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Kevin Hollinrake MP
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Business
Department for Business and Trade
1 Victoria Street
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18 April 2024

Dear Kevin

I refer to my letter to you of 20 March and to our subsequent meeting on 28 March 2024 to discuss the Post Office (Horizon Offences) Bill ahead of its Committee stage.

The Scottish Government position as outlined to you, is that the best way to achieve parity for the sub-postmasters and sub-postmistresses across the UK who were convicted on the basis of tainted evidence from the Post Office Horizon system, is for the current Bill to be extended to Scotland and Northern Ireland.

Extending the Bill to Scotland would ensure there is no delay to the quashing of convictions and access to compensation since any Scottish legislation could not be finalised until after the UK Bill is passed to ensure we can take account of any amendments made throughout the passage of your Bill.

I also said to you that we believe extending the Bill would be relatively simple and in light of discussion at the March Inter-Ministerial Committee meeting where Michael Gove MP was clear that the UK Government would be very open to such an extension, stating the “route was still open” for the Bill’s provisions to be extended to Scotland and Northern Ireland, the Scottish Government has prepared the attached draft clauses which demonstrate how the Bill could be amended in a straightforward way to extend provisions to Scotland.

As you will see the 15 proposed amendments (Annex A) are neither complex nor extensive and take full account of differences in Scottish criminal law and practice and the difference in the offences which were prosecuted in Scotland using tainted evidence from the Horizon System. Their purpose and effect is at Annex B.

I therefore urge you to table these amendments and bring certainty and clarity for those who have suffered wrongful convictions in Scotland. I would ask you to let me know if you will do so ahead of the Committee Stage of the Bill.

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My officials would be happy to discuss the proposed amendments with their UK Government counterparts as I would with you.

I am copying this letter to the Secretary of State for Levelling Up, Chair of the House of Commons Business and Trade Committee, and Convener of the Scottish Parliament's Criminal Justice Committee. I am also publishing this letter and proposed amendments on the Scottish Government website as we have done with previous correspondence on this matter

Yours sincerely



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Post Office (Horizon System) Offences Bill — Committee Stage

Clause 1, page 1, line 9, at end insert—

“(2A) This Act applies to a conviction in Scotland for a relevant offence where the conviction has not been considered by the High Court of Justiciary.”

Clause 1, page 1, line 12, after “Appeal” insert “or by the High Court of Justiciary”

Clause 2, page 2, line 19, at end insert—

“(6A) In its application to Scotland, this section is to be read as if condition B were that the offence is one of the following—

- (a) any of the following offences at common law—
 - (i) embezzlement;
 - (ii) fraud;
 - (iii) theft;
- (b) an offence of attempting or conspiring to commit an offence specified in paragraph (a);
- (c) an offence of inciting a person to commit an offence specified in paragraph (a);
- (d) an offence of aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a).”

Clause 3, page 3, line 15, at end insert—

“(6) In relation to a conviction in Scotland—

- (a) subsections (1) to (5) apply as if for the words “Court of Appeal” there were substituted “High Court of Justiciary”;
- (b) a conviction is also to be taken to have been considered by the High Court of Justiciary where the conviction is by the High Court of Justiciary following its substitution of an amended verdict of guilty on appeal.”

Clause 4, page 3, line 38, after “Wales” insert “or in Scotland”

To move the following Clause—

“Deletion of alternatives to prosecution for relevant offences: Scotland

- (1) Section 5 applies in relation to an alternative to prosecution given to a person in Scotland for a relevant offence as it applies in relation to a caution given to a person in England and Wales for a relevant offence, subject to the following modifications—
 - (a) references to the appropriate chief officer of police are to be read as references to the chief constable of the Police Service of Scotland;
 - (b) the reference to the criminal records database is to be read as a reference to the criminal history database of the Police Service of Scotland held for the use of police forces generally.
- (2) For the purposes of this section, an alternative to prosecution has been given to a person for a relevant offence if the person—
 - (a) has been given a warning in respect of the offence by a constable in Scotland or a procurator fiscal,
 - (b) has accepted, or is deemed to have accepted—
 - (i) a conditional offer issued in respect of the offence under section 302 of the Criminal Procedure (Scotland) Act 1995, or
 - (ii) a compensation offer issued in respect of the offence under section 302A of that Act,
 - (c) has had a work order made against the person in respect of the offence under section 303ZA of that Act, or
 - (d) has accepted an offer made by a procurator fiscal in respect of the offence to undertake an activity or treatment or to receive services or do any other thing as an alternative to prosecution.”

Clause 6, page 5, line 2, at end insert—

- “(4) In relation to a conviction in Scotland, the reference in subsection (1) to the conviction having been quashed by a court on an appeal is to be read as a reference to the conviction having been quashed by the High Court of Justiciary on an appeal by the convicted person.”

