

POST OFFICE (HORIZON SYSTEM) OFFENCES (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. As required under Rule 9.3.3 of the Parliament’s Standing Orders, this Policy 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 Financial Memorandum (SP Bill 47–FM);
- 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 Policy Memorandum has been prepared by the Scottish Government to set out the Government’s policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

BACKGROUND

4. This Bill is based on the policy approach of the UK Government Post Office (Horizon System) Offences Bill¹ which was introduced in the House of Commons on 13 March 2024.

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.

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

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

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.

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. In 2020, the Scottish Criminal Cases Review Commission (SCCRC) which investigates possible miscarriages of justice in Scotland wrote to 73 potential victims of the Horizon scandal in Scotland.

8. Following various unsuccessful attempts to expose the scandal, in 2016 a group of 555 people took the Post Office to the High Court in England in a case managed pursuant to a Group Litigation Order² made in March 2017. In December 2019, Post Office Ltd reached a settlement of £57.75 million to conclude this case³. The findings in this litigation - which were later endorsed by the English Court of Appeal in April 2021 when quashing 39 convictions of those who had suffered a miscarriage of justice⁴ - identified and confirmed beyond doubt the extent of the problems with Horizon, and the adverse impact that those problems had on prosecutions across the United Kingdom.

9. This scandal has had profound impacts on those affected by it. Some of those prosecuted were made bankrupt, some lost their homes, some suffered mental or physical health problems as a result of their treatment or of the financial consequences. Some were harried as thieves by their local communities. Some suffered breakdowns in relationships with their partners, children or other families and friends. Several died by suicide.

POLICY OBJECTIVES OF THE BILL

Overall objective

10. In line with the approach of the UK Government, the Scottish Government believes that anyone wrongly convicted as a result of the impact of the defective Horizon IT system should have their conviction quashed and as a result be entitled to UK Government compensation. Given the unique circumstances arising from the endemic failings of the Horizon IT system, the Scottish Government's view is that this requires unprecedented action in the form of primary legislation to quash relevant convictions, rather than relying on the existing processes of the justice system to cure the miscarriages of justice that arose. This Bill aims to deliver action to ensure that those affected by wrongful convictions can receive justice by having their convictions quashed. As a result of the operation of this legislation, affected sub-postmasters in Scotland will be able to access compensation from UK Government/Post Office schemes.

² A Group Litigation Order (GLO) is an order issued by a court in England and Wales allowing multiple claims with common or related factual or legal issues to be managed collectively.

³ <https://www.judiciary.uk/wp-content/uploads/2019/12/bates-v-post-office-judgment.pdf>

⁴ <https://www.judiciary.uk/wp-content/uploads/2022/07/Hamilton-Others-v-Post-Office-judgment-230421.pdf>

11. The determination of innocence or guilt in criminal cases in Scotland is usually rightly a matter for the independent judiciary, and robust processes already exist under Scots law to address potential miscarriages of justice. The SCCRC is an independent body which has the power to review and investigate cases where it is alleged that a miscarriage of justice may have occurred. Under the terms of section 194C of the Criminal Procedure (Scotland) Act 1995, where a miscarriage of justice may have occurred and it is in the interests of justice to do so, the SCCRC can refer a case to the High Court for a fresh appeal. Such a reference can be made at any time and regardless of whether an appeal has already been considered by the High Court.

12. Since the beginning of 2020, a number of Horizon cases have been referred to the High Court by the SCCRC, and a number of convictions have subsequently been overturned on appeal⁵. The unprecedented scale of the miscarriages of justice caused by the Horizon IT system means that the steps proposed by this Bill, which are recognised as an unusual intervention into the normal processes of the justice system, are required.

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. Continuing in this way therefore would not achieve the objective of ensuring all wrongful convictions are quashed.

14. The provisions of this Bill therefore aim to right the wrongs created by the failings of the Horizon IT system by providing a quick, fair and equal solution for all affected sub-postmasters.

