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FROM: DAVID GRAHAM

DATE: 24 APRIL 2024

TO: CAROLINE PERRY

POST OFFICE (HORIZON SYSTEM) OFFENCES: LEGISLATIVE CONSENT MEMORANDUM

SUMMARY

Business Area: Criminal Justice Policy and Legislation Division

Issue: Legislative Consent Memorandum to enable inclusion of clauses in the UK Government's Post Office (Horizon System) Offences Bill to bring Northern Ireland within scope.

Action Required: Members are asked to consider the proposal to seek the approval of the Assembly to include the clauses within the Post Office (Horizon System) Offences Bill by means of a Legislative Consent Motion.

INTRODUCTION

The Post Office (Horizon System) Offences Bill ("the Bill") was introduced to the House of Commons on 13 March 2024, and Second Reading was on 20 March 2024. The Bill as introduced extended to England and Wales only. However, the UK Government has tabled amendments for consideration at Committee Stage which would extend the scope of the Bill to Northern Ireland. This briefing paper is offered to the Committee to enable it to reach a view on the laying of a legislative consent memorandum in the Assembly.

BACKGROUND TO THE BILL

2. On 10 January 2024, during Prime Minister's Questions, the Prime Minister announced plans to introduce new primary legislation to make sure those convicted because of the Post Office Horizon scandal could be "swiftly exonerated and compensated". The Parliamentary Under-Secretary of State for Business and Trade, Kevin Hollinrake MP, subsequently made a statement to the House setting out the Government's intentions, acknowledging it was unusual for Parliament to encroach on matters relating to judicial decisions.

3. On 22 February 2024, Minister Hollinrake made a written ministerial statement which confirmed that, "UK parliamentary legislation will proceed on an England and Wales basis" because "victims in those jurisdictions are best served by local decisions tailored to the judicial systems in Scotland and Northern Ireland".

4. The Bill had its first reading in the House of Commons on 13 March 2024. The Bill as introduced provided 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. The Bill also included provisions related to the deletion of cautions given in England and Wales for such offences.

PROVISIONS WHICH EXTEND AND APPLY TO NORTHERN IRELAND

5. Following further representations from the First Minister, deputy First Minister and the Justice Minister, on 22 April 2024 the UK Government announced it now intends to extend the territorial extent of the Bill to include Northern Ireland and tabled amendments for our inclusion.

6. The amendments, if accepted by the House, would quash convictions for certain offences in Northern Ireland alleged to have been committed while the Horizon system was in use, and provide for the deletion of cautions given here for such offences. The Bill as amended would also place a duty on the Department of Justice to identify and notify individuals within the scope of the legislation. The amendments are scheduled for consideration in the House of Commons during Committee Stage on 29 April 2024.

7. A further summary of the provisions within the Bill and the amendments tabled to include Northern Ireland within scope is included at **Annex A** of this paper.

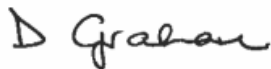
OTHER JURISDICTIONS

8. If the Bill is amended at Committee Stage, the provisions will apply to England, Wales and Northern Ireland. The Scottish Government has previously indicated its intention to legislate separately if it is not included within the scope of the UK Government's legislation.

NEXT STEPS

9. The Department of Business and Trade currently anticipate that the Bill will be enacted before the start of Parliament's summer recess (23 July 2024), at which point any convictions within the scope of the legislation will be quashed.

10. The Minister would be very grateful for the Committee's cooperation to enable a Legislative Consent Memorandum to be laid before the Assembly by 13 May 2024 and assures the Committee that officials will, of course, assist with any further queries the Committee may have.



DAVID GRAHAM
DALO

Annex A

The Post Office (Horizon System) Offences Bill

Quashing of Convictions for relevant offences

Clause 1

Clause 1 provides that convictions in England and Wales for “relevant offences”, prosecuted by the Post Office or CPS, and which have not been considered by the Court of Appeal, are to be quashed on the day on which the legislation comes into force.

