

## **Post Office (Horizon System) Offences Bill**

### **European Convention on Human Rights Memorandum**

#### **SUMMARY OF THE BILL**

1. The Bill is being introduced to meet the Government's commitment announced on 10 January to quash, on a blanket basis, the convictions of those convicted of various theft, fraud and related offences against the Post Office that were reliant on erroneous Horizon evidence and the egregious behaviour of the Post Office in the period in question.
2. In particular, the Bill:
  - a. provides that convictions for relevant offences (Clause 1) are quashed on the coming into force of the Act;
  - b. defines "relevant offences" (Clause 2), making clear the exclusion for cases where permission to appeal to the Court of Appeal has been refused or where the Court of Appeal has dismissed the appeal (Clause 3);
  - c. makes provision for activities that will be needed following the quashing of convictions, including notifying individuals that their convictions have been overturned, notifying the convicting court and enabling individuals to seek confirmation that their conviction has been overturned (Clause 4);
  - d. makes provision to update records where a person has been cautioned for a relevant offence (Clause 5 and 6);
  - e. makes consequential provision to ensure that a person whose conviction is quashed by the legislation is to be treated as if the conviction had been quashed by a court on an appeal (Clause 7);
  - f. includes powers to make further consequential provision by regulations (Clauses 8 and 9); and
  - g. extends and applies to England and Wales and Northern Ireland (Clause 11).
3. On introduction in the House of Commons, the Secretary of State for Business and Trade made a statement under section 19(1)(a) of the Human Rights Act

1998 (“HRA 1998”) that in his view the provisions of the Bill are compatible with Convention rights. The ECHR implications are considered in this Memorandum.

## **ECHR IMPLICATIONS**

4. The Department considers that Articles 6, 8 and 14 and Article 1 of Protocol 1 are engaged by the Bill.

### *Article 6*

5. Article 6 provides that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
6. The Article 6 guarantees also apply in principle to appeals on points of law<sup>1</sup>As a general point however, the right of access to a court is not absolute and is subject to implied limitations<sup>2</sup>. However, these limitations must not restrict the exercise of the right in such a way or to such an extent that the very essence of the right is impaired. They must pursue a legitimate aim and there must be a reasonable proportionality between the means employed and the aim sought to be achieved<sup>3</sup>.
7. The criminal justice system in England & Wales ensures compliance with Article 6. While the original trials may be argued to have been procedurally flawed due to defects in the investigation and/or prosecution process, this is capable of being rectified through the appeal process currently provided for in legislation. The Department accepts that the proposed Bill restricts the right of individuals whose convictions are quashed by the Bill to access the courts in order for their appeal to be heard. However, the Department considers that to the extent that this interferes with their Article 6 rights, such an interference is justified. The legislation has been drafted narrowly to minimise the risk of including non-Horizon cases in scope and the Government has been clear in public statements that given the factually exceptional nature of this case, the legislation does not set a precedent for future relations between Parliament, the judiciary and the

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<sup>1</sup> Meftah and Others v France [GC], 2002, §40.

<sup>2</sup> Deweer v Belgium, 1980, §49; Kart v Turkey [GC], 2009, §67.

<sup>3</sup> Guérin v. France [GC], 1998, § 37; Omar v. France [GC], 1998, § 34, citing references to civil cases

executive. Furthermore, the legislation can only operate beneficially with respect to these individuals; their convictions are quashed without the need for them to be involved in the court process and the impact of the quashing in respect of amending criminal records and access to financial redress is on the same basis as if their conviction had been quashed by the courts.

#### *Article 8*

8. Article 8 provides that everyone has the right to respect for his private and family life, his home and his correspondence.
  
9. The Department considers that Article 8 may be engaged, since in the absence of the legislation, it would be for the individual to consider whether to pursue an appeal. We are also aware that some individuals have been contacted in the past by the Post Office or Criminal Cases Review Commission in respect of the potential for making an appeal through the courts and have indicated that they do not wish to be contacted further. However, given the exceptional circumstances of the Horizon scandal, the Department considers that any interference with an individual's Article 8 rights is justified to ensure the protection of the rights of those who have suffered a miscarriage of justice and that this is necessary to ensure prompt justice with the minimum burdens placed on the individuals concerned.

#### *Article 14*

10. Article 14 provides that the enjoyment of the rights and freedoms set out in the Convention is to be secured without discrimination.
  
11. For there to be a breach of Article 14, a person would need to show that they had been treated differently on the basis of a ground listed in Article 14 (including 'other status'), that the claimant is in an analogous position to the person treated differently, and such differences cannot be objectively justified. A person who has had their conviction upheld by the Court of Appeal might seek to argue that they have been treated differently from someone whose conviction is quashed by the legislation on the basis of an 'other status' and that they are in an analogous position to that person (which will be highly fact specific).

12. However, even if such a characteristic could amount to an 'other status', given that the characteristic in such a case would not be innate, the government would likely be afforded a wide margin, and any difference in treatment would require a lower level of justification than would a difference based on innate characteristics<sup>4</sup>.

13. If a difference in treatment based on 'other status' were to be found, the Department considers any such treatment is justified by the legitimate aims of the Bill and because the exclusion for cases previously considered and rejected by the senior appellate court is necessary and proportionate to respect the principle of the separation of powers, and therefore to the maintenance of the rule of law.

*Article 1 of Protocol 1*

14. Article 1 of Protocol 1 provides that every natural or legal person is entitled to the peaceful enjoyment of his possessions.

15. Article 1 of Protocol 1 may be engaged since individuals who have Horizon convictions overturned by the courts may be eligible for financial redress under the Overturned Convictions Compensation scheme or section 133 of the Criminal Justice Act 1988 which is administered by the Miscarriage of Justice Applications Service<sup>5</sup>. The Department considers that there is no interference with these rights because individuals whose convictions are quashed under the legislation will continue to be eligible for this financial redress (subject to meeting the usual criteria).

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<sup>4</sup> *R (RJM) v SSWP [2008] UKHL 63*

<sup>5</sup> Although compensation under section 133 of the Criminal Justice Act 1988 will remain available in principle, it is expected that it is unlikely that many individuals who have their convictions quashed under the Bill will seek to access this compensation due to the high threshold for compensation under section 133 and the fact that any losses are very likely to be covered by the Overturned Convictions Compensation Scheme.