UK Government legislation

General approach of the UK legislation

15. On 10 January 2024, the UK Government announced⁶ that it would introduce new primary legislation to provide a blanket exoneration of those wrongfully convicted due to evidence from the Horizon IT system. In doing so, the UK Government committed to making sure that these convictions were overturned during the course of 2024, and that the redress scheme for those whose convictions have been overturned would be amended so that those who have had their convictions overturned through legislation rather than on appeal will also be eligible. Under the redress scheme, as announced⁷ in September 2023, anyone who was wrongly convicted and has had their conviction overturned as it was reliant on Horizon evidence is given the option of settling their claim for redress for an up-front sum of £600,000, without the need to bring a formal claim against the Post Office. It was confirmed⁸ on 13 March 2024 that this scheme would apply to those

⁵ As of 1 May 2024, six cases have been overturned on appeal following this route. There are another two cases still before the court.

⁶ <https://www.gov.uk/government/news/government-to-quash-wrongful-post-office-convictions>

⁷ <https://www.gov.uk/government/news/government-announces-600000-of-new-compensation-for-every-wrongfully-convicted-postmaster>

⁸ <https://www.gov.uk/government/news/wrongful-post-office-convictions-to-be-quashed-through-landmark-legislation-13-march-2024>

whose convictions are quashed by legislation, and that those with overturned convictions would be able to accept a fixed and final offer of £600,000 or to have their claim assessed as part of the usual scheme process (in which there is no limit). The UK Government has indicated that to mitigate the risk that people will receive financial redress where they have not been wronged, a condition of access to 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 conviction is quashed by the Bill despite them having committed the offence should be deterred from falsely claiming compensation.

16. On 22 February 2024, further details of the legislative approach that the UK Government intended to take were announced by the Minister for Enterprise, Markets and Small Business⁹. The purpose of this proposed legislation was defined as being to make sure that those convicted as a result of the Horizon scandal would be swiftly exonerated and compensated. In line with that purpose, the stated goals of the legislation were to a) bring prompt justice to all of those who were wrongfully convicted, and b) provide those individuals with rapid financial redress.

17. On both of these occasions, the UK Government noted that the territorial extent of the proposed legislation would be England and Wales only. The rationale for this position was that in both Scotland and Northern Ireland prosecutions were undertaken by the relevant authorities in those jurisdictions rather than the Post Office and that the Scottish Parliament and the Northern Ireland Assembly have the responsibility of holding those systems to account.

18. On 13 March 2024, the UK Government introduced the Post Office (Horizon System) Offences Bill to “*provide for the quashing of convictions in England and Wales for certain offences alleged to have been committed while the Horizon system was in use by the Post Office*”.¹⁰ The explanatory notes¹¹ to the Bill explain that the UK Government believes that the Scottish Government and the Northern Ireland Executive are best placed to legislate to overturn convictions where prosecutions were instigated by the COPFS and the Public Prosecution Service for Northern Ireland respectively. However, the UK Bill was amended¹² to include Northern Ireland on 29 April 2024. Despite repeated requests made by the Scottish Government to do so, the UK Government did not extend their Bill to Scotland.

19. The UK legislation is in three parts, the first of which deals with the quashing of convictions, the second of which provides for deletion of cautions, and the third of which contains supplementary and final provisions.

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.

⁹ <https://questions-statements.parliament.uk/written-statements/detail/2024-02-22/hcws283>

¹⁰ As stated in the long title of [the Bill](#)

¹¹ <https://publications.parliament.uk/pa/bills/cbill/58-04/0181/en/230181en.pdf>

¹² <https://bills.parliament.uk/publications/55293/documents/4770>

21. Under the UK Government redress scheme¹³, anyone who was wrongfully convicted as a result of Horizon evidence is eligible to receive £600,000 but only once their conviction has been overturned (see paragraph 15 of this memorandum for more details of the scheme). This means that many sub-postmasters and others who were wrongfully convicted but have not appealed through the courts are unable to access the compensation that they deserve. The UK Bill will remove this barrier to access for those who ought to be entitled to financial redress.

Coverage of the UK legislation

22. The UK legislation provides that “*every conviction to which this Act applies is quashed on the coming into force of this Act*”. The UK legislation applies where the offence for which there is a conviction was prosecuted by the Post Office or the Crown Prosecution Service, where the conviction has not been considered by the Court of Appeal, and where the conviction is for a “relevant offence”. This means that convictions within the ambit of the UK Bill will be quashed directly by legislative means once the Bill comes into force.