The amendments tabled in respect of Clause 1 allow for the inclusion of prosecutions taken forward by the Director of Public Prosecutions in Northern Ireland, and the Police Service of Northern Ireland. This amendment takes account of the fact that prior to the establishment of the Public Prosecution Service in 2005, low level prosecutions were taken forward by the police service.

Meaning of “relevant offence”

Clause 2

Clause 2 gives the meaning of “relevant offence” with reference to several conditions set out in the subclauses. All of the conditions must be satisfied for an alleged offence to be included within the scope of the Bill.

The proposed amendments to Clause 2 would add the following Northern Ireland offences from the Theft Act (Northern Ireland) 1969 to the definition of a “relevant offence”:

- False accounting;
- Fraud;
- Handling stolen goods; and
- Theft.

The definition of ‘money laundering’ within the Clause 2 as introduced extends to Northern Ireland and does not require any amendment.

Determining when a conviction has been considered by the Court of Appeal

Clause 3

Clause 3 provides for when a conviction is to be determined as having been “considered by the Court of Appeal” for the purposes of Clause 1.

An amendment has been tabled to bring cases considered by the Court of Appeal in Northern Ireland within scope.

Identification and notification of quashed convictions

Clause 4

Clause 4 provides for aspects of the process for identifying which convictions have been quashed by the provisions in Clause 1.

Amendments have been tabled to Clause 4 to include Northern Ireland within the scope of the requirement to identify and notify individuals of quashed convictions for relevant offences, placing this duty on the Department of Justice.

Deletion of cautions for relevant offences

Clause 5

Clause 5 sets out the process for deleting records of cautions for relevant offences. Cautions are not ordered by a court and are not “quashed” in the same way as convictions or recorded in the same way.

An amendment has been tabled to insert a new equivalent Clause within the Bill, which sets out the process for deleting cautions for relevant offences in Northern Ireland. This proposed Clause would require the Department of Justice, if it becomes aware or is made aware of a caution for a relevant offence, to direct the Chief Constable to delete details of the caution from the Northern Ireland criminal records database and the UK criminal records database. The Clause also includes a requirement for the Chief Constable to act upon this direction.

Consequential provision

Clause 6

Clause 6 makes consequential amendments to related legislation in England and Wales. No amendments have been tabled for Northern Ireland in respect of this clause.

Power to make further consequential provision

Clause 7

Clause 7 allows for amendment or modification of any provision of primary or secondary legislation. This may be required in order to ensure that the consequences of the quashing of a conviction can be applied to these convictions quashed by Act of Parliament in the same way as they do to convictions quashed by a court on appeal.

An amendment has been tabled to insert a new equivalent Clause within the Bill, to provide the Department of Justice with a regulation-making power to make provision that is consequential to the provisions within the Act and is related to a devolved matter. If the regulations make provision in respect of primary legislation, they would be subject to affirmative resolution, and any other regulations would be subject to negative resolution. It may well be the case that no further consequential provision is required, in practice. However, given the Bill has been brought forward at pace, the Department for Business and Trade thought it prudent to create a power to deal with any unanticipated issues. We considered it appropriate for the Department of Justice rather than the Secretary of State for Business and Trade to be responsible for any amendments that may subsequently be required to legislation relating to a devolved matter.

Interpretation

Clause 8

Clause 8 sets out provisions on interpretation of several terms in the Bill.

Amendments have been tabled to add Northern Ireland to the scope of Clause 8, and to broaden the definition of a Caution to include Northern Ireland.

Extent and commencement

Clause 9

Clause 9 sets out provisions for commencement and territorial extent.

One amendment has been tabled to reflect Northern Ireland's addition to the territorial extent of the Bill.

Short Title

Clause 10



Clause 10 establishes the Bill's short title.

No amendments have been tabled for Northern Ireland in respect of this clause.

The Bill and the amendments tabled to include Northern Ireland within scope can be found at:

<https://bills.parliament.uk/bills/3694>