

LEGISLATIVE CONSENT MEMORANDUM
THE POST OFFICE (HORIZON SYSTEM) OFFENCES BILL

Draft legislative Consent Motion

1. The draft motion, which will be tabled by the Minister of Justice, is:

“That this Assembly endorses the principle of the extension of the provisions of the Post Office (Horizon System) Offences Bill to Northern Ireland”.

Background

2. This memorandum has been laid before the Assembly by the Minister of Justice in accordance with Standing Order 42A(2). The Post Office (Horizon System) Offences Bill was introduced to the House of Commons on 13 March 2024. The latest version of the Bill can be found at:

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

Summary of the Bill and its policy objectives

3. From the mid-1990s, hundreds of sub-postmasters and sub-postmistresses were wrongly convicted after shortfalls of money appeared in their branches, due to faults with Horizon software.
4. 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 then 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.
5. 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”.

6. 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.
7. Following further representations from the First Minister, deputy First Minister and the Justice Minister, on 22 April 2024 the UK Government announced its intention to extend the territorial extent of the Bill to include Northern Ireland and tabled amendments to give effect to this decision. The amendments were debated during the Committee Stage of the Bill in the House of Commons on 29 April 2024, and accepted by the House.
8. The Bill will quash all convictions in scope, excluding convictions already considered by the Court of Appeal. That scope is defined by a set of clear and objective conditions which will be set out in the Bill, each of which will need to have been met, to identify the convictions which have been quashed. The conditions are:
 - Condition A – the offence must have been committed between 23 September 1996 and 31 December 2018, covering the period of the Horizon scandal, including the Horizon pilot.
 - Condition B – the offence was false accounting, fraud, handling stolen goods, money laundering, theft, or an ancillary offence.
 - Condition C – at the time the offence occurred, the convicted person was carrying on a post office business or working for the purposes of such a 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.
9. At this stage, the Bill is expected to achieve Royal Assent before the end of June 2024, subject to completion of the remaining stages of legislative passage in the House of Lords and House of Commons.

Provisions which deal with a Devolution Matter

10. Clause 1 provides that convictions in England, Wales and Northern Ireland for “relevant offences”, 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. In Northern Ireland, this relates to prosecutions taken forward by the Director of Public Prosecutions in Northern Ireland, and the Police Service of Northern Ireland (prior to the establishment of the Public Prosecution Service in 2005, low level prosecutions were taken forward by the Police Service of Northern Ireland).
11. Clause 2 gives the meaning of “relevant offence” with reference to conditions A -E set out in the subclauses (and summarised at paragraph 8 above). All of the conditions must be satisfied for an alleged offence to be included within the scope of the Bill. The following offences from the Theft Act (Northern Ireland) 1969 are included within the definition of a “relevant offence”:
 - False accounting;
 - Fraud;
 - Handling stolen goods; and
 - Theft.
12. Clause 3 provides for how a conviction is determined as having been “considered by the Court of Appeal” for the purposes of Clause 1. It specifies that where permission to appeal has been refused or an appeal has been dismissed the conviction will not be quashed. This does not prevent a further appeal against a conviction that has been considered by the Court of Appeal. The Court of Appeal in Northern Ireland is included within the scope of this clause.
13. Clause 4 sets out the process for identifying convictions that have been quashed by the provisions in Clause 1, the amendment of criminal records and the notification of affected individuals. In Northern Ireland, the duty to identify and notify individuals of quashed convictions for relevant offences will be placed on the Department of Justice.
14. Clause 6 sets out the process for the deletion of cautions for relevant offences in Northern Ireland. This clause will place a requirement on the Department of Justice, if it becomes aware or is made aware of a caution for a relevant offence, to direct the

Chief Constable of the Police Service of Northern Ireland (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.

15. Clause 7 makes consequential amendments to related legislation in England and Wales. No consequential amendments have been made in respect of Northern Ireland.
16. Clause 9 provides the Department of Justice with a regulation-making power to make a 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.
17. Clause 10 sets out provisions on interpretation of several terms in the Bill, and Clause 11 sets out provisions for commencement and territorial extent.

Reasons for making the provisions

18. The provisions are required to quash convictions and delete cautions without placing any obligation on affected sub-postmasters to apply to the Court of Appeal. Sub-postmasters and sub-postmistresses have been waiting for justice for years, some for decades, and many postmasters do not want to engage further with the justice system. The judiciary and the courts have dealt swiftly with the cases before them, but the passage of time, lack of evidence and lack of trust in the wider criminal justice system means that existing mechanisms will not provide the swift and complete righting of this miscarriage of justice.
19. Government action, via primary legislation, is therefore necessary to provide a swift and certain resolution and to avoid any more delays to financial redress, via a blanket quashing of convictions that meet the criteria.

Reasons for utilizing the Bill rather than an act of the Assembly

20. It would not be possible to achieve equivalent legislation via an Assembly Bill within the same timescale as this Westminster Bill. Any delay in legislating to overturn these convictions would delay access to justice and financial redress for sub-postmasters in Northern Ireland, and lead to differential treatment. A legislative consent motion, is,

therefore, considered to be the most timely, reasonable and proportionate way forward in the circumstances.

Consultation

21. There has been no public consultation on the Bill. However, on 18 April 2024 I met with the National Federation of Sub-Postmasters (a not-for-profit trade association which represents post office operators responsible for approximately 8,500 post office branches across the UK) to discuss the potential solutions to address the Horizon Scandal in Northern Ireland. My officials have provided an update to the Federation following the inclusion of Northern Ireland within the territorial extent of the Bill.
22. Furthermore, there has been regular engagement between my departmental officials and our justice partners, to develop the amendments for Northern Ireland and to prepare for implementation.

Human Rights and Equality

23. The Department for Business and Trade (DBT) published an Equalities statement on 20 March 2024¹. The statement summarises DBT's consideration of the impact of the Bill's provisions on the basis of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex or sexual orientation. The statement did not identify any adverse impacts on these groups.
24. The Department of Justice is currently completing an equality screening on the extension of provisions within the Bill to Northern Ireland and will publish this screening in due course.
25. The UK Government does not consider that the Bill raises any significant issues in relation to the European Convention on Human Rights. Accordingly, the Secretary of State for Business and Trade has made a statement to this effect under section 19(1)(a) of the Human Rights Act 1998.

¹ <https://www.gov.uk/government/publications/post-office-horizon-system-offences-bill-supporting-documents/equalities-statement-post-office-horizon-system-offences-bill#:~:text=Data%20supplied%20by%20the%20Post,is%20therefore%20not%20directly%20discriminatory.>

Financial Implications

26. The administrative costs associated with the implementation of the Bill will fall to the Department of Justice. These are not anticipated to be significant and will be met from the Department of Justice's existing budget allocations.
27. The UK Government has published an impact assessment for the Bill, which estimates the costs and benefits to business².

Summary of Regulatory Impact

28. There is no expected impact on business and the voluntary sector.

Engagement to date with the Justice Committee

29. The Department provided written briefing to the Justice Committee on 24 April 2024, and an oral evidence session with officials was held on the afternoon of Thursday 9 May. At the conclusion of the evidence session, the Justice Committee agreed that it was content for a Legislative Consent Memorandum to be laid before the Assembly by mid-May 2024.

Conclusion

30. My view is that, in the interests of delivering equitable and swift access to justice for affected sub-postmasters in Northern Ireland, the Assembly should support the terms of the draft legislative consent motion as set out in paragraph 1 of this memorandum.

Minister of Justice

13 May 2024

² <https://publications.parliament.uk/pa/bills/cbill/58-04/0181/ImpactAssessment.pdf>