Clause 7, page 5, line 13, at end insert—

- “(3A) Before making regulations under this section, the Secretary of State must obtain the consent of the Scottish Ministers in relation to any provision which—
- (a) would be within the legislative competence of the Scottish Parliament, if contained in an Act of that Parliament, and
 - (b) is not merely incidental to, or consequential on, provision which would be outside that legislative competence.”

To move the following Clause—

“Power of the Scottish Ministers to make further consequential provision

- (1) The Scottish Ministers may by regulations make provision that is consequential on any provision made by this Act (see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10), as a result of which such regulations are to be made by Scottish statutory instrument).
- (2) Regulations under this section may amend, repeal or revoke provision made by or under—
 - (a) an Act of the Scottish Parliament passed before this Act, or
 - (b) an Act passed—
 - (i) before this Act, or
 - (ii) later in the same session of Parliament as this Act.
- (3) The power to make regulations under this section includes power to make—
 - (a) supplementary, incidental, transitional or saving provision;
 - (b) different provision for different purposes.
- (4) Regulations under this section may only make provision which would be within the legislative competence of the Scottish Parliament if contained in an Act of that Parliament.
- (5) Regulations made under this section that amend or repeal provision made by an Act of the Scottish Parliament, or by an Act, are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).
- (6) Any other regulations made under this section are subject to the negative procedure (see section 28 of that Act).”

Clause 8, page 5, line 34, after “proceedings” insert “in England and Wales”

Clause 8, page 5, line 36, at end insert “or

- (c) a finding in any criminal proceedings in Scotland (including a finding linked with mental disorder or in respect of which an admonition or absolute discharge is made) that a person has committed an offence or done the act or made the omission charged,”

Clause 8, page 6, line 9, after “Wales” insert “or Scotland”

Clause 9, page 6, line 25, after "Wales" insert "and Scotland"

Title, line 1, after "Wales" insert "and Scotland"

Title, line 4, after "Wales" insert "and of alternatives to prosecution given in Scotland"

POST OFFICE (HORIZON SYSTEM) OFFENCES BILL: SCOTTISH GOVERNMENT DRAFT AMENDMENTS - PURPOSE AND EFFECT NOTES

Clause 1-Quashing of Convictions		
Overview		
Clause 1 - Quashing of Convictions	<p>Clause 1, page 1, line 9, at end insert—</p> <p>“(2A) This Act applies to a conviction in Scotland for a relevant offence where the conviction has not been considered by the High Court of Justiciary.”</p>	<p>Purpose and effect:</p> <p>This amendment will apply the Bill to a conviction in Scotland for a relevant offence where the conviction has not been considered by the High Court of Justiciary on appeal. The new subsection is therefore equivalent in effect to clause 1(2) of the Bill, but takes account of the different prosecutors and appeal court in Scotland.</p>
Clause 1 - Quashing of Convictions	<p>Clause 1, page 1, line 12, after “Appeal” insert “or by the High Court of Justiciary”</p>	<p>Purpose and effect:</p> <p>This amendment to the overview in clause 1(4) simply signposts that clause 3 will deal not only with what it means for a conviction to have been considered by the Court of Appeal, but also what it means for it to have been considered by the High Court of Justiciary.</p>
Clause 2 – Meaning of “relevant offence”	<p>Clause 2, page 2, line 19, at end insert—</p> <p>“(6A) In its application to Scotland, this section is to be read as if condition B were that the offence is one of the following—</p> <p style="padding-left: 40px;">(a) any of the following offences at common law—</p> <p style="padding-left: 80px;">(i) embezzlement;</p>	<p>Purpose and effect:</p> <p>The offences in clause 2(3) are stated in the Explanatory Notes to the Bill to be those which were prosecuted in Horizon-related cases in England and Wales. The offences listed in the amendment are those which were prosecuted in Horizon-related cases in Scotland.</p>

