

POST OFFICE (HORIZON SYSTEM) COMPENSATION BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Post Office (Horizon System) Compensation Bill as brought from the House of Commons on 19 December 2023 (HL Bill 37).

- These Explanatory Notes have been prepared by the Department for Business and Trade in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The Post Office (Horizon System) Compensation Bill will help delivery of full and fair compensation to postmasters who have suffered as a consequence of the Post Office Horizon IT scandal, including those who were litigants in legal proceedings the subject of a “Group Litigation Order” (GLO) (*Bates and Others v Post Office*) which exposed the scandal and shortcomings of the Post Office Limited (“the Post Office”). It will establish the financial authority (necessary for regularity reasons) to enable the Secretary of State for Business and Trade (“the Secretary of State”) to make compensation awards by way of *ex gratia* payment under the current GLO Scheme after the existing power ceases to be available in August 2024, if it proves necessary to do so. However, it remains the Government’s intention to complete the Scheme before that date. The Bill also provides the Secretary of State with authority for the payment of compensation under other schemes or other arrangements established to compensate persons affected by the Horizon IT system and in respect of other matters identified in legal proceedings related to the Horizon system.
- 2 The Bill contains only 2 clauses.
 - Clause 1 provides the power to incur expenditure.
 - Clause 2 specifies the Bill’s short title.

Policy background

Context

- 3 In 2000 the Post Office introduced new Horizon software to its network of branches. The software had faults which meant that some postmasters’ accounts showed false shortfalls. The Post Office obliged postmasters to “repay” these false shortfalls. Some postmasters were suspended (generally without pay) and/or dismissed. Others were prosecuted (by the Post Office itself or by others); some were convicted and imprisoned. Some were made bankrupt (in some cases on the petition of the Post Office: there are allegations that this was done maliciously). 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.
- 4 Following various failed attempts to expose the scandal, in 2016 a group of 555 people (mostly postmasters (individuals or companies) but also some managers, Post Office staff and employees of postmasters) took the Post Office to the High Court in a case managed pursuant to a Group Litigation Order made in March 2017. This legal action culminated in two major judgments (on Common Issues and Horizon Issues) which were very critical of the Post Office’s software, its contracts with postmasters and its general behaviour.
- 5 As well as finding that the postmasters were not liable for the shortfalls, the High Court made several important findings in respect of the postmasters’ contracts. In particular, the Court found that:
 - The contract between the Post Office and the SPMs was relational. This imposed an implied duty of good faith on both parties.
 - The terms of the contract were subject to the requirement of reasonableness imposed by the Unfair Contract Terms Act 1977; and that a number of the terms

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which the Post Office had imposed failed to satisfy that test, including the withholding of postmasters' remuneration during any period of suspension prior to March 2019.

- 6 In December 2019, in the light of the High Court judgments the Post Office settled out of court for £42.5 million plus costs ("the GLO settlement agreement"). The postmasters had to pay around £31 million of this sum to the company which had funded their action, leaving them with meagre compensation. They divided this amongst themselves using a formula set by the group's steering committee with the help of their legal advisors.
- 7 The GLO settlement agreement also provided for the Post Office to create a compensation scheme for those postmasters who had not been parties to the GLO legal action. This was implemented as the Historic Shortfall Scheme (HSS), now renamed the Horizon Shortfall Scheme.¹
- 8 The Government subsequently announced the launch of a judicial inquiry into the scandal, which was upgraded to a statutory inquiry in June 2021. This is being chaired by Sir Wyn Williams. The Inquiry's scope is defined by the Terms of Reference² set by the Secretary of State. Within that, the Inquiry has published a List of Issues³ on which it is focusing.
- 9 In April 2021 the Court of Appeal overturned⁴ the convictions of 39 postmasters whose cases had been referred by the Criminal Cases Review Commission (CCRC). Further convictions have since been overturned, taking the total to 93. These individuals – whether or not they were members of the GLO – are compensated through separate arrangements. (The GLO settlement agreement included a special provision to permit this).
- 10 The effect of this was that – paradoxically – the unconvicted members of the GLO group were left as the least generously compensated postmasters affected by the scandal. The Government announced⁵ in March 2022 that it would run a compensation scheme ("the GLO Scheme") to provide these people with compensation on a similar basis to other postmasters.
- 11 The terms of the GLO Scheme are set out in Guidance and Principles⁶ published by the Department for Business and Trade ("DBT").
- 12 As previously mentioned, the Common Issues judgment found that clauses in Postmaster contracts allowing the Post Office to withhold remuneration during any period of suspension were unreasonable under the Unfair Contract Terms Act and, consequently unlawful so that it was not entitled to rely on them.
- 13 In 2022 the Post Office announced⁷ the Suspension Remuneration Review with an intention of offering redress for current postmasters affected by Post Office's previous suspension remuneration policy. This policy meant that prior to March 2019, postmasters who were suspended did not receive any remuneration during the period they were suspended. This policy was subsequently changed in March 2019, necessitating the payment to eligible