23. In determining whether an offence falls within the ambit of the legislation, the UK legislation outlines a set of five objective criteria, on the face of the legislation, each of which will need to have been met in order for a conviction to be quashed. The policy objective behind these criteria is that they will not require any element of discretion or subjective analysis in order to be applied, allowing for the automatic quashing of convictions which fall within the ambit of the legislation. The conditions set by the UK legislation are:

- Offence dates: Condition A of the UK legislation is that the relevant offence was alleged to have been committed on a date (or dates) between 23 September 1996 and 31 December 2018.
- Offence type: Condition B of the UK legislation specifies which offences are within the ambit of the legislation. These are offences of dishonesty which were prosecuted in Horizon-related cases. The offences are (a) false accounting; (b) fraud; (c) handling stolen goods; (d) money laundering; (e) theft; and (f) ancillary offences relating to any of the other offences listed.
- The contractual or other relationship of the convicted individual to the Post Office: Condition C of the UK legislation is that the person needs to have been either carrying on a post office business, or working in a post office - whether under a contract of employment or otherwise - for the purposes of a post office business.
- Relevance of the offence: Condition D of the UK legislation is that the alleged offence in question must have been committed in connection with carrying on, or working for the purposes of, the post office business.
- Use of the Horizon system at the date of the offence: Condition E of the UK legislation specifies that at the time of the alleged offence, the Horizon system was being used for the purposes of the post office business.

¹³ <https://corporate.postoffice.co.uk/en/horizon-scandal-pages/overturned-convictions-and-compensation-information-on-progress/>

Summary of main provisions of the Bill

24. This Bill takes a very similar approach to the proposed UK legislation, with the intention of ensuring that Scottish sub-postmasters affected by the Horizon IT scandal will therefore be afforded access to compensation via the UK scheme in the same way as their English and Welsh counterparts.

25. Section 1 provides that convictions for “relevant offences” will be quashed when the Bill comes into force, provided that the convictions occurred in Scotland, took place before the coming into force of the legislation, and have not been considered by the High Court.

26. 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, uttering or an ancillary offence.
- 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 that 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.

27. 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.

28. 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.

29. 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.

30. 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 Ministers.

31. The remaining provisions of the Bill 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.

32. As noted above, in broad terms the Bill deliberately adopts the same approach as that taken in the UK Bill. There are, however, a few areas in which nuanced changes have been made in order to adapt the provisions of the UK Bill for a Scottish context:

- In section 2 of the Bill, the list of applicable offences includes the offences of embezzlement and uttering¹⁴ which are not offences which exist in England & Wales. It does not include the offence of money laundering (which is an offence which exists in Scotland) or any equivalent to the English and Welsh offence of handling stolen goods. This is because, 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.
- Section 3 of the Bill is designed to replicate the policy of the UK Bill in respecting the authority of decisions taken by the courts in appeal cases. In order to fully implement this policy, the Bill contains a fourth scenario not contained in the UK Bill which covers cases where the conviction is by the High Court following its substitution of an amended verdict of guilty on appeal. This is a possible outcome in an appeal in Scotland and in such cases where a conviction for a relevant offence has been imposed by the High Court following its consideration of an appeal then it is logical for this to be included within the scope of cases which have been “considered by the High Court”.
- Section 6 of the Bill 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. The Scottish Ministers' functions 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, and the notification to the courts/police (as applicable) and to those directly affected of the fact that the conviction has been quashed/the police have been instructed to delete details of an alternative to prosecution. The information that the Scottish Ministers may need to carry out this function is likely to be held by a range of organisations, including the SCCRC, COPFS, Post Office Limited, Police Scotland and the Scottish Courts and Tribunal Service. In order that the Scottish Ministers have the necessary tools available to them to effectively carry out their functions under the Bill, it is considered appropriate that they have a power to require the provision of such information where this is necessary for carrying out their functions under the Bill.

ALTERNATIVE APPROACHES

33. A number of alternative approaches to achieving the aims of the Bill have been considered by the Scottish Government.

¹⁴ In Scots law, uttering is a [common law](#) crime of [dishonesty](#) whereby a document which purports to be something it is not (e.g. because it or a signature/authentication on it have been forged) is knowingly used with an intent to deceive.

Introduction of legislation to pardon all convicted sub-postmasters

34. The Scottish Parliament has previously passed legislation to pardon those convicted of offences in connection with the 1984 coal miners' strike¹⁵ and men convicted for offences relating to same-sex sexual activity between men that is now lawful¹⁶. 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.