	<ul style="list-style-type: none"> (ii) fraud; (iii) theft; <ul style="list-style-type: none"> (b) an offence of attempting or conspiring to commit an offence specified in paragraph (a) or (b); (c) an offence of inciting a person to commit an offence specified in paragraph (a) or (b); (d) an offence of aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a) or (b)." 	<p>The Scottish offences are common law offences, in contrast to the English and Welsh offences which are statutory. The provision also captures ancillary offences in the same way as currently defined in subsection (7) of clause 2 for England and Wales.</p>
<p>Clause 3 – Determining when a conviction has been considered by Court of Appeal</p>	<p>Clause 3, page 3, line 15, at end insert—</p> <p>“(6) In relation to a conviction in Scotland—</p> <ul style="list-style-type: none"> (a) subsections (1) to (5) apply as if for the words “Court of Appeal” there were substituted “High Court of Justiciary”; (b) a conviction is also to be taken to have been considered by the High Court of Justiciary where the conviction is by the High Court of Justiciary following its substitution of an amended verdict of guilty on appeal.” 	<p>Purpose and effect:</p> <p>This amendment makes provision for when a conviction is to be treated as having been considered by the High Court of Justiciary (and is therefore not quashed).</p> <p>It applies the same rules as those that apply in England and Wales in respect of the Court of Appeal, with one addition (namely, the High Court substituting an amended verdict in an appeal). This addition is made to take account of the ways in which the High Court of Justiciary could have disposed of a case in Scotland while allowing a conviction for a relevant offence to continue to exist.</p>

<p>Clause 4 - Identification and notification of quashed convictions</p>	<p>Clause 4, page 3, line 38, after “Wales” insert “or in Scotland”</p>	<p>Purpose and effect:</p> <p>Clause 4(5) requires the Secretary of State, when identifying convictions quashed by clause 1, to consider representations made to him that a person has been convicted of a relevant offence in England and Wales. This amendment extends that requirement to representations regarding convictions for a relevant offence in Scotland.</p>
	<p>To move the following Clause—</p> <p>“Deletion of alternatives to prosecution for relevant offences: Scotland</p> <p>(1) Section 5 applies in relation to an alternative to prosecution given to a person in Scotland for a relevant offence as it applies in relation to a caution given to a person in England and Wales for a relevant offence, subject to the following modifications—</p> <p>(a) references to the appropriate chief officer of police are to be read as references to the chief constable of the Police Service of Scotland;</p> <p>(b) the reference to the criminal records database is to be read as a reference to the criminal history database of the Police Service of Scotland held for the use of police forces generally.</p>	<p>Purpose and effect:</p> <p>Clause 5 of the Bill sets out the process for the deletion of cautions for relevant offences from the official record in England and Wales where the Secretary of State becomes aware of them, and for identification and notification to the person. This amendment, inserting what would be a new clause 5A, applies this process to the various types of alternatives to prosecution available in Scotland in the same way as it applies to cautions in England and Wales.</p> <p>This means that if the Secretary of State becomes aware of any relevant offences for which alternatives to prosecution have been given in Scotland, he will require to direct the Chief Constable of Scotland to delete details of those from the criminal records database. This will include police and procurator fiscal warnings, conditional offers of fixed penalty from the procurator fiscal, compensation offers from the procurator fiscal, work orders offered by the procurator</p>

	<p>(2) For the purposes of this section, an alternative to prosecution has been given to a person for a relevant offence if the person—</p> <p>(a) has been given a warning in respect of the offence by a constable in Scotland or a procurator fiscal,</p> <p>(b) has accepted, or is deemed to have accepted—</p> <p>(i) a conditional offer issued in respect of the offence under section 302 of the Criminal Procedure (Scotland) Act 1995, or</p> <p>(ii) a compensation offer issued in respect of the offence under section 302A of that Act,</p> <p>(c) has had a work order made against the person in respect of the offence under section 303ZA of that Act, or</p> <p>(d) has accepted an offer made by a procurator fiscal in respect of the offence to undertake an activity or treatment or to receive services or do any other thing as an alternative to prosecution.”</p>	<p>fiscal, or other alternatives to prosecution offered by the procurator fiscal.</p>
<p>Clause 6 - Consequential provision</p>	<p>Clause 6, page 5, line 2, at end insert—</p> <p>“(4) In relation to a conviction in Scotland, the reference in subsection (1) to the conviction having been quashed by a court on an appeal is to be read as a reference to the conviction having been quashed by the High Court of Justiciary on an appeal by the convicted person.”</p>	<p>Purpose and effect:</p> <p>This amendment provides that in Scotland a reference to a conviction having been quashed by a court on an appeal is to be read as a reference to the conviction having been quashed by the High Court of Justiciary on an appeal by the convicted person. This is to ensure there is parity with a person whose conviction</p>