¹ <https://www.onepostoffice.co.uk/scheme>

² <https://www.gov.uk/government/publications/post-office-horizon-it-inquiry-2020/terms-of-reference>

³ <https://www.postofficehorizoninquiry.org.uk/publications/completed-list-issues>

⁴ <https://www.judiciary.uk/judgments/hamilton-others-v-post-office-limited/>

⁵ <https://hansard.parliament.uk/Commons/2022-03-22/debates/OABE1552-567E-4092-93EB-0F3F12814479/Sub-PostmastersCompensation>

⁶ <https://assets.publishing.service.gov.uk/media/641c0fe5ba5ac90013b1a6b4/glo-guidance-principles.pdf>

⁷ <https://corporate.postoffice.co.uk/en/suspension-remuneration-review/changes-to-operational-processes-and-policies/>

postmasters who were suspended before the change of policy of retrospective remuneration to cover the period of suspension.

- 14 The Government announced⁸ in November 2022 that it would provide funding to cover compensation to postmasters for unpaid suspension remuneration and any associated consequential losses, although the scheme would be administered by the Post Office. The terms of the Suspension Remuneration Review are set out in the questions and answers document⁹ published by the Post Office.

Outline of the Bill

- 15 The Bill contains only two clauses. The first provides a power to incur expenditure; the second specifies its short title.

Legal background

- 16 The principal pieces of existing legislation with relevance to the Bill are as follows.

Primary legislation

- 17 The Post Office is a company limited by shares of which the Secretary of State is the sole shareholder and is classified as a public corporation in the national accounts. The primary legislation that covers it is contained in the Postal Services Act 2000 and the Postal Services Act 2011. The company has a prescribed social purpose. This includes the operation of a network of Post Office branches and meeting certain access criteria, the details of which are set out in a framework agreement and a funding agreement with the Secretary of State.
- 18 Section 103 of the 2000 Act¹⁰ provides the Secretary of State with the power to subsidise and support the Post Office's network of post offices via a scheme.
- 19 The section 103 power cannot be used as the statutory authority for funding the GLO Scheme which is run and administered by the Department for Business and Trade, because it relates only to payments made by the Secretary of State to the Post Office.
- 20 Parliament has not previously granted specific statutory authority to incur expenditure which can be used as the basis for the GLO Scheme. However, it is possible for temporary programmes of expenditure to be undertaken under the sole authority of successive Supply and Appropriation Acts. It is this power that has been used as the legal basis for the GLO Scheme to date. The text in the Supply and Appropriation (Main Estimates) Act 2023¹¹ reads:

“Funding to provide compensation to Group Litigation Order (GLO) claimants who have suffered detriment arising from the errors in the Post Office Horizon IT system or the other matters identified in the relevant High Court judgments.”
- 21 Such payments under the sole authority of the Appropriation Acts are governed by the Treasury's 1932 Concordat with the PAC. That quotes a key passage from the relevant Treasury Minute:

“... while it is competent to Parliament, by means of an annual vote embodied in

⁸ <https://hansard.parliament.uk/Commons/2022-11-24/debates/22112428000006/PostmasterSuspensionPay>

⁹ https://corporate.postoffice.co.uk/media/4x3doo5i/srr_qanda_july2023.pdf

¹⁰ <https://www.legislation.gov.uk/ukpga/2000/26/section/103/2001-01-01>

¹¹ <https://www.legislation.gov.uk/ukpga/2023/31/schedule/enacted>

the Appropriation Acts, in effect to extend powers specifically limited by statute, constitutional propriety requires that such extensions should be regularised at the earliest possible date by amending legislation, unless they are of a purely emergency or non-continuing character”.

- 22 In practice this is taken to mean that payments under the Act in pursuit of a particular project must be completed within two calendar years. Since the first (interim) payment under the GLO Scheme was made on 8 August 2022, this creates a deadline of 7 August 2024 by which the final award under the scheme must be paid.

Secondary legislation

- 23 Secondary legislation has been made to ensure that payments under the GLO Scheme are exempted from income tax and capital gains tax, as well as inheritance tax. Further legislation has been made to ensure GLO Scheme payments are disregarded in the calculation of benefits (in respect of which a further set of regulations have been made to cover Northern Ireland).
- 24 The above measures have been put in place to increase the amount of compensation received by postmasters and are intended to achieve fairness and consistency in compensation outcomes across the whole cohort of postmasters who have been affected by the Horizon IT scandal and the shortcomings of the Post Office.

Territorial extent and application

- 25 The Bill is to extend and apply to England, Wales, Scotland and Northern Ireland. Postmasters who are receiving *ex gratia* payments under the GLO Scheme and receiving compensation under other schemes or arrangements live in each jurisdiction mentioned.
- 26 The scandal did not affect any postmasters in the UK’s Crown Dependencies or Overseas Territories and hence no provision is required for those jurisdictions.
- 27 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

Clause 1: Expenditure in connection with compensation schemes relating to Post Office Horizon system etc.

