

Justice Committee

Criminal Justice (Scotland) Bill

Written submission from Howard League for Penal Reform in Scotland

The Howard League for Penal Reform in Scotland

The membership of the Howard League for Penal Reform in Scotland (HLS) is drawn from a wide range of disciplines connected to criminal justice. The executive committee consists of academics, lawyers, criminal justice practitioners, a GP, and a justice of the peace. There is an even balance of those who are professionally involved in victims groups, the criminal courts and the delivery of criminal justice services.

The aims of HLS are:

“The Howard League for Penal Reform in Scotland is an independent organisation whose members seek improvements to the criminal justice system in Scotland.

We believe it is time for criminal justice policy and systems to take a different direction, a direction with much more reliance on effective community approaches to reducing crime and dealing with criminality. A direction with much greater chance of success in reducing crime.”

The mission statement of the HLS is:

“Whilst still committed to Penal Reform — the improvement of Prison conditions and the promotion of rehabilitation — the Howard League Scotland is convinced that a steady reduction in the numbers of people committed to prison is essential and achievable. Howard League Scotland members have extensive experience across all aspects of the criminal justice system in Scotland. They have no rosy-eyed view either of the effects of crime nor of the nature of criminality, even in its most drastic forms. HLS shares these views with many others, not just in Scotland but across the UK. In pursuit of these aims we work closely with our sister organisation — the Howard League for England and Wales.

HLS does not represent individuals nor provide services, nor does it plan to. It is a fully independent body, representing an enormous amount of experience and active engagement — with members (including Committee members) at all stages of careers. It seeks to draw from the wisdom of this experience and engagement to promote realisable goals for Scotland’s criminal justice system and help promote effective pathways to achieving those goals — which include a sustained reversal of the increase in prison numbers.”

HLS welcome this opportunity to state their view on the provisions of the Criminal Justice (Scotland) Bill.

Part 1: Police Powers and Rights of Suspects

HLS welcome the introduction of a statutory duty on the police to treat the need to safeguard and promote the well-being of a child as a primary consideration when making decisions regarding that child (section 42).

HLS have no other comment to make on the draft sections in Part 1.

Part 2: Corroboration and related reforms

HLS do not accept that removal of the requirement of corroboration for criminal proof is necessary or desirable. In some contexts, the removal of the requirement might be thought likely to result in higher rates of conviction, for example in charges of sexual offences. HLS recognise that there has historically been a low conviction rate on charges of rape. However, HLS members have expressed a range of concerns about the proposal to remove the requirement of corroboration.

HLS recognise that corroboration has formed an important principle of the law of criminal evidence for a considerable time (e.g. Balfour's *Practicks*, 1754). Criminal procedure and the law of evidence have developed together. The consequences of removing a fundamental requirement of criminal proof are uncertain. Corroboration is not an element of criminal proof which can be considered in isolation. The requirement for corroboration has a direct bearing on the investigation of crime by the police, the Crown's decision to prosecute and the conduct of criminal trials. The implications of its removal are likely to be substantial and may be unforeseen.

Moreover, the HLS is opposed to reform of such a central element of the criminal justice system on the basis of a consultation exercise. HLS consider that it would be far preferable for the matter to be considered by the Scottish Law Commission (SLC), the statutory body charged with recommending reforms which are just, principled, responsive and easy to understand. The SLC have previously reported on hearsay and similar fact evidence. In the view of HLS, the SLC is the appropriate body to undertake the task of considering and reporting on substantive law reform of this sort.

A number of potential concerns arise from the removal of the requirement for corroboration:

- Under pressure of time and limited resources, police officers may carry out less thorough investigations if corroboration of a charge is not required, with the potential for miscarriages of justice;
- The prosecution may find it more difficult to apply the test of whether a prosecution has a reasonable prospect of conviction where the only potential evidence of guilt is contained in the police statement of a single witness; it may be impossible to sift out vindictive or inaccurate complaints prior to trial;
- Precognitions are no longer obtained by the Crown where the decision to prosecute is made, so there is no further sifting of cases in which the evidence of a single witness may readily be shown to be incredible or

unreliable; there may be an increase in prosecutions where there is, objectively, no realistic prospect of proof of a criminal charge;

- If a single witness gives evidence that a crime has been committed and the accused committed it, the trial judge would be unable to withdraw the charge from the jury no matter how obviously unsatisfactory the evidence of that witness is; time and expense are likely to be wasted in such situations, with a greater prospect of miscarriages of justice occurring;
- the prosecution of charges where there is no realistic, or very poor, prospects of proof of a criminal charge would unnecessarily and unfairly put witnesses and victims through the ordeal of giving evidence.
- Careful consideration is required of the present jury system of majority verdicts if the requirement for corroboration is removed; it would be substantially unjust in many cases for an accused to be convicted on the evidence of a single witness whose evidence is rejected as incredible or unreliable by 7 members of a jury; the precise number to constitute a jury and a just majority system requires careful thought; a recommendation on these matters should only be formed after careful consideration of the Scottish system and a comparative analysis of foreign jurisdictions; that work is most transparently and effectively undertaken by the SLC.

The requirement for corroboration in criminal proof operates as part of the finely balanced system of criminal justice. HLS have serious reservations about changes to this isolated area following a public consultation exercise. The SLC have the particular expertise to carry out research and impartially consider the impact of the proposals. It is not clear why the SLC have not been consulted on the proposal contained in the Bill. That omission is particularly concerning where the Senators of the College of Justice (as the senior judiciary in Scotland) are unanimous in recommending that the requirement for corroboration is not removed (with the exception of Lord Carloway).

Part 3: Court procedures

HLS welcomes the simplification of the constitution of a jury and requirements for returning a verdict. HLS however consider that the majority required to convict on a charge is a matter which should be considered by the SLC along with the proposal to abolish the requirement for corroboration. If both sections are made law, a person may be convicted on the evidence of a single witness where 5 members of the jury found that witness could not be believed. By contrast, in England and Wales, the majority required for a guilty verdict is 10 to 2. Some jurisdictions require unanimity.

Part 4: Sentencing and appeals

The HLS recognise the harm caused to individuals and the damage caused to society through the prevalence of offensive weapons. HLS support measures to reduce the number of weapons carried and used in the commission of crime. However, HLS do not believe that an increase in sentences for carrying offence weapons is the most effective means of preventing offending and rehabilitating

offenders. An increase in the maximum sentence available is likely to result in an escalation of sentences for carrying offensive weapons.

A change in the culture of carrying or using offensive weapons is likely to be more effective than any deterrent effect of an increase in sentences.

The combined effect of clause 78 and 81 is to remove the inherent jurisdiction of the Court of Appeal to cure a miscarriage of justice in the most highly exceptional circumstances (through exercise of the *nobile officium*). The Court has repeatedly affirmed that this is a very limited jurisdiction. However, where the clearest miscarriage of justice has occurred in a prosecution and through no fault of the convicted person a time-limit is missed, the proposed amendments to the 1995 Act would remove the ability of the Court of Criminal Appeal to consider the matter. The removal of this very limited jurisdiction is an unnecessarily draconian step, which in due course, is likely to result in miscarriages of justice.

Howard League for Penal Reform in Scotland
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