35. The Historical Sexual Offences (Pardons and Disregards) (Scotland) Act 2018 did introduce a separate 'disregard' system to enable people with convictions for historical sexual offences to apply to the Scottish Government to have their convictions formally 'disregarded' and removed from all public databases/records. In the case of convicted miners, the age of the convictions was such that they would almost certainly have been 'spent' and would not show up on any criminal record check.

36. The position as regards those sub-postmasters who were convicted is different in that the convictions are likely to be significantly more recent (those referred back to the High Court by the SCCRC dated from between 2004 and 2013) and in that those convicted are likely to wish to make use of the UK Government scheme to claim compensation. As such, a largely symbolic pardon would not address any of the core issues faced by the convicted sub-postmasters (either having their convictions removed from their criminal history or obtaining compensation for losses resulting from their wrongful conviction).

37. The position with respect to sub-postmasters is also materially different in another important aspect as the convictions were wrongly obtained due to the use of tainted evidence.

Continuing to rely on the Scottish Criminal Cases Review Commission mechanism

38. As noted above, the SCCRC is responsible for reviewing cases where it is claimed that a miscarriage of justice has occurred. Anyone who believes that they were convicted on the basis of evidence from the Horizon IT system can make an application to the SCCRC. Where the SCCRC considers that a miscarriage of justice may have occurred, and that it is in the interests of justice to do so, they can refer a case to the High Court for a fresh appeal.

39. 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 any reasonable effort to locate those who may have been affected and encourage them to make an application. This was a departure from their usual approach, as they would not normally proactively seek out potential victims of miscarriages of justice. In September 2020 they wrote to all those who had been identified as having been convicted in a case potentially related to the Horizon system.

40. Despite these unprecedented steps, the number of applications made to the SCCRC has remained small and, as of November 2023, the SCCRC had received only 16 applications from a total of approximately 80 identified cases. It is not entirely clear why this is, but it is possible that

¹⁵ [Miners' Strike \(Pardons\) \(Scotland\) Act 2022 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

¹⁶ [Historical Sexual Offences \(Pardons and Disregards\) \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

not all of those convicted (or their direct relatives where the individual is deceased) wish to go through the process of appealing their convictions. The Scottish Government is aware of anecdotal evidence that due to the stigma associated with crimes of this nature, some sub-postmasters who were convicted did not inform family members of their conviction, and as such may not wish to have attention drawn to them through the SCCRC application process.

41. Whilst the Scottish Government in no way intends to cast any doubt on the excellent work of the SCCRC, given the unprecedented scale of issues created by the Horizon IT system, the Scottish Government's view is that reliance on the existing procedures available to address miscarriages of justice will not provide the swift and comprehensive resolution now required.

A single 'mass' appeal

42. Campaigners in England and Wales have suggested that the process of reversing convicted sub-postmasters' convictions (and subsequent access to compensation) could be sped up by having one single appeal to consider all the relevant convictions. It is not, however, clear what the mechanism for this would be in a Scottish context. It is open to the High Court to consider closely-linked appeals together, but it is for the independent judiciary to decide when it is appropriate to do so. There is not currently any mechanism by which the Scottish Ministers could direct the courts to consider a single 'mass' appeal relating to all those convicted of offences relating to the Horizon IT system.

43. Furthermore, there are different evidential issues relating to different cases. A single appeal hearing a large number of potentially quite different cases would inevitably be long and complex, and it is not clear that such a single appeal would necessarily reach a determination any more quickly than hearing each appeal individually. To the extent that a mass appeal would therefore require the examination of individual cases, the same issues faced by the SCCRC would apply equally to this approach.

CONSULTATION

44. In light of the speed with which Scottish legislation has been prepared (in order not to disadvantage Scottish sub-postmasters in comparison with their counterparts in England & Wales), there has not been time to conduct a public consultation. That notwithstanding, given the level of ongoing media interest and scrutiny of this issue, the views of many stakeholders are known from their public comments.

45. In early 2023 the UK set up the Group Litigation Order (GLO) Compensation Scheme Advisory Board, an independent advisory board of parliamentarians and academics, to oversee the GLO compensation scheme. This compensation scheme is different to the redress scheme referred to in paragraphs 15 and 21. The GLO Compensation Scheme has the objective of ensuring postmasters who were part of the GLO and not eligible to seek compensation from the Post Office have access to fair compensation for their Horizon-related losses. The terms of reference of this advisory board were subsequently expanded to include advice about the Department for Business and Trade's oversight of the delivery of other strands of Horizon-related compensation by the Post

Office, including the Historical Shortfall Scheme¹⁷, arrangements for compensation in respect of overturned historic convictions and compensation for postmaster detriment.

