 Ministers.

26. The other sections relate to such matters as consequential provision and commencement.

Costs on the Scottish Administration

27. There will be costs arising from the operation of the Bill falling on the Scottish Administration.

28. Under section 4 of the Bill, the Scottish Ministers must take all reasonable steps to identify convictions quashed by the Bill.

29. It is not known with certainty how many convictions will fit the criteria for the quashing of convictions provided for in the Bill. The offences of fraud, theft and embezzlement are relatively commonly prosecuted criminal offences in Scotland. However, the operation of the criteria in section 2 of the Bill means that it is necessary for such offences to have been committed within a specific time frame (23 September 1996 to 31 December 2018), for the convicted person to have been running or working in a post office business, for the offence to have related to the running of or working in a post office, and for the Horizon computer system to have been in use at the time in the post office business.

30. All of these additional criteria will operate as a filter on the number of relevant offences.

31. In light of the impact of evidence from the Horizon IT system on a potentially large number of cases, the SCCRC decided as a matter of policy to make a reasonable effort to locate those who may have been affected and encourage them to make an application for a review of their case. In September 2020 they wrote to approximately 80

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individuals who had been identified as having been convicted in a case potentially related to the Horizon system. The individuals were identified through a review exercise carried out by the SCCRC, who obtained data from Post Office Limited as well as the Crown Office and Procurator Fiscal Service (COPFS), who had also undertaken their own review.

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.

33. Within this context, it is suggested that 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 Bill itself recognises the uncertainty of the numbers of convictions quashed, through the inclusion of a specific mechanism in section 4 for the Scottish Ministers to identify cases where convictions are quashed (such a mechanism would not be needed if there was certainty as to the relevant cases). Whilst the Scottish Government estimates the number of convictions that will be quashed as 200, processes will need to be put in place to ensure that the Scottish Ministers have taken 'all reasonable steps' under section 4 of the Bill to identify convictions which come within the reach of section 1. Based on discussions with COPFS and their knowledge of the overall caseload, it is estimated that between 1,000 to 2,000 cases will need to be considered.

34. There will be administrative costs arising for Scottish Government officials involved in the process of identifying quashed convictions. These costs are likely to form part of existing Scottish Government job roles as the Act is implemented, meaning that they will be met from within the existing workforce and overall budget based on reprioritising workload.

35. For the purposes of providing an estimated cost, it may be assumed that a review of cases which may meet the criteria requires, say, 10 hours of staff work time per case to take reasonable steps to identify cases (e.g. corresponding with the Post Office, COPFS, etc.), review the information against the criteria in the Bill, and notify certain persons when cases are identified as meeting the criteria. This estimate is based on a reasonable average taking into consideration the various steps that would need to be taken, informed to some degree by existing review work carried out by COPFS. This would amount to 10,000 to 20,000 hours of staff time in total, depending on whether this is applied to the low estimate of cases to be reviewed (1,000) or the high estimate of cases to be reviewed (2,000).

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36. This 10 hours of staff time is an estimate and reflects the fact that some cases may require more intensive engagement to take reasonable steps than others. As indicated above, work has already been carried out by both the SCCRC and COPFS in attempting to identify cases where a miscarriage of justice may have occurred. These cases would be considered in the first phase of any review of cases to ensure those people and the court are notified in early course that the conviction has been quashed.

37. However, in other cases Ministers may require further information from a number of different organisations which will add to the time spent on a case and, in other cases, consideration may only be prompted by initial consideration of a request made by a person for a case to be looked into. This will add time to the consideration needed and has therefore been taken into account in terms of arriving at a reasonable average.

38. Assuming this work is carried out at B3 level, the total cost to the Scottish Government of one hour of B3 work time is on average £34 (with the assumed 10 hours of time referred to above therefore amounting to a cost of £340 per case). The upper range estimate of 2,000 cases would lead to a cost of c. £680,000 and the lower range estimate of 1,000 cases would amount to a cost of c. £340,000. A central estimate of 1,500 cases would amount to a cost of c. £510,000.

39. Whilst this memorandum applies the 10 hours per case to all reviews, it is anticipated that many will not require such a large time commitment and so these are upper estimates of time. As noted above, the cases which have already been identified by COPFS and the SCCRC should be able to be confirmed to fall within the Bill's criteria very quickly. It is also anticipated that it will be relatively fast work to eliminate a number of cases of embezzlement, fraud and theft which fall within the relevant date range but do not meet the condition of being in connection with carrying on, or working for the purposes of, a post office business (for example, where the theft was part of a housebreaking). Where more time is likely to be needed is in cases where, for example, the condition of carrying on, or working for the purposes of, a post office business is established, but information needs to be obtained in order to establish whether the condition that the Horizon system was being used is met.

