

Justice Committee

Criminal Justice (Scotland) Bill

Written submission from Equality and Human Rights Commission

Introduction

The Equality and Human Rights Commission promotes and protects equality across Scotland, England and Wales, working to eliminate discrimination, reduce inequality and make sure that everyone has a fair chance to participate in society. In Scotland, we share our role as a National Human Rights Institution¹ with our colleagues in the Scottish Human Rights Commission (SHRC).

There are several aspects of the Criminal Justice (Scotland) Bill which are relevant to our remit, including:

1. The proposal for an aggravation for people trafficking
2. The abolition of corroboration rule
3. The proposals for rights of suspects in police custody including vulnerable adults.

Proposed human trafficking aggravation

In November 2011, the Commission published its report on the Inquiry into Human Trafficking in Scotland². The inquiry aimed to understand better the factors which underpin human trafficking in Scotland, as well as to examine the legal, institutional and policy shifts required to address it more effectively.

One of the main findings from the inquiry was that legislation on human trafficking in Scotland is piecemeal and inconsistent. Human trafficking is addressed in a range of legislation, such as sexual offences, asylum or immigration law, and these different pieces of legislation carry different definitions for what is essentially the same act. Since the inquiry's publication, the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA), in its report on progress in the UK, has also highlighted the need to work to the best and most comprehensive definition of human trafficking³. The inquiry recommended that the Scottish Government introduce a comprehensive Human Trafficking Bill based upon a review of all its legislation relating to human trafficking. While recognising that a new statutory aggravation does not address these wider points, we welcome the proposal and believe it can be an important additional weapon for police and prosecutors.

Abolition of corroboration rule

The Carloway Report reflected on the experience of women victims of violence and noted the challenge of corroborating offences whose hidden nature makes this difficult, if not impossible. Our human trafficking inquiry also identifies the evidential bar set by corroboration as a barrier to cases getting to court. Scots law requires corroboration for a criminal offence that can be proved only by "leading evidence from at least two independent sources that the crime was committed and that the accused was the perpetrator". In the view of the COPFS, this requirement, together

¹ www.ohchr.org/en/countries/nhri/pages/nhrimain.aspx

² www.equalityhumanrights.com/scotland/human-rights-in-scotland/inquiry-into-human-trafficking-in-scotland/

³ <http://ec.europa.eu/anti-trafficking/entity.action?path=Publications%2FGRETA+UK>

with the inherent difficulty of getting traumatised survivors to be witnesses, poses “*real challenges in obtaining a sufficiency of evidence to satisfy the requirement for corroboration*”.⁴

There are however, wider and deeper factors which contribute to the very low conviction rates for certain crimes. Systemic issues around appropriate questioning and support, and wider public attitudes to rape and sexual offences may be just as important, if not more so, than the issue of corroboration rules stopping cases reaching court. Similarly, juries’ reluctance to convict in rape trials is linked to wider assumptions and negative attitudes. In order to address low conviction rates, there is much work that to be done to build the capacity of sheriffs, judges, police, and the members of juries, to respond appropriately to sexual and domestic violence. Clearly if changes to the corroboration rules proceed, the Government must also ensure that the human right of accused persons are appropriately protected.

Rights of suspects in police custody, including vulnerable adults

The Commission welcomes the provisions in the Bill which define a vulnerable person on arrest, detention and questions as a person aged 18 or over who is assessed as vulnerable due to a mental disorder as defined in section 328(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003.

Again, there are wider challenges around awareness-raising and training for staff working in criminal justice agencies. In order to strengthen rights and protection for disabled accused persons, the Commission recommends that Article 13 of the United Nations Convention on the rights of Persons with Disabilities is given meaningful effect in practice: ‘In order to help to ensure effective access to justice for persons with disabilities, State Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.’

Equality and Human Rights Commission
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⁴ COPFS evidence to human trafficking inquiry, p 70.