



EQUALITIES AND HUMAN RIGHTS COMMITTEE

AGENDA

19th Meeting, 2017 (Session 5)

Thursday 7 September 2017

The Committee will meet at 9.15 am in the Robert Burns Room (CR1).

1. **Declaration of interests:** Jamie Greene will be invited to declare any relevant interests.
2. **Decision on taking business in private:** The Committee will decide whether to take item 4 in private.
3. **Prisoner voting in Scotland:** The Committee will take evidence from—

Patrick Harvie MSP;

and then from—

Chris Highcock, Secretary, Electoral Management Board for Scotland;

Michael Clancy, Director of Law Reform, Law Society of Scotland;

Tom Halpin, Chief Executive, Sacro;

Professor Fergus McNeill, Scottish Centre for Crime & Justice Research;

Pete Wildman, Chair of the Electoral Registration Committee, Scottish Assessors Association;

Lucy Hunter Blackburn, Executive Committee Member, Howard League for Penal Reform Scotland;

David Strang, Her Majesty's Chief Inspector of Prisons for Scotland, HM Inspectorate of Prisons for Scotland;

Jan Anderson, Access to Industry;

Beverley Smith, ex-offender.

4. **Prisoner voting in Scotland:** The Committee will consider the evidence received.

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The papers for this meeting are as follows—

Agenda item 3

Prisoner voting - submissions

EHRiC/S5/17/19/1

PRIVATE PAPER

EHRiC/S5/17/19/2
(P)

Equalities and Human Rights Committee

19th Meeting, 2017 (Session 5)

Prisoner voting – written submissions

Introduction

1. At its meeting today, the Committee will hold a one-off evidence session on the issue of prisoner voting. This session was agreed at the Committee's meeting on 29 June 2017, following receipt of a [letter from Patrick Harvie MSP](#) requesting that the Committee consider this topic as part of its work programme.
- 2.

Written and oral evidence

3. The Committee will take evidence from Patrick Harvie MSP, before holding a round-table session with various stakeholders, including a former offender.
4. The Committee has received written submissions from the following organisations, attached as Annexes to this paper –
 - Electoral Commission (Annexe A – pages 2-5);
 - Electoral Management Board for Scotland (Annexe B – pages 6-12);
 - Prison Reform Trust (Annexe C – pages 13-16);
 - Scottish Assessors Association (Annexe D – pages 17-22);
 - Scottish Courts and Tribunal Service (Annexe E – pages 23-25); and
 - Scottish Prison Service (Annexe F – pages 26-28).
5. After this evidence session, the Committee will decide what further action, if any, it would like to take on this issue.

Gary Cocker
Assistant Clerk
1 September 2017

Written submission from the Electoral Commission

The Electoral Commission welcomes the opportunity to provide the Committee with written evidence on the issues which would need to be considered in the event that prisoners are enfranchised.

The Commission believes it is for Parliament to decide on the franchise for our elections and we take no view on whether prisoners should be entitled to vote or not. Therefore, we have limited our evidence to highlighting the practical implications which will need to be considered in the event that prisoners are enfranchised. Should Parliament develop specific proposals for prisoners' voting then we would welcome the opportunity to provide detailed comment on those proposals.

As the Committee will be aware, prisoners on remand are already entitled to register and vote and therefore our comments relate only to sentenced prisoners.

Registration of prisoners

Establishing entitlement to register

In the event that some prisoners are given the right to vote, it will be likely that not all prisoners will meet the eligibility criteria and there will therefore need to be a process for establishing whether a prisoner is eligible to register or not. For example, Parliament may choose to enfranchise only those prisoners serving sentences of less than a determined length or to retain the voting ban for prisoners serving sentences in relation to specified offences (e.g. electoral fraud). It is also likely that some prisoners would also not meet the nationality requirements for registering to vote if they are not a British citizen, a qualifying Commonwealth citizen or a citizen of a European Union state.

In order to establish eligibility it might be helpful to develop a specific application to register form for prisoners which would replicate the application to register process for anonymous electors. The prison governor or other prison staff could be required to attest the application stating that the prisoner is, for example, sentenced to less than the prescribed amount of time and so is eligible to be registered to vote. However, it should not be possible for a prisoner to become disenfranchised because of the refusal of prison staff to attest the form. The prison services and inspectorate should ensure that prison staff do not unduly delay the application.

The level of prison staff who can attest these applications could be prescribed, as it is for certain police ranks in relation to anonymous registration. The prescribed level should be low enough that the registration process is not reliant on too few people but high enough that the attester will be aware of who can and cannot register and would carry sufficient authority.

