

Citizen Participation and Public Petitions Committee

1st Meeting, 2022 (Session 6), Wednesday,
19 January 2022

PE1855: Pardon and memorialise those convicted under the Witchcraft Act 1563

Note by the Clerk

Lodged on: 17 March 2021

Petitioner Claire Mitchell QC

**Petition
summary** Calling on the Scottish Parliament to urge the Scottish Government to pardon, apologise and create a national monument to memorialise those people in Scotland accused and convicted as witches under the Witchcraft Act 1563.

Webpage petitions.parliament.scot/petitions/PE1855

Introduction

1. This Committee last considered this petition at its meeting on [1 September 2021](#) where it decided to seek further information from the Scottish Government and the petitioner on the potential use of the Royal Prerogative of Mercy in relation to the aims of this petition.
2. A summary of past consideration of the petition and responses to information requests are provided for the Committee's consideration.

Background

3. During its consideration of this petition, the Committee received 5 written submissions.

Initial Scottish Government submission

4. In its first written submission, the Scottish Government explains that, in Scotland, it is the First Minister who is responsible for recommending to Her Majesty the Queen the exercise of the Royal Prerogative of Mercy to grant a Free Pardon.
5. If a Free Pardon is granted, the conviction is disregarded to the extent that, as far as possible, the person is relieved of all penalties and other consequences of the conviction. The conviction is not quashed, however, as only the courts have that power.
6. The Scottish Government also explains that since 1 April 1999, the Scottish Criminal Cases Review Commission (SCCRC) has been responsible for the review and referral to the High Court of alleged miscarriages of justice.
7. The SCCRC has the power to consider a case even after the death of the person or persons convicted. Although the Royal Prerogative of Mercy (RPM) remains in place, it is largely superseded by the SCCRC process.
8. The Scottish Government highlights that the First Minister will not generally consider recommending a free pardon until—
 - an appeal has been dismissed, or
 - leave to appeal has been refused, and
 - any application to the SCCRC seeking to have the case referred to the Appeal Court has been rejected.
9. The Scottish Government states, however, that it would carefully consider representations from the petitioner highlighting a specific case or set of cases, with a view to establishing whether such case(s) constituted appropriate grounds to recommend an RPM.
10. In this written submission, the Scottish Government notes that the [Historical Sexual Offences \(Pardons and Disregards\) \(Scotland\) Act 2018](#), referenced in the petition, provides a recent precedent for legislation in the area of pardons.
11. It states that there are clear “similarities between the injustices of those convicted in a discriminatory manner for same-sex sexual activity and the injustices of women classed as witches many centuries ago”. The submission further states that these similarities could justify legislative steps being taken in this area.
12. The Scottish Government acknowledges that those accused and convicted of the offence of witchcraft were women who faced discrimination and had very little protection in law from allegations of criminality, including witchcraft.

Further Petitioner & Scottish Government Submissions

13. The Committee received a submission from the petitioner on 20 September 2021. A link to the full submission is provided in the annexe to this paper.
14. The petitioner reiterates that she is seeking 3 things, a pardon, an apology and a national memorial for those convicted under the Witchcraft Act 1563.
15. The petitioner points out that 'when the Witchcraft Act 1563-1736 was abolished and replaced by a new act, the crime was that of 'pretended witchcraft'' and 'even by 1736 it was realised that there was no such crime of witchcraft and broadly accepted that people should not have been accused and executed for it'.
16. In relation to a pardon, the petitioner states their belief that the Royal Prerogative of Mercy is not a suitable vehicle to achieve their petition's aim, stating 'we are not looking for a pardon in individual cases by the Queen' as 'the prosecutions were carried out by the Scottish State'.
17. The petitioner also states that an application to the SCCRC to pardon individual people would not be competent as there would be no-one that could be considered to have a 'legitimate interest' in terms of the Criminal Procedure (Scotland) Act 1995.
18. Instead, the petitioner suggests there is a need for the Scottish Government to legislate to provide a pardon for all those convicted. The petitioner draws parallels with the Historical Sexual Offences (Pardons and Disregards) (Scotland) Act 2018, in that it provided a 'collective and posthumous pardon'.
19. In relation to an apology, the petitioner acknowledges that 'a pardon and apology would be symbolic', but that 'it would not be any the less important or powerful for being so'. The petitioner suggests that the Committee should ask the Scottish Government to 'provide a public apology to those convicted of witchcraft, making it clear that those convictions ought not to have happened and that these people were not witches'.
20. The petitioner also draws attention to a number of national monuments and museums erected globally to commemorate those convicted of witchcraft, suggesting that to erect a national monument in Scotland would 'acknowledge the terrible injustice done' and 'allow reflection on the circumstances which led to a vulnerable group being scapegoated'.
21. In its submission dated 4 November 2021, the Scottish Government accepts 'that while the Scottish Criminal Cases Review Commission (SCCRC) can consider posthumous applications made on behalf of a convicted person made by someone who would have standing to bring an appeal on their behalf, in practice, this will almost certainly not be possible'.

22. The Scottish Government also points out that in terms of the Royal Prerogative of Mercy, 'the First Minister will not generally consider recommending to Her Majesty a free pardon under the RPM process until that person's appeal against their conviction has been dismissed, or leave to appeal has been refused, and any application to the SCCRC seeking to have the case referred to the Appeal Court has been rejected'.
23. The Scottish Government highlights that whilst there was no specific legislation in this policy area set out in the most recent Programme for Government, 'legislative planning is kept under review on an ongoing basis' and there would also be scope for this to be pursued by an individual MSP via the Members' Bill process.
24. In a further submission from the petitioner dated 5 December 2021 (a link to which is also provided in the annexe to this paper), the petitioner suggests that the Committee may wish to consider a Committee Bill on this topic.
25. However, since that submission has been made, there has also been press coverage to suggest that the petitioners may be considering working with an MSP on a Members' Bill instead. To date, however, a proposal for such a Bill has not been lodged with the Scottish Parliament.

Action

The Committee is invited to consider what action it wishes to take on this petition.

Clerk to the Committee

Annexe

The following submissions are circulated in connection with consideration of the petition at this meeting:

- [PE1855/C: Petitioner submission of 20 September 2021](#)
- [PE1855/D - Scottish Government submission of 4 November 2021](#)
- [PE1855/E - Petitioner submission of 5 December 2021](#)

The Scottish Parliament launched a new website at the end of Session 5.

All written submissions received on the petition before May 2021 can be viewed on the [archive webpage](#). Written submissions received on the petition after May 2021 can be viewed on its [new webpage](#).