Introduction

1. This memorandum has been prepared by the Scottish Government to assist consideration by the Justice Committee of the Criminal Verdicts (Scotland) Bill which was introduced by Michael McMahon MSP on 27 November 2013.

Background

2. The Scottish Government previously considered whether to amend the Not Proven verdict and size of jury majority required for conviction as part of the reforms in the Criminal Justice (Scotland) Bill.

3. As part of the consultation “Reforming Scots Criminal Law and Practice: Additional Safeguards Following the Removal of the Requirement for Corroboration” the Scottish Government sought views on whether a change to the three verdict system was required. Although a majority of consultees supported removal of the Not Proven verdict, the Senators of the College of Justice recommended that consideration of the Not Proven verdict be deferred until after the reforms contained in the Criminal Justice Bill had bedded down. As such, the Scottish Government did not support the Criminal Verdicts (Scotland) Bill’s proposal to abolish the Not Proven verdict in 2013.

4. Additionally, the Scottish Government did not support the Criminal Verdicts (Scotland) Bill’s alteration to the jury majority because the Criminal Justice (Scotland) Bill originally proposed the same adjustment (to increase the jury majority for a guilty verdict from 8 to 10 out of 15).

5. On the basis that a reform of the three verdict system would not be taken forward in the Criminal Justice (Scotland) Bill, the Scottish Government agreed in principle that it would be appropriate for a review of the Not Proven verdict to be taken forward by the Scottish Law Commission in a future work programme. This agreement however was overtaken by the appointment of Lord Bonomy to lead the Post-corroboration Safeguards Review in February 2014. An examination of the three-verdict system therefore does not form part of the SLC’s current programme for 2015-17.

6. Lord Bonomy’s Review reported in April 2015 and has recommended that any changes to the jury system (such as abolishing the Not Proven verdict) should only be made on a fully informed basis. The Review stated that that all key components of the jury system are inextricably linked (jury size, jury majority, the three verdicts) and that long term reform should not be made to any one of these components in isolation.
7. The Review recommended that to enable any firm evidence-based conclusion to be drawn about the likely impact of reducing the size of the jury, changing from a system with three verdicts to one with two, and changing the majority required for conviction, jury research must be carried out.

8. The Criminal Justice Bill, as passed at Stage 3, contains no provisions in relation to changing the workings of Scottish juries.

**Scottish Government's Position**

9. Lord Bonomy’s Report stated the key components of the Scottish jury system (the simple majority required for conviction, the three verdicts, and the size of the jury (15)) are inextricably linked. Jury research is required to make informed evidence based decisions on reforming this system. Lord Bonomy was assisted by a Reference Group of experts with extensive experience of the operation of the criminal justice system in a wide range of different roles.

10. The Scottish Government fully agrees with Lord Bonomy’s rationale and, in terms of building a consensus for future reforms, considers it important to take forward the recommendation that jury research be carried out. As such, on 8 September 2015, the Cabinet Secretary for Justice announced that preliminary work in relation to conducting jury research would be undertaken. This work is under way.

11. While the Scottish Government is open to the possibility of the Not Proven verdict being removed, it considers it necessary to take a holistic and evidence-based approach to reform and believes Lord Bonomy’s recommendation that jury research should be taken forward to understand better how juries operate is an important part of considering justice reform in the round as it will provide an evidence base for reform and avoid a situation where changes are made to the jury system without first understanding the consequences.

**Financial Impact**

12. Abolishing the Not Proven verdict would have some relatively small resource/financial implications for the Scottish Courts and Tribunals Service in terms of amending advice leaflets etc. that it provides to jurors to explain a two-verdict system. No reliable research has been carried out into how jurors view and use the Not Proven verdict or the possible effects of a move to a majority of 10 jurors to convict. Consequently, and as the financial memorandum to Mr McMahon’s Bill admits, it is difficult to quantify what impact, if any, there would be on the number of people convicted of criminal offences and subsequently receiving prison sentences or community based disposals, and thus any financial implications for the Scottish Prison Service or local councils are unknown. Similarly any impact in terms of appeals and related costs to the Scottish Courts & Tribunals Service, the Crown Office, and to the Scottish Legal Aid Board, is presently unforecastable.
Conclusion

13. The Scottish Government opposes the Criminal Verdicts (Scotland) Bill as it agrees with Lord Bonomy’s recommendation that jury research is required before any significant change to the jury system is made. It is undertaking that jury research.

Scottish Government
8 January 2016