46. Membership of the Board, which is now known as the Horizon Compensation Advisory Board, is comprised of two academic experts in the field of alternative dispute resolution and legal ethics, and two parliamentarians recognised for their past involvement in pursuing the resolution of the Horizon scandal. The Board does not have a role in individual cases, but advises on the overall progress of compensation arrangements. As such, the views of the advisory board are particularly noteworthy, given that they come from those familiar with the issue.

47. On 14 December 2023 the Chair of the Board wrote to Alex Chalk KC MP, Lord Chancellor and Secretary of State for Justice, to advise him that the approach of relying on the Criminal Cases Review Commission and the Courts to have convictions overturned was not working¹⁸. In doing so he made the following observations:

- Given the age of some of the cases, much of the relevant evidence has been lost or destroyed;
- Many individuals were unwilling to appeal given their understandable deep distrust of authority;
- The rules of the Court of Appeal mean that there are limitations on the ability of the Post Office to concede cases; and
- In cases where the Post Office concludes that a retrial would not be in the public interest, a conviction is overturned but sub-postmasters can be denied full compensation and left with a continued implication of guilt.

48. The Chair concluded that, in his belief, the only viable approach was to overturn all Post Office-driven convictions from the Horizon period. He noted that whilst a small minority of these people were doubtless genuinely guilty, it would be worth their acquittal in order to deliver justice to the majority, which would not otherwise happen.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

49. A suite of Impact Assessments is currently being drafted for the Bill and will be published on the Scottish Government website in due course.

Equal opportunities

50. The intention of the Bill is to deliver justice to Scottish sub-postmasters affected by the Horizon IT scandal. Overall, the Bill is anticipated to have a positive impact on all those who have been impacted by the use of tainted evidence provided by the Post Office in criminal cases. Sub-postmasters who were incorrectly convicted of offences have suffered profoundly as outlined in

¹⁷ The Horizon Shortfall Scheme is for current and former Postmasters who believe they experienced shortfalls related to previous versions of the Horizon system. It is separate from the redress arrangement for people with Horizon-related convictions that have been overturned.

¹⁸ <https://www.gov.uk/government/publications/ministry-of-justice-documents>

paragraph 9. While it is difficult to fully reverse the ruinous impact of these convictions, the Bill will ensure that justice can be delivered more swiftly, which will allow sub-postmasters (or in cases where the sub-postmasters have since died, their families) to access compensation. The positive impact will be restorative in the form of both monetary payments as well repaired reputations.

51. Given the anticipated impact of the Bill on all affected sub-postmasters, the Scottish Government does not foresee that there will be any detrimental impacts on victims with protected characteristics.

Human rights

52. The Scottish Government has considered the effects of the provisions of the Bill on human rights and, in particular, Articles 6 and 8 of the European Convention on Human Rights (ECHR). The Scottish Government is of the view that the provisions in the Bill are compatible with the ECHR and that there will be significant positive impacts on the rights of those whose convictions are quashed by the legislation.

53. Article 6 (right to a fair trial) will have been engaged during the determination of the criminal charges underlying the relevant convictions. Article 6 is also engaged during appeal proceedings.¹⁹ Once the Bill is in force, the persons whose convictions meet the criteria in the Bill will no longer be convicted of a criminal offence as their convictions will have been automatically quashed by the legislation. The effect of the automatic quashing of the conviction is to remove the trigger for the protections under Article 6. For those persons whose convictions are not automatically quashed by the Bill, the usual appeal route remains. The Scottish Government is therefore of the view that the provisions in the Bill are compatible with Article 6.

54. The right to protection of reputation can be protected by Article 8 (right to respect for private life and family life) of the Convention as part of the right to respect for private life, but it is not an explicit inclusion in the provision of the Article. Harm to reputation engages Article 8 right to private life only in certain situations.²⁰ To the extent that persons have suffered reputational damage in the aftermath of being convicted, the Bill will lift the stigma associated with conviction and have positive Article 8 implications insofar as it promotes the reputation of those whose convictions are quashed and will ultimately have a positive impact.

