

Justice Committee

Criminal Justice (Scotland) Bill

Letter from the Scottish Government to the Convener

I refer to my letter of 4 February which advised the Committee of my decision that an independent Reference Group is to be set up to consider further reforms which may be necessary in light of the corroboration provisions in the Bill.

I am now pleased to announce that The Right Hon Lord Bonyon has agreed to lead this group and that a remit for the issues to be considered has been agreed with him. The Committee will be well aware of the calibre of Lord Bonyon's previous contributions to Scots Law. He was appointed as Senator of the College of Justice in January 1997, serving with great distinction and retiring in 2012. He also has international experience, serving as a judge of the UN International Criminal Tribunal for the Former Yugoslavia between June 2004 and August 2009 where he presided over many high profile war crimes cases. In 2001 Lord Bonyon conducted a comprehensive review of the practices and procedure of the High Court of Justiciary. Lord Bonyon's report was published in 2002 and resulted in significant set of reforms to High Court practices and procedures. Lord Bonyon's extensive knowledge and expertise on Scots Criminal Law makes him the ideal person to lead this important Reference Group.

Please find attached a copy of the remit for your Committee's information. Membership of the Reference Group is still being considered, but arrangements are being made for the work of the group to commence as soon as possible.

I hope this further information is helpful.

Kenny MacAskill
Cabinet Secretary for Justice
5 February 2014

TERMS OF REFERENCE

In the context of provisions in the Criminal Justice (Scotland) Bill which propose the removal of the general requirement for corroboration in criminal cases, recognising that this is considered by many to be an integral requirement of the criminal justice system, to consider what additional safeguards and changes to law and practice are necessary to maintain a fair, effective and efficient system, to report, and to draft any legislation required to give effect to these changes.

In making its assessment, the review would be expected to consider the issues highlighted in the following, non-exhaustive, list:

- Whether a formal statutory test for sufficiency based upon supporting evidence and/or on the overall quality of evidence is necessary,
- Whether any proposed prosecutorial test (or a requirement for publication of any such test) should be prescribed in legislation,
- The admissibility and the use of confession evidence,
- The circumstances in which evidence ought to be excluded,
- The practice of dock identification,
- Jury majority and size,
- The future basis and operation for a submission that there is no case to answer at the end of the prosecution case,
- Whether a judge should be able to remove a case from a jury on the basis that no reasonable jury could be expected to convict on the evidence before it,
- Whether any change is needed in the directions that a judge might give a jury (including a requirement for special directions in particular circumstances),
- Whether any additional changes are required in summary proceedings.

Appeals are not expected to be considered by the review as they are for wider consideration, not related specifically to corroboration.