Address at which prisoners are registered

In the event that prisoners are entitled to register to vote, consideration will need to be given to the address at which they are registered. Residence is one of the main criteria for eligibility to register; however, we do not believe it would be appropriate for prisoners to register to vote at the prison address.

Given that prisoners are only present at the prison address as a result of their sentence, an alternative option would be for prisoners to register in respect of a previous or intended address.

Entry on the electoral register

In the event that the Scottish Parliament chooses to enfranchise prisoners for the elections under the competence of the Scottish Parliament (i.e. Scottish Parliament elections and Scottish local government elections) but they are not enfranchised for other elections under the competence of the UK Parliament (i.e. UK Parliament elections and European Parliament elections) then consideration will need to be given to how their voting entitlement is clarified on the electoral register. It may be the case that a new marker is created to distinguish a new type of voter as 'prisoner voter', however, consideration will need to be given to any human rights implications from this identification. Consideration should also be given to including prisoner voters on the register in the same manner as overseas electors under the heading of 'other electors' and not showing the qualifying address.

Promoting registration

In the event that some or all prisoners are enfranchised then the Scottish Prison Service will need to ensure that all eligible electors have the opportunity to register to vote. An awareness programme should be implemented to highlight among prisoners the process by which they may register and vote. This will involve the allocation of suitable resources to the prison service. The Commission worked with the Scottish Prison Service ahead of the Scottish independence referendum to provide factsheets and posters for remand prisoners which explained how they may register and vote. We would be happy

to explore with the Scottish Prison Service the practical steps they could take to support prisoners to realise their right to vote and advise on the kinds of materials that might be used by the prison service to raise awareness.

In addition, a process should be established by which to record the number of prisoners registered to vote in order to enable an assessment of any system to facilitate their registration. Electoral Registration Officers could be required to supply this information or prison governors could be required to record the number of eligible electors in their prison and the number of attestations signed.

Methods of voting

In the event that prisoners are registered in respect to the prison address then it might be feasible for polling stations to be set up within the prison grounds. In this case the Scottish Prison Service would need to work with Returning Officers to carry out a risk assessment for this option and to identify any practical implications for this option.

In the event that prisoners register at a past or intended address then it would not be feasible to set up a polling station at the prison given the number of potential wards or constituencies that the completed ballots would need to be returned to ahead of the count. In this case prisoners will only be entitled to an absent vote.

Postal voting

It is likely that some prisoners with low literacy levels may need assistance in completing any applications to vote by post and the Scottish Prison Service will need to consider how to provide this support. There is a relatively short window between the issue of postal ballot packs by Returning Officers and the deadline for returning the completed postal ballot in time for it to be counted. Given this, the Scottish Prison Service would need to consider whether their arrangements for the processing of prisoners' mail would enable prisoners to receive and return their postal ballots within the necessary timeframe.

In the event that prisoners are able to cast their vote by post it will be important to ensure that the right to a secret ballot is guaranteed for all prisoners. We would recommend that in this case there should be a legal requirement for prisons to supply a location for ballot papers to be completed in secret. Consideration would need to be given to how prisoners' post is handled to ensure that the privacy of the vote is not compromised.

Proxy voting

A prisoner should automatically be entitled to a proxy vote, as overseas and service voters are, without the need for their application to be attested. It is clear that, by nature of being in prison, the voter has a sufficient reason for not being able to attend their polling station.

Access to campaign arguments

In the event that prisoners are enfranchised for some elections then consideration will need to be given to how prisoners access information about the policies of candidates, parties and other campaigners.

Written submission from the Electoral Management Board for Scotland

BACKGROUND

Prisoners serving a custodial sentence do not have the right to vote under UK law. Prisoners on remand are able to vote under the provisions of the Representation of the People Act 2000.

At its meeting on 29 June, the Equalities and Human Rights Committee considered a letter from Patrick Harvie MSP requesting that, as part of its work programme, the Committee consider the question of prisoners voting in Scotland. The Committee agreed to undertake “a one-off oral evidence scoping session” at its meeting on 7 September 2017. This was to consider the issues raised by Mr Harvie in relation to prisoner voting. Following this the Committee will consider what further action, if any, may be required on this issue.

OVERVIEW: DISCUSSION POINTS ONLY

The Committee has invited the Electoral Management Board for Scotland (EMB) to supply evidence and the EMB is happy to take this opportunity to offer some comment on the practical issues that would need to be considered were prisoners to be included in the franchise.

