



Briefing for the Public Petitions Committee

Petition Number: [PE1436](#)

Main Petitioner: Colette Barrie

Subject: Abolition of the Requirement for Corroboration

Calls on the Parliament to urge the Scottish Government to legislate for the retrospective abolition of the requirement for corroboration in criminal prosecutions

The Carloway Review and Report

In 2010 the Scottish Government decided to establish an independent review of certain aspects of Scots criminal law and practice. One of the issues which the review was asked to look at was the law of evidence, including the general requirement for corroboration in criminal cases. The review, headed by Lord Carloway (a High Court judge), commenced its work in November 2010 and reported a year later – [‘the Carloway Report’](#).

The report outlined the requirement for corroboration in the following terms:

“there must first be at least one source of evidence (ie the testimony of one witness) that points to the guilt of the accused as the perpetrator of the crime. That evidence may be direct or circumstantial. Secondly, each ‘essential’ or ‘crucial’ fact, requiring to be proved, must be corroborated by other direct or circumstantial evidence (ie the testimony of at least one other witness).

Generally, there are two crucial facts requiring proof in every crime: (1) that the offence was committed; and (2) that the accused committed it. (...)

There are some limited statutory exceptions to the requirement for evidence to be corroborated. These exceptions, which tend to relate to minor crimes, do not attract any substantial adverse criticism.” (paras 7.2.6-8)

After considering the impact of the general requirement for corroboration, and arguments for and against abolishing that requirement, the Carloway Report went on to conclude that:

“The Review is in no doubt that the requirement of corroboration should be entirely abolished for all categories of crime. It is an archaic rule that has no place in a modern legal system where judges and juries should

be free to consider all relevant evidence and to answer the single question of whether they are satisfied beyond reasonable doubt that the accused person committed the offence libelled. The argument is not that such a reform would bring Scotland into line with the rest of Europe and the Commonwealth. It is that it would bring Scots law into line with modern, and almost universal, thinking on how to approach evidence in criminal, and indeed all other, cases.” (para 7.2.55)

Scottish Parliament Consideration

Following publication of the Carloway Report, the Scottish Parliament held a plenary [debate](#) (December 2011) considering its recommendations. In addition, the Justice Committee took [evidence](#) on the report from a range of interested parties (November to December 2011).

In January 2012, the Convener of the Justice Committee [wrote](#) to the Scottish Government setting out observations arising from the Committee’s initial evidence-taking. In relation to corroboration she noted that the possibility of abolishing the requirement for corroboration was the most discussed recommendation, with witnesses putting forward arguments both for and against abolition.

Scottish Government Consultation

In July 2012 the Scottish Government published a [consultation paper](#) (responses sought by 5 October 2012) stating that:

“We intend to introduce a Bill to Parliament, at an early legislative opportunity, based around Lord Carloway’s recommendations, and taking into consideration the views provided through this consultation process.” (para 1.10)

It noted that the Government aims to issue a report on the consultation by the end of November 2012. In relation to corroboration, it said that:

“The Government is not minded to revisit Lord Carloway’s recommendation on removal of the requirement for corroboration or to remit this question to a further review. The focus of the Government is now upon deciding how to best achieve abolition and what, if any, additional measures require to be taken as a consequence. It is on that basis that the Government invites the views of those responding to this paper.” (para 9.25)

Retrospective Abolition

As can be seen from the above, the possibility of removing the general legal requirement for corroboration in criminal cases is under active consideration

by the Scottish Government. However, neither the Carloway Report nor the Government consultation highlighted the possibility of retrospective abolition.¹

Article 7 of the European Convention on Human Rights states that:

“No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed.”

However, removing the requirement for corroboration (retrospectively or otherwise) would not create any new criminal offences. What retrospective abolition would do is to apply new rules of evidence in relation to offences committed prior to the relevant legislation being commenced.

By way of comparison, the petition notes that changes made by the Double Jeopardy (Scotland) Act 2011, including the introduction of a number of exceptions to the rule that a person cannot be tried twice for the same offence, were given retrospective effect.²

The types of cases which might be affected by retrospective abolition of the need for corroboration could (depending on the detail of any legislation) include:

- those not yet investigated by the police (where the commission of the alleged offence had not yet come to light)
- those which were being actively investigated by the police at the time the relevant legislation came into force
- those which had been investigated but not prosecuted due to a failure to find the necessary corroborative evidence
- those where a prosecution was already ongoing at the time the legislation came into force
- those where there had already been an unsuccessful prosecution (eg where statutory exceptions to the rule preventing a person being tried twice for the same offence apply)

In relation to civil cases, the remaining legal requirements for corroboration were removed by section 1 of the Civil Evidence (Scotland) Act 1988. Section 10 went on to provide that this change applied to “proceedings whether commenced before or after the date of its coming into force (but not to proceedings in which proof commenced before that date)”.³ Thus, there was an element of retrospective application in that it could apply to cases involving civil wrongs occurring before commencement of the legislation. It may,

¹ It may, of course, be an issue raised in consultation responses and/or in relation to any future piece of legislation seeking to abolish the requirement for corroboration.

² Provision for retrospective effect was one of the aspects of the Double Jeopardy (Scotland) Bill giving rise to arguments both for and against the suggested approach (eg see the SPICE briefing [Double Jeopardy \(Scotland\) Bill: Stage 3](#) (2011, p 8-9)).

³ The proof diet is the court hearing in civil cases at which evidence is led (ie the equivalent of the trial in criminal cases).

however, be argued that different considerations apply to civil and criminal cases (eg the fact that state bodies are generally involved in the investigation and prosecution of criminal allegations).

It might also be argued that abolition of the requirement for corroboration in criminal cases – which was just one element of the changes recommended in the Carloway Report – should not apply to any case where the particular suspect would not be covered by other changes recommended by Carloway. For example, if any legislation removing the requirement for corroboration also strengthened protections available to suspects in police custody, it might be argued that the new rules on corroboration should not apply to a case where the accused was questioned by the police prior to changes affecting police custody coming into effect).

Frazer McCallum

Senior Research Specialist
22 August 2012

SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However if you have any comments on any petition briefing you can email us at spice@scottish.parliament.uk.

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.