

## POST OFFICE (HORIZON SYSTEM) OFFENCES BILL

### DELEGATED POWERS – SUPPLEMENTARY MEMORANDUM BY THE DEPARTMENT FOR BUSINESS AND TRADE

#### A. Introduction

1. This supplementary memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Post Office (Horizon System) Offences Bill (“the Bill”).
2. Amendments were made to the Bill at Commons Committee stage. They include one new delegated power and make changes to the existing delegated power. This supplementary memorandum explains the amendments and why the new power has been taken and the justification for the procedure selected.
3. The Bill includes one new delegated power, which will enable the Department of Justice in Northern Ireland to make amendments which are consequential on the provisions of the Bill, and within the legislative competence of the Northern Ireland Assembly. It also amends the proposed power for the Secretary of State, to enable consequential amendments to be made to reserved provision.

#### B. Analysis of the New Delegated Power

##### **Clause 9: Power of Department of Justice in Northern Ireland to make further consequential provision**

<b>Power conferred on:</b>	<i>Department of Justice</i>
<b>Power exercised by:</b>	<i>Regulations made by statutory rule</i>
<b>Parliamentary Procedure:</b>	<i>Negative resolution (if it does not amend primary legislation), otherwise affirmative resolution</i>

#### Context and purpose

4. The new clause confers a power on the Northern Ireland Department of Justice to make provision that is consequential on any provision made by the Bill and which is transferred Northern Ireland provision.

#### Justification for delegation

5. The Government has committed to quashing convictions within the scope of the Bill as soon as possible and, in these exceptional circumstances, the Bill has been introduced within a very short timescale. The Government has now amended the Bill to extend it to Northern Ireland, also within a short timescale. The general consequential provision at Clause 6 (to ensure that a person whose conviction is quashed by the Bill is to be treated as if the conviction had been quashed by a court on appeal) will apply to Northern Ireland, however no other consequential provision has so far been identified for the jurisdiction. The UK Government and Northern Ireland Department of Justice therefore believe it necessary to take a power to make further consequential provision to avoid

any implementation difficulties or legislative inconsistencies which may otherwise arise. This delegation of power is justified to ensure that, should any issues arise in the future, those can be addressed to ensure delivery of the policy intent.

6. Such a consequential power would be narrow in scope. The provisions of the Bill are intended to overturn the convictions of those individuals impacted by the Horizon scandal, and the criteria that must be met for a person to have their conviction quashed by the Bill are objective and clearly set out on its face. Any consequential provision would be limited to delivering the effect of the quashing of those convictions, or the deletion of any cautions in Northern Ireland. That effect should be in line with what would happen if a court were to quash a conviction on appeal, or if a caution were to be deleted.
7. The consequential power may be exercised to make provision that is transferred Northern Ireland provision within the meaning of the clause.

### **Justification for procedure**

8. If regulations made under this power do not amend primary legislation, they will be subject to the negative resolution procedure. The affirmative procedure is not considered necessary or suitable for any applicable amendments which might be made to secondary legislation by virtue of this clause as amendments to any applicable orders and regulations are expected to have a positive impact on the rights of those who have had their convictions quashed.
9. If regulations made under this power amend provision in primary legislation, they will be subject to the affirmative resolution procedure as befitting a “Henry VIII” power of this type. It is considered that this provides the appropriate level of parliamentary scrutiny for the powers conferred by this clause.

### **C. Amendments to Clause 7**

10. Clause 7 confers a power on the Secretary of State to make consequential provision for the purposes of the Bill. Amendments have been made to the power, in consequence of the extension of the Bill to Northern Ireland.
11. As set out above, a new power is proposed to enable Northern Ireland to make consequential provision that is transferred Northern Ireland provision within the meaning of the clause. In order to ensure that any necessary consequential provision that would apply in Northern Ireland but which falls outside the scope of this new power, amendments have been tabled to the power for the Secretary of State at Clause 7, to allow the Secretary of State to make such provision.
12. This amendment to the power is considered necessary to ensure parity between the ability to make consequential provision for Northern Ireland and for England and Wales, while avoiding competence issues.

13. In all other respects, the power, and the justification for both the power and the procedure, remain as outlined in the memorandum tabled upon introduction of the Bill to the House of Commons.