40. There will also be costs falling on COPFS. These costs will arise for them from the likelihood of Scottish Ministers engaging with them to seek information about criminal cases which will assist in identifying cases where a conviction is likely to fall within the criteria in the Bill. It is anticipated that the majority of the work in relation to identifying cases which fall within the criteria will be carried out by Scottish Government officials, and that as a result the costs falling on COPFS are likely to be lower than those falling on the Scottish Government. For the purposes of estimating overall costs, the costs on COPFS have been estimated at one third of the costs on the Scottish Government, on the basis that this will relate to interrogating records and collating material rather than involving the process of review and notification, so £113 per case.

41. There will also be costs falling on the SCCRC. These costs will arise from the likelihood of Scottish Ministers engaging with them to seek information about criminal cases which will assist in identifying cases where a conviction has been quashed. It is

anticipated that the majority of the work in relation to the identification of the cases will be carried out by Scottish Government officials, and as a result the costs falling on SCCRC are likely to be lower than those falling on the Scottish Government. For the purposes of estimating overall costs, the costs on SCCRC have been estimated at one third of the costs on the Scottish Government, so £113 per case, but restricted to the estimate of the number of cases which it is considered may be quashed by the Bill - i.e. a range of between 100 and 300 cases. Again these costs are on the basis that the SCCRC is involved in interrogating and providing records, rather than carrying out the process of review and notification and the scope of this work is restricted to the numbers of cases which have already been identified as part of existing review work, or where any further information is sought in order to determine whether a conviction has been quashed. The SCCRC do not have access to the full caseload which could be caught by the Bill as their role is quite different to that of COPFS.

42. There will also be costs falling on Scottish Courts and Tribunals Service (SCTS) in Scottish Ministers engaging with them to seek information about criminal cases which will assist in identifying cases where a conviction is likely to fall within the criteria in the Bill. Thereafter they will be required to update digital and physical records in their possession in cases where the Scottish Ministers have identified a quashed conviction and notify SCTS. It is anticipated that this work will not be as time consuming as the original identification of cases or the provision of relevant information from the investigations, as what SCTS may hold is limited to relevant court records, and as such lower costs are expected to fall on SCTS than on either the Scottish Government, COPFS or the SCCRC. For the purposes of estimating overall costs, the costs on these bodies have been estimated at one fifth of the costs on the Scottish Government.

43. In relation to SCTS, it should also be noted that there may be additional costs associated with cases where a financial penalty was imposed as part of a conviction which has been overturned by the Bill. In such cases, any sums paid to the court will need to be returned to the individual in question.

44. Given the difficulties noted above in terms of estimating the total number of convictions likely to be considered within the ambit of the Bill, it is not possible at this stage to quantify in how many of the convictions that will be overturned by the Bill, financial penalties were imposed. The Scottish Government is in discussion with SCTS and will continue to investigate this matter. By way of illustration, the median fine imposed on individuals across all Scottish courts in 2021/22 (the last full year for which data is currently available) was £280⁶.

45. It should be borne in mind that the repayment of financial penalties in relation to overturned convictions would in any event be required under the current scheme whereby cases are referred to the High Court by the SCCRC. There have been 16 applications to the SCCRC to date, where it could reasonably be expected that, in the absence of this Bill, the referrals would proceed and could result in the quashing of the conviction. As such, these costs are not always costs which exist as a direct result of

⁶ <https://www.gov.scot/publications/criminal-proceedings-scotland-2021-22/pages/15/>

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the provisions of this Bill, although the Bill will have the effect of causing them to fall due more readily.

46. It is accepted, however, that the Bill will quash more convictions than would otherwise be quashed by the SCCRC appeal route, and as such this memorandum proceeds on the basis that the costs are attributable to the Bill.

47. Finally, minimal costs may also fall on Police Scotland. Scottish Ministers may engage with them to seek information about criminal cases which will assist in identifying cases where a conviction is likely to fall within the criteria in the Bill. It is anticipated that Police Scotland may hold some information about cases they reported to COPFS, but the majority of the convictions which will be quashed by the legislation involve cases reported to COPFS by the Post Office. There may also be requests made to the police to carry out checks from the Police National Computer. In addition, the Scottish Ministers may engage with them under the provisions of section 5 of the Bill. Where Scottish Ministers become aware that an alternative to prosecution was made in relation to a relevant offence, Police Scotland will be instructed to amend the Criminal History System to delete that alternative to prosecution. However, the number of alternatives to prosecution made in relation to relevant offences are understood to be far lower than the number of convictions. There is also not the same duty on Ministers to take all reasonable steps to identify such cases. As such the costs falling on Police Scotland are likely to be much lower than those falling on SCTs.

