



Justice Directorate
Criminal Justice Division

m: 07500066706
e: Anna.Donald@gov.scot

Lady Paton

Thank you for taking the time to meet earlier this month to discuss the possibility of the Scottish Law Commission including a project on the corroboration rule in Scottish criminal law in your next Programme of Law Reform commencing in 2023.

I found it a very helpful discussion and I hope you found it useful to hear more about the Cabinet Secretary for Justice and Veteran's view that we submit this matter to the Scottish Law Commission to consider whether the corroboration rule is still fit for purpose in our new, reformed justice system – particularly for sexual offences - by reviewing developments over recent years, and considering the potential impact of such a reform, including whether the additional safeguards set out in Lord Bonomy's post-corroboration safeguards review are still the appropriate ones.

As we discussed in our meeting, this is an area of law that is particularly sensitive and complex, has changed substantially over time, and has been viewed as playing an important role in ensuring the Scottish criminal justice system appropriately balances the need to provide access to justice to victims of crime, while maintaining a system that provides appropriate safeguards to ensure it is fair to the accused. Although the debate focuses primarily on offences that take place in private, particularly sexual crimes, of course the corroboration rule affects all offences (with limited statutory exceptions), so any reform or abolition has the potential to be wide-ranging.

The Cabinet Secretary for Justice and Veterans is keen that these issues are explored thoroughly, taking account of relevant context and potential implications. He considers it vital that any such work should engage widely with stakeholders and seek to build confidence and consensus. I am pleased that the Commission put so much focus on discussing these matters with interested parties, including civic society, members of the general public, relevant professions and businesses.

It may be useful to set out some further comments against the criteria for selection of topics for the Eleventh Programme set out in the Commission's consultation paper:-

- *“Importance: The extent to which the law is unjust or out of date (for example, unfair, unclear, inaccessible, inefficient, unduly complex or outdated); and the potential benefits likely to arise from reform of the law.*

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot





In the recent consultation on [the not proven verdict and related reforms](#), views were provided by a range of stakeholders including highly experienced legal practitioners, and those with direct experience of the justice system, who criticised the corroboration rule in precisely these terms. For example, some highlighted their views that the meaning of corroboration has moved on significantly in recent years, and that rules regarding what may constitute corroboration are now very complex and hard to understand, to the extent that they may not be consistently understood by legal professionals or communicated clearly to complainers, and could potentially be misunderstood by jurors.

In terms of potential benefits those in favour of reform/abolition suggested that reform in this area could mitigate what some consider to be a barrier to accessing justice, particularly in the cases of many women and child victims of both sexual abuse and more general domestic abuse, although it should also be noted that many stakeholders wished for the corroboration rule to be retained, set out views that its requirements should be strengthened, or noted that any reforms in this area would first require additional safeguards to be brought in.

- *Suitability: Whether the issues concerned are predominantly legal rather than political; and whether there is any other body better placed to examine the topic in question.*

The issues concerned are predominantly legal and go right to the foundations of Scottish Criminal law so this is an area of work that would benefit from the rigorous, comparative research carried out by the Scottish Law Commission. If political issues did arise during the course of the Commission's consideration, I am confident that the organisation's reputation for integrity and expertise over the last 50 years at the forefront of major changes to Scots law, would help assuage any such concerns.

- *Resources: The expertise and experience of Commissioners and legal staff and, in relation to projects where there may be a substantial role for a consultant, the availability of adequate funding; and the need for a mix of projects in terms of scale and timing in order to achieve a balance of workload among Commissioners and facilitate effective management of the Programme.*

You highlighted that resources may be a concern, particularly given the diverse and challenging range of other work that the Commission may be undertaking at the same time. I hope that given the importance of this work and its priority to Scottish Ministers that suitable resources will be found for this, however I appreciate the challenging range of priorities the Commission is managing and I hope it gives you some reassurance that we could be flexible about the start date of this work, and may be able to consider assisting with any shortage of funding or staff if that would be appropriate.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot





In conclusion, for the reasons set out above I am confident that a law reform project on the corroboration rule would be an excellent fit with the Commission's criteria. Given the importance and complexity of these matters, I would be grateful if you would consider such work to be the Scottish Government Justice Directorate's priority for inclusion to be taken forward in the next Programme of Law Reform commencing in 2023.

Thank you for taking the time to consider this application. In the event that you have any concerns or doubts about the project it would be helpful if we could perhaps discuss these further before you reach a final decision. If you are minded to take this work forward, I look forward to discussion on remit/timescales etc in due course.

Yours sincerely,

Anna Donald
Deputy Director, Criminal Justice Division

