

Victims, Witnesses, and Justice Reform (Scotland) Bill: factsheet

Abolishing the not proven verdict and jury reforms

This pages provides more information on the proposals within the [Victims, Witnesses, and Justice Reform \(Scotland\) Bill](#) to abolish the not proven verdict and make related reforms to reduce juror numbers (from 15 to 12) and require at least a two-thirds majority for conviction.

It covers:

- what the bill does
- verdicts in criminal trials in Scotland
- history of the Scottish verdict system
- evidence for reform
- links with jury size and majority required for conviction

What the bill does

To ensure our laws and legal processes meet the needs of modern Scotland and enable public confidence in the justice system, the bill seeks to:

- abolish the not proven verdict in all criminal trials in Scotland and introduce a two verdict system of guilty and not guilty
- reduce juror numbers (from 15 to 12)
- require a two-thirds majority for conviction

Verdicts in criminal trials in Scotland

In all Scottish criminal trials there are currently three verdicts available:

- guilty
- not guilty
- not proven

If a guilty verdict is returned the accused is convicted of the crime. Not guilty and not proven are both verdicts of acquittal and the accused cannot then be tried again for the same offence except under the very limited circumstances provided for in the [Double Jeopardy \(Scotland\) Act 2011](#).

There is no definition of the not proven verdict and nothing in law which defines the difference between the not proven and not guilty verdicts. Jurors therefore receive no explanation of what the not proven verdict means or how it differs from not guilty.

History of the Scottish verdict system

Scottish juries did not originally use the verdicts we use today. Although there is a popular misconception that the original Scottish verdicts were proven and not proven, they did in fact use terms that referred to guilt and innocence, rather than 'proof'.

In the early 17th century, there was a change in procedure and juries began to return “special verdicts” stating whether individual facts were proven or not proven. The overall conviction or acquittal of the accused was then decided by the judge.

In 1728 a landmark case, *Carnegie of Finhaven*, re-established the right of the jury to return a verdict of not guilty, rather than leaving that decision to the judge.

Although it has no agreed upon definition in law, juries continue to use “not proven” as one of two possible verdicts of acquittal, up to the present day. However, it has been described as a “historical accident” because it now serves a different function than its original role of indicating failure to prove individual facts.

Legal academics including Willock (1963) and Professors Chalmers, Leverick and Munro (2022) have set out the history of the not proven verdict in detail, and this factsheet draws on their work.

See:

- [origins and development of the jury system in Scotland](#) - by Douglas Willock, University of Glasgow
- [a modern history of the not proven verdict](#) - by J Chalmers, F Leverick, and V.E. Munro, University of Glasgow

Evidence for reform

The suitability of Scotland’s three verdict system has long been debated.

We have carried out significant work to build a robust evidence base to assess the effect of Scotland’s three verdict system including:

- commissioning [independent Scottish jury research](#), which was the largest and most realistic of its kind ever undertaken in the UK
- [engagement events on the jury research findings](#)
- seeking wider views through a [public consultation on the not proven verdict](#)

The evidence is clear that the not proven verdict is not understood by jurors, can cause stigma for the acquitted, and trauma for complainers. Many of the people most affected by the justice system do not have trust in a verdict that cannot be adequately explained to them. Jurors cannot be expected to use the not proven verdict consistently since they receive no instruction on how it differs from the not guilty verdict.

This does not serve the interests of justice or the people of Scotland. Abolishing the not proven verdict will improve the fairness, clarity and transparency of decision making in criminal trials.

The Bill proposes that the two verdicts available should be guilty and not guilty. These are familiar verdicts that have been proven to work well in other countries and are easier to understand than the alternatives of proven and not proven.

Links with jury size and majority required for conviction

The Scottish jury system is a complex system and if one part is changed, there is likely to be an impact elsewhere. A key finding of the independent jury research was that the number of jurors, the number of verdicts available, and the size of majority required for conviction may all have an effect on the verdict chosen.

Verdicts must therefore be considered alongside jury size and the majority required for conviction. This is to ensure the system is balanced and there is justice for both complainers and the accused.

Jury size

The evidence suggests that reducing Scotland's jury size from 15 to 12 will mean that jurors have better discussions and take part more effectively in the decision-making process. It will also mean that fewer people in Scotland will be needed to sit on juries at any particular time which will mean less disruption to the lives of Scottish people.

Crucially, these benefits can be delivered without reducing the quality of decision-making of a jury.

It is important to note that nearly every other similar jury system is made up of 12 jurors.

Majority required for conviction

The evidence is clear that jurors may be more likely to convict in a system with two verdicts of guilty and not guilty. It is therefore important to ensure that any convictions as a result of this change are safe and the justice system is fair and balanced.

Increasing the majority required for conviction from a simple majority to two thirds of jurors is a proportionate way to achieve this balance. The proposed reform would bring Scotland closer to the systems in other similar countries which all require either unanimous or near-unanimous decision making in criminal juries.

These reforms will introduce changes which will affect all types of offences. It is therefore important to consider the overall impact they will have on fairness and confidence in the criminal justice system.