The paper does not consider the policy position or the various arguments around the whether such a franchise should be in place. It is for Parliament to determine the franchise and to frame the appropriate legislation. The points identified in the paper are offered as a basis for discussion to highlight the key relevant issues. It is not a fully developed discussion paper. It is assumed that any future specific proposals would be subject to consultation and the EMB would welcome the chance to offer detailed comment as part of that.

This paper focuses exclusively on the act of voting. The maintenance of an accurate register of electors is dealt with by Electoral Registration Officers (EROs). The Electoral Registration Committee of the Scottish Assessors Association (SAA), includes all 15 EROs in Scotland has identified a range of issues relevant to prisoners serving custodial sentences given the UK’s approach to registration. They have provided a separate paper, fully endorsed by the EMB, as written evidence to the Committee to inform that aspect of the discussion.

CONTEXT - PATRICK HARVIE'S OPTIONS

The letter from Patrick Harvie MSP referred to what he characterised as “an increasingly clear legal view that the blanket prohibition on prisoners voting is not human rights compliant” and proposed that “alternatives to the blanket ban must be actively considered if further legal challenges are to be avoided”. He suggested some such alternative approaches:

- the resumption of voting rights at the end of a longer sentence
- sentencing guidelines dealing with restriction of voting rights; or
- the loss of voting rights for specific categories of offence.

This paper does not explicitly address these options. They are all in the domain of policy debate and for the determination of Parliament. The focus here is on the practicalities of applying the franchise to prisoners serving custodial sentences. In practice, however, broadly similar challenges would be faced in each of those three options. Those are addressed below.

REGISTRATION VS POLLING

The paper supplied by the EROs considers possible practical issues around the registration of offenders serving custodial sentences. In common with this paper, it does not offer a view on whether prisoners *should* be enfranchised or not as that is a matter of political policy. ROs and EROs will apply whatever legislation is in place to deliver elections according to the rules.

As noted in the SAA paper, the disenfranchisement of convicted prisoners in Prisons and Young Offenders Institutions is covered by Section 3 of the Representation of the People Act 1983. The disenfranchisement of offenders detained in secure hospitals is covered by section 3A of the Representation of the People Act 1983. Prisoners held on remand are eligible to be registered to vote and the process of registering them is dealt with by Section 7A of the Representation of the People Act 1983.

Electoral Registers are compiled for each election by the EROs listing electors entitled to vote in that electoral event. The Returning Officers (ROs) use these registers to facilitate polling. A voter must be on the register for a ballot paper to be issued either at a polling station or through the absent vote process. Absent voters can either vote using a postal vote, with its associated security checks, or through an appointed proxy.

The remainder of this paper briefly identifies issues that would need consideration were the franchise extended on some basis to convicted prisoners detained in prisons, young offenders institutions and secure hospitals.

THE VOTING PROCESS – SECRECY OF THE BALLOT AS FUNDAMENTAL

Separate from any consideration of the actual mechanics of voting the discussion needs to be grounded in the basic principles of democracy. Fundamental is the secrecy of the ballot. This principle was long campaigned for and extended generally in the UK by the Ballot Act of 1872. The right to hold elections by secret ballot is now included in numerous treaties and international agreements. A secret ballot ensures that votes are cast freely without influence. Whatever the voting method it needs to preserve that secrecy as a prerequisite. A voter's choices must be anonymous, so that attempts to influence the voter by intimidation, blackmail, or “treating” are eliminated.

HOW WOULD PRISONERS CAST THEIR VOTE?

The points below are offered to prompt discussion around practical issues that would need to be considered were prisoners to be granted a vote.

Method of Voting: In Person at Polling Place outwith the Prison

- Prisoners would need to be escorted to a polling place to allow them to vote;
- There may be a risk of absconding and an associated threat to public during the transport to and from the polling place;
- Resource would be needed to escort and guard the prisoners during this journey; and
- Transport needed to take the voter to their “home” constituency, either in the area of the prison or at their previous address (depending on the approach taken to registration).

Method of Voting: In person at Polling Place within the Prison

- Polling places would need to be set up in the prison, with facilities to ensure that the ballot was cast in secret;
- If the prisoner remains on the register at their previous address – applying the usual domestic registration – such a polling place would require multiple registers, ballot papers and ballot boxes from Returning Officers across the UK;

- If the prison was treated as the place of residence, that polling district would be dominated by prisoners with a disproportionate effect on the vote within the constituency/ward;
- Ballot papers in the correct boxes would need to be transferred to the correct Returning Officer at the close of poll. This could involve transport across the UK if registration were based on previous home address; and
- The polling place within the prison would need to be staffed. With the associated security/safety issues this might be difficult for the Returning Officer to resource.