- 28 Clause 1 empowers the Secretary of State to make payments “under, or in connection with, schemes or other arrangements -
- 29 to compensate persons affected by the Horizon system;
- 30 to compensate persons in respect of other matters identified in High Court judgments given in proceedings relating to the Horizon system.”
- 31 This reference to persons affected by the Horizon system would include those eligible for the GLO Scheme described above as well as those eligible under schemes or other arrangements established to provide compensation.
- 32 The reference to matters in High Court judgments relating to the Horizon system includes detriments such as the failure by the Post Office to pay suspension pay to postmasters.

33 The clause also gives a definition of the Horizon system.

Clause 2: Short title

34 Clause 2 specifies the short title of the Bill.

Commencement

35 The Act will commence on Royal Assent.

Financial implications of the Bill

36 The Bill will provide the Secretary of State, with statutory authority which facilitates the delivery of full and fair compensation which is already underway via the GLO Scheme and the other schemes and arrangements in place. However, the delivery of compensation and the settlement of claims is not wholly within the control of the Government and this of itself may give rise to financial implications.

Parliamentary approval for financial costs or for charges imposed

37 A money resolution is required where a bill authorises new charges on the public revenue - broadly speaking, new public expenditure. A money resolution is required for the Bill in respect of the expenditure authorised under clause 1(1); namely, expenditure under or in connection with schemes or other arrangements to compensate persons affected by the Horizon system, or in respect of other matters identified in legal proceedings relating to the Horizon system.

38 The House of Commons approved the money resolution at Second Reading on 19 December 2023.

39 No ways and means resolution is required as the Bill does not authorise any new taxation or similar charges.

Compatibility with the European Convention on Human Rights

40 The Bill does not engage any ECHR rights. Its purpose is to provide appropriate financial authority for payments made under or in connection with schemes or other arrangements to compensate persons affected by the Horizon system, or in respect of other matters identified in legal proceedings relating to the Horizon system.

41 The Government therefore considers that the Post Office (Horizon System) Compensation Bill is compatible with the European Convention on Human Rights. Accordingly, Lord Offord of Garvel, Parliamentary Under Secretary of State at the Department for Business and Trade has made a statement under section 19(1)(a) of the Human Rights Act 1998 to this effect.

No statement under the Environment Act 2021

42 Lord Offord of Garvel, Parliamentary Under Secretary of State at the Department for Business and Trade, is of the view that the Bill as published does not contain provision which, if enacted, would be environmental law for the purposes of section 20 of the Environment Act 2021.

Related documents

43 The following documents are relevant to the Bill and can be read at the stated locations:

- (Redacted) Settlement Deed between Post Office Limited and GLO cohort, December 2019¹²
- Common Issues Judgment, March 2019¹³
- Horizon Issues Judgment, December 2019¹⁴
- GLO Scheme Guidance and Principles, March 2023¹⁵
- The Treasury's 1932 Concordat with the PAC (set out in Managing Public Money Annex 2.3), May 2023¹⁶
- Supply and Appropriation (Main Estimates) Act 2023, July 2023¹⁷
- Terms of Reference for the Williams Inquiry set by the Secretary of State, September 2023¹⁸
- The Inquiry's List of Issues on which it is focusing, January 2022¹⁹

¹² https://corporate.postoffice.co.uk/media/mwwacr4p/20191210-glo-confidential-settlement-deed-executed-version-redacted_-003.pdf

¹³ <https://www.judiciary.uk/wp-content/uploads/2019/03/bates-v-post-office-judgment-no3-15-mar-19.pdf>

¹⁴ <https://www.judiciary.uk/wp-content/uploads/2019/12/bates-v-post-office-judgment.pdf>

¹⁵ <https://assets.publishing.service.gov.uk/media/641c0fe5ba5ac90013b1a6b4/glo-guidance-principles.pdf>

¹⁶ <https://www.gov.uk/government/publications/managing-public-money>

¹⁷ <https://www.legislation.gov.uk/ukpga/2023/31/schedule/enacted>

¹⁸ <https://www.gov.uk/government/publications/post-office-horizon-it-inquiry-2020/terms-of-reference>

¹⁹ <https://www.postofficehorizoninquiry.org.uk/publications/completed-list-issues>

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Annex A – Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 1	Yes	Yes	No	Yes	No	Yes	No
Clause 2	Yes	Yes	No	Yes	No	Yes	No

Subject matter and legislative competence of devolved legislatures

- 44 As set out in section 2, the provisions in the Act extend and apply to England and Wales, Scotland, and Northern Ireland.
- 45 No provisions touch on matters that are devolved to Scotland or Wales, or transferred to Northern Ireland.

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