48. Virtually all costs falling on the Scottish Administration are expected to arise in the financial year 2024-25. The Bill is expected to pass before the autumn, with Royal Assent following shortly thereafter, whereupon convictions will be quashed. The vast majority of action taken in relation to identifying and notifying individuals affected will therefore take place around, or immediately after, the time of the Bill receiving Royal Assent. It is of course possible that representations will be made to Ministers to investigate a particular case at a later date, but this memorandum proceeds on the basis that all costs will be incurred in the current financial year.

49. For completeness, it should also be noted that section 7(2) of the Bill allows the quashing of a conviction by this Bill to be treated as the person's conviction being reversed for the purpose of access to the compensation scheme which exists under section 133 of the Criminal Justice Act 1988. Any compensation payable under that scheme in respect of Scottish convictions would be payable by the Scottish Ministers. However, the UK Government has indicated in paragraph 65 of the Explanatory Notes⁷ to its Bill that it expects it to be unlikely for any compensation to be sought in England and Wales under the 1988 Act given the existence of the Overturned Convictions compensation scheme. Given that it is not anticipated that claims would be made to the 1988 Act scheme from the much wider pool of potential applicants in England and Wales, this memorandum proceeds on the basis that the anticipated cost to the Scottish Administration arising due to this provision of the Bill is nil.

⁷ <https://publications.parliament.uk/pa/bills/cbill/58-04/0181/en/230181en.pdf>

50. The total estimated costs falling on the Scottish Administration are as follows:

Public Body	Low Estimate	Central Estimate	High Estimate
Scottish Government	£340,000	£510,000	£680,000
COPFS	£113,333	£170,000	£226,666
SCCRC	£11,500 ⁸	£22,500	£34,000
SCTS	£68,000 + financial penalty repayment costs	£102,000 + financial penalty repayment costs	£136,000 + financial penalty repayment costs
Police Scotland	minimal	minimal	minimal
Total	£532,833	£804,500	£1,076,666

Costs on local authorities

51. It is not expected there will be any costs arising for local authorities.

Costs on other bodies, individuals and businesses

52. The effect of the Bill is to quash convictions. This in itself does not impose a cost for the UK Government. However, through the UK Government/Post Office operated compensation schemes, a person with a conviction quashed will be able to access compensation. This is a key aim of the Bill. This, however, is governed by the rules of the compensation schemes rather than directly by this Bill and so no cost is indicated for the purposes of this financial memorandum.

53. However, it may be observed that, as noted above, those with convictions which arose from the Horizon IT failings and whose convictions are quashed are expected to be eligible for a minimum payment of £600,000 from the UK Government. The UK Government has indicated that, in order to mitigate the risk that people will receive financial redress when they have not been wronged, a condition of access to the redress will be that the person signs a statement to the effect that they did not commit the crime for which they were originally convicted. This means that anyone whose

⁸ The figures for SCCRC are based on the range of 100 to 300 cases which it is estimated will be quashed, as the information they may hold will be limited to those cases.

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conviction is quashed by the Bill despite them having committed the offence should be deterred from falsely claiming compensation. As such, it could reasonably be estimated that the number of individuals who claim compensation should be no higher than the number of convictions which are estimated to be quashed by the Bill – but that the number may well be lower.

54. It should also be noted that one effect of the quashing of convictions is that regulation 9D of the Social Security (Credits) Regulations 1975 will apply. This provides for individuals who were imprisoned for a quashed conviction to be entitled to a pension credit in respect of that period. To the extent that Scottish postmasters were imprisoned as a result of their convictions, and to the extent that they might not otherwise have an entitlement to the full state pension, this would give rise to an increased cost falling on the UK Government. While it has not been possible to estimate this cost, it is expected that the number of those affected would be low. The cases were mostly dealt with on summary complaint and the sentences were mostly financial penalties and community sentences.

55. In identifying cases of convictions which have been quashed, engagement will also occur with the Post Office in terms of information they hold which may assist the Scottish Ministers. These costs are likely to be of a similar extent to those falling on COPFS.

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