55. The concept of “private life” in Article 8 covers the disclosure of personal data.²¹ The Bill enables the Scottish Ministers to require any person to provide them with information which the person holds and which Ministers consider is necessary for the carrying out of their functions under the Bill. The Scottish Government is of the view that any such interferences will be in accordance with the law, in pursuit of the legitimate aims of the protection of the rights and freedoms of others and the prevention of crime and disorder and will be necessary in a democratic society.

56. The power to require information to be shared will have a basis in domestic law in that it will be set out on the face of the Bill. The Scottish Government considers the provision to be clear,

¹⁹ *Reichman v. France* (50147/11, 12 July 2016)

²⁰ *Axel Springer AG v. Germany* (39954/08, 7 February 2012)

²¹ *The Christian Institute and others v The Lord Advocate* [2016] UKSC 51

foreseeable and adequately accessible.²² The power is linked to the functions of Ministers under the Bill which are narrowly defined and the duty will only arise if the person holding the information receives a written notice from Scottish Ministers.

57. The sharing of information is critical to the successful operation of the Bill. It will aid Ministers in their role of identifying which convictions have been quashed by the Bill so that court records can be accurately amended and persons whose convictions have been quashed have the certainty of knowing that their conviction has been quashed.

58. The power in section 6 only applies where the Scottish Ministers consider it is *necessary* for carrying out their functions under the Bill. This will assist in ensuring that any interference will not be greater than is reasonably necessary for achieving the aim. The Scottish government considers that any interferences with Article 8 can be regarded as proportionate to the aim.

59. The Scottish Ministers are public authorities under the Human Rights Act 1998 and thus will be under a duty to act in a way which is compliant with ECHR when exercising the power under this Bill.

Island communities

60. The provisions in this Bill are intended to apply to all affected individuals in Scotland. The Scottish Government is satisfied that, as a package, the Bill has no significant differential effects upon island or rural communities and a full Bill-level Island Communities Impact Assessment (ICIA) is not required.

Local government

61. The Bill does not place any new responsibilities on local government and there will be no direct impact on local authorities.

Sustainable development

62. The Bill is aligned with the Scottish Government's National Performance Framework (Access to Justice – Human Rights National Outcome²³) and contributes to Sustainable Development Goal 16 (peace, justice and strong institutions²⁴).

63. One of the aims in the Human Rights National Outcome is to ensure that Scotland's justice systems are proportionate, fair and effective while challenging unfairness. Goal 16 of the Sustainable Development Goals includes a target to “ensure equal access to justice for all”.²⁵

²² *Silver and Others v. the United Kingdom* (5947/72; 6205/73; 7052/75; 7061/75; 7107/75; 7113/75; 7136/75, 25 March 1983)

²³ [Access to Justice | National Performance Framework](#)

²⁴ [Scotland and the sustainable development goals: a national review to drive action - gov.scot \(www.gov.scot\)](#)

²⁵ [Peace, justice and strong institutions - United Nations Sustainable Development](#)

64. To this end, the Bill's intended effect is to quash relevant wrongful convictions, thereby ensuring those who have been impacted can receive justice and that the unfairness inherent in the use of Horizon evidence for criminal cases is addressed.

65. The potential environmental impact of the Bill has been considered and no significant environmental impacts are expected.

CROWN CONSENT

66. It is the Scottish Government's view that the Bill as introduced does not require Crown consent. Crown consent is required, and must be signified during a Bill's passage, where the Bill impacts the Royal prerogative, the hereditary revenues of the Crown or the personal property or interests of the Sovereign, the Prince and Steward of Scotland or the Duke of Cornwall. The Scottish Government's view is that this Bill does none of those things.

67. For the source of the requirement for Crown consent, see [paragraph 7 of schedule 3 of the Scotland Act 1998](#), and [rule 9.11 of the Parliament's Standing Orders](#). For further information about the considerations that go into determining whether Crown consent is required for a Bill see [Erskine May](#), the guide to procedure in the UK Parliament.

*This document relates to the Post Office (Horizon System) Offences (Scotland) Bill (SP Bill 47)
as introduced in the Scottish Parliament on 14 May 2024*

POST OFFICE (HORIZON SYSTEM) OFFENCES (SCOTLAND) BILL

POLICY MEMORANDUM

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