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Scottish Parliament
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07 March 2024

Dear Convener,

I am writing to you to provide an update on the Scottish Government's position regarding legislation to reverse the convictions of wrongly convicted sub-postmasters.

As you will be aware, on 10 January, the UK Government announced that it would legislate to reverse the convictions of sub-postmasters convicted because of unsafe Horizon IT system evidence which infected criminal cases all across the UK. I wrote to the Secretary of State for Justice, Alex Chalk MP, saying that the Scottish Ministers supported the approach announced in the UK Parliament, and that the Scottish Government was keen to work with the UK Government to ensure that the appropriate legislation is brought forward. The First Minister wrote to the Prime Minister on 12 January to reiterate this message and the Prime Minister confirmed that the UK Government would work with devolved administrations to ensure that sub-postmasters across the whole of the UK receive the exoneration they deserve.

The issue was discussed when I met with UK, Welsh and Northern Irish Ministerial colleagues at the Inter-Ministerial Group on Justice on 25 January. As set out in the minute of that meeting, which is published at <https://www.gov.uk/government/publications/communiqués-from-the-inter-ministerial-group-for-justice/inter-ministerial-group-for-justice-imgj-meeting-summary-25-january-2024>, Ministers agreed that close engagement between the administrations would be crucial to ensure that wrongly convicted postmasters across the UK receive an equitable outcome.

On 22 February, Kevin Hollinrake MP, the Minister for Enterprise, Markets and Small Business, who has portfolio responsibility for the operation of the Post Office, made a statement at Westminster in which he said that the UK Government intends to introduce a Bill in Parliament in March, to reverse the convictions of those who were wrongfully convicted of criminal offences as a consequence of the defective Post Office Horizon IT system. This legislation would apply in England and Wales only.

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It is unclear why the UK Government have made this decision to restrict the Bill to England and Wales. I have written to Minister Hollinrake to make clear the Scottish Ministers' position that a single Bill applying across all the jurisdictions of the UK is the best way to ensure that there is a quick, fair and equal solution for all affected sub-postmasters. The First Minister and Deputy First Minister in Northern Ireland, which has been placed in the same position, has also made clear that this issue is best addressed on a UK-wide basis.

In light of this UK Government decision, we are currently working to develop equivalent legislation to be introduced in the Scottish Parliament to reverse the convictions of sub-postmasters convicted in the Scottish courts to ensure that they are not disadvantaged if the UK Government does not change its position on this matter. I have asked Minister Hollinrake to share with the Scottish Government a copy of its proposed legislation to enable equivalent legislation to be introduced in the Scottish Parliament as quickly as possible, so minimising any delay in Scottish sub-postmasters having their convictions reversed. I have attached a copy of my letter to him for information.

Insofar as possible, we wish to mirror the provisions of the UK legislation to ensure equal treatment of those convicted in Scottish courts, and we wish to ensure that there is minimal delay in passing the legislation and to this end we are exploring appropriate and timely Parliamentary consideration of the Bill.

It is worth noting however, that some delay may be inevitable as any legislation would have to be passed after the UK Bill has been passed, to ensure full compatibility with UK legislation and access to the UK compensation scheme for wrongly convicted sub-postmasters, in which the Scottish Government and Parliament have no locus. This is a clear reason why UK-wide legislation would be best and this may be a particular issue if the UK Bill is not passed until after the Scottish Parliament has gone into summer recess.

It should also be noted that, depending on the detail of the UK Bill, it may be that aspects of the Scottish Legislation cannot be fully effective without further secondary legislation in the UK Parliament. In particular, this may be an issue if the Scottish Parliament makes provision to compel the Post Office to provide information to the Scottish Government to assist in determining whether individual convictions are Post Office Horizon convictions that should be overturned. Again, this is a reason why a UK-wide approach in the UK Government Bill would be best.

I hope this is helpful in setting out the Scottish Government's position and would be happy to meet to discuss if that would be helpful.

Yours sincerely,



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Kevin Hollinrake MP
Minister for Enterprise, Markets and Small
Business
Department for Business and Trade
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23 February 2024

Dear Kevin

Thank you for your letter of 22 February setting out the UK Government's proposed approach to overturning the convictions of wrongly convicted sub-postmasters and sub-postmistresses and for calling to explain the UK Government's position.

As I set out during our call, the Scottish Government is strongly of the view that the best way to ensure a solution that is quick, fair and treats all affected sub-postmasters across the United Kingdom equally, is for Westminster to legislate for the whole of the UK to overturn the convictions of all those affected. I would therefore urge you to reconsider the scope of this legislation so that it can apply across the UK.

The cause of these wrongful convictions, wherever they occurred, is the defective Post Office Horizon IT system and the failure of the Post Office to disclose relevant information to prosecutors. This has infected cases across the UK. Responsibility for overseeing the Post Office is of course a matter for the UK Parliament and Government.

It is important that convictions in Scotland are treated in exactly the same way as those in the other jurisdictions of the UK to ensure that those affected are able to access compensation. You have recognised this, therefore surely you must also recognise that the most effective way in which to ensure this parity of treatment would be to use the same legislative vehicle for all cases.

If separate legislation is required to be introduced in the Scottish Parliament, it will have to closely mirror whatever approach is taken in the proposed UK Bill for the reasons set out above.

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It is therefore inevitable that any Scottish legislation to reverse convictions of affected sub-postmasters has to take account of the criteria in the UK Bill and it will not be possible to introduce it in Parliament until after the UK Bill has been introduced – and passed to take into account any amendments. This will very likely result in Scottish sub-postmasters having to wait longer to have their convictions overturned than would be the case if a single Bill legislated for the whole of the UK.

I would be grateful if you could share the draft UK Bill with us as soon as possible. Without this level of detail, it is not clear to us whether the process that it will put in place to quash convictions will be fully within the devolved competence of the Scottish Parliament. In particular, if there is any requirement for information to be obtained from the Post Office in order to determine a person's eligibility for compensation, there may well be issues as regards the Scottish Ministers' and Scottish Parliament's powers to compel the Post Office to provide such information. If this was needed for the Bill to work effectively, it appears to us that it may require the UK Government to seek to pass orders under Section 104 of the Scotland Act 1998, which risks introducing further delay for affected Scottish sub-postmasters.

In this regard, I am aware from discussions with the Crown Office and Procurator Fiscal Service and Scottish Criminal Cases Review Commission that delays in the Post Office providing information about cases being appealed to the High Court has been a significant factor in delaying consideration of appeals against convictions.

I would highlight that there are well established processes for UK legislation applying in devolved areas with consent and I see no barrier as to why this could not be the case for this issue. I am committed to ensuring that Scottish sub-postmasters have swift access to justice and insofar as possible are not disadvantaged relative to their counterparts in England and Wales.

I welcome the commitment you make in your letter that your team will continue to offer support to Scottish colleagues as the UK Bill is being developed, however it remains the case that the best way forward for sub post masters to be treated in the same way at the same time is to legislate on a UK wide basis.

As we discussed in our call, I would also very much welcome an in-person meeting to discuss further.

I am copying this letter to colleagues in Northern Ireland.

Yours sincerely



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