		<p>is quashed by the High Court of Justiciary in an appeal. It takes account of the wording of Scottish legislation in relation to matters such as the return of fines (which is framed in relation to who brought the case which led to the conviction being quashed).</p>
<p>Clause 7 - Power to make further consequential provision</p>	<p>Clause 7, page 5, line 13, at end insert—</p> <p>“(3A) Before making regulations under this section, the Secretary of State must obtain the consent of the Scottish Ministers in relation to any provision which—</p> <ul style="list-style-type: none"> (a) would be within the legislative competence of the Scottish Parliament, if contained in an Act of that Parliament, and (b) is not merely incidental to, or consequential on, provision which would be outside that legislative competence.” 	<p>Purpose and effect:</p> <p>This amendment provides that the Secretary of State would require to obtain the Scottish Ministers’ consent to the making of consequential regulations if those regulations would be within the legislative competence of the Scottish Parliament. This mirrors the approach taken in section 94 of the Health and Care Act 2022 (among others).</p>
	<p>To move the following Clause—</p> <p>“Power of the Scottish Ministers to make further consequential provision</p> <ul style="list-style-type: none"> (1) The Scottish Ministers may by regulations make provision that is consequential on any provision made by this Act (see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10), as a result of which such regulations are to be made by Scottish statutory instrument). 	<p>Purpose and effect:</p> <p>This amendment inserts what would be a new clause 7A. It provides a parallel regulation-making power for Scottish Ministers to the provision made in clause 7.</p> <p>This would allow the Scottish Ministers (subject to the rules on the Scottish Parliament’s devolved competence) to make consequential regulations relating to Scotland, given that the subject matter of criminal law and procedure is devolved. This recognises that while there may be consequential</p>

	<p>(2) Regulations under this section may amend, repeal or revoke provision made by or under—</p> <p>(a) an Act of the Scottish Parliament passed before this Act, or</p> <p>(b) an Act passed—</p> <p>(i) before this Act, or</p> <p>(ii) later in the same session of Parliament as this Act.</p> <p>(3) The power to make regulations under this section includes power to make—</p> <p>(a) supplementary, incidental, transitional or saving provision;</p> <p>(b) different provision for different purposes.</p> <p>(4) Regulations under this section may only make provision which would be within the legislative competence of the Scottish Parliament if contained in an Act of that Parliament.</p> <p>(5) Regulations made under this section that amend or repeal provision made by an Act of the Scottish Parliament, or by an Act, are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).</p>	<p>provision required which is best made by the Secretary of State (given he will be administering the scheme), there may also be consequential provision required which is specific to Scotland and which it would therefore make sense for the Scottish Ministers to make.</p> <p>These regulations would be subject to the usual rules, in that it allows for modification of other legislation: affirmative procedure would apply if the regulations modified an Act, and otherwise negative procedure would apply.</p>
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	(6) Any other regulations made under this section are subject to the negative procedure (see section 28 of that Act)."	
Clause 8 - Interpretation	Clause 8, page 5, line 34, after "proceedings" insert "in England and Wales"	<p>Purpose and effect:</p> <p>This amendment limits paragraph (b) of the definition of "conviction" so that it only applies to England and Wales. This is linked to the next amendment which substitutes an adapted definition for Scotland.</p>
Clause 8 - Interpretation	Clause 8, page 5, line 36, at end insert "or (c) a finding in any criminal proceedings in Scotland (including a finding linked with mental disorder or in respect of which an admonition or absolute discharge is made) that a person has committed an offence or done the act or made the omission charged,"	<p>Purpose and effect:</p> <p>This amendment adds a new paragraph (c) to the definition of "conviction", adding an equivalent for Scotland to paragraph (b).</p> <p>This provides for "conviction" to include a finding, linked to mental disorder, that a person has committed the offence/done the act or omission charged, and a finding which resulted in admonition or absolute discharge.</p> <p>This reflects the fact that "mental disorder" is used in Scotland in relation to such findings rather than "insanity". It also ensures that the intention behind clause 8(2) applies fully in Scotland: the general rule on not treating a discharge as a conviction needs to be disapplied as otherwise such persons would not benefit from their convictions being quashed.</p>

Clause 8 - Interpretation	Clause 8, page 6, line 9, after “Wales” insert “or Scotland”	<p>Purpose and effect:</p> <p>This amendment to the definition of “post office” in clause 8(1) extends the definition to post offices to include any premises or vehicles from which postal services are provided (whether alone or with other services) directly to the public in Scotland. This ensures that those working in post offices in Scotland are covered by condition C in clause 2.</p>
Clause 9 - Extent and commencement	Clause 9, page 6, line 25, after “Wales” insert “and Scotland”	<p>Purpose and effect:</p> <p>This amendment provides for the Bill to extend Scotland.</p>
Title	Title, line 1, after “Wales” insert “and Scotland”	<p>Purpose and effect:</p> <p>This amendment adjusts the Bill’s long title to reflect the fact that, under the preceding amendments, the Bill would also apply to convictions in Scotland.</p>
Title	Title, line 4, after “Wales” insert “and of alternatives to prosecution given in Scotland”.	<p>Purpose and effect:</p> <p>This amendment adjusts the Bill’s long title to reflect the fact that, under the preceding amendments, it would also apply to the deletion of details of alternatives to prosecution in Scotland.</p>