Method of Voting: By Postal Vote

- Prison authorities would need to facilitate the application process, providing the form and posting it once completed with signature and date of birth by the prisoner;
- Postal votes would need to be delivered to prisoners in good time for them to be completed and returned. The RO would deliver as normal to the prison but it would fall to the prison service to distribute the packs to prisoners;
- Facilities would be needed to allow postal votes to be completed in secret;
- Prison authorities would have to collect completed packs and post them to the relevant ROs. Packs need to be with the RO by 10pm on polling day for them to be counted;
- Postal voters currently have the right to hand a postal vote into a polling place. This would be hard to apply to prisoners;
- An approach would need to be devised to deal with the replacement of lost or spoilt postal votes. Electors can apply for a replacement for lost or undelivered postal votes from 4 working days before polling day. Spoilt postal votes can be replaced at any time although the voter needs to return the original papers to the RO and provide proof of their ID; and
- Current deadlines for the issue, receipt and replacement of postal packs do not reflect any of the challenges that would be involved in the secure delivery to or the receipt of material from prisons.

Method of voting: by the appointment of a proxy

- The completion and return of the proxy application would need to be facilitated by the prison authorities, but the subsequent process would then be as it is for any other proxy voter. Consideration should be given to whether or not such an application would need “attestation” and the usual demonstration of a sufficient reason for not being able to attend a polling station;

- There would need to be a way by which the prisoner could intimate to the proxy how they wished their vote to be cast. Consideration would need to be given as to how the secrecy of the ballot could be protected;
- The proxy would attend the appropriate polling place and cast the vote on behalf of the prisoner;
- Prisoners could be listed under the category of "other elector" and appear on the register on that basis; and
- Prisoners may not have a friend or family member trusted to vote on their behalf.

A REVISION OF REGULATIONS AND LEGISLATION

The current rules and legislation around polling would not be immediately compatible with the extension of the franchise to convicted prisoners. The timetable and mechanics of voting are assume the voter is at liberty in the community and able to attend a polling place in their polling district within the hours of poll or to receive a postal vote, request and receive a replacement if necessary and return it to the Returning Officer by 10pm on polling day. Some of these elements would be unachievable if the voter was a convicted prisoner serving a custodial sentence. Timetables and processes would need to be revised through legislation if they were to accommodate the challenges of prisoner voting.

There is continuing public debate about the nature and exercise of the democratic process. In recent years in Scotland this has led to the extension of the franchise to 16 and 17 year olds. There is also increasing interest in the opportunities offered by new technologies around "eVoting" and by "live" electronic registers. The points offered for consideration above reflect the current situation around polling. Electoral reform and the modernisation of the process to take account of new technologies may introduce additional opportunities and challenges to the processes by which a prisoner would cast a vote.

Any intention to extend the franchise to prisoners in future should inform current debates about new technology and electoral reform to ensure that new structures can accommodate this franchise.

SUMMARY

Prisoners serving a custodial sentence do not have the right to vote under UK law although those on remand are entitled to vote.

If those serving a custodial sentence were granted a vote there would be numerous challenges associated with each of the current methods of voting – in person, by post or by proxy. The current methods could not simply be extended to apply to prisoners without revisions in the timetable and other changes to the

regulations specific to prisoners. Were the registration to be based on previous address then the multiplicity of contests and potentially different franchises across the UK would pose particular challenges.

THE DELIVERY OF ELECTIONS IN SCOTLAND

The key individuals responsible for the delivery of elections in Scotland are Returning Officers (ROs) and Electoral Registration Officers (EROs). Every council must appoint an officer of the council to be the Returning Officer for any elections of councillors to the council. The 32 Returning Officers in Scotland are generally the Chief Executives of the Council and act as Returning Officers for Parliamentary elections for constituencies in their area. They also have responsibilities as “Counting Officers” for referendums.

To ensure the objectivity and neutrality of the role it is a separate appointment totally discrete from the individual’s role as Chief Executive. The Chief Executive answers to local politicians in the council. As RO the individual only answers to the courts so the elections are free of political control.

The Returning Officer is personally responsible for the all tasks relating to the delivery of the election in accordance with the law, including:

- the publication of the notice of election
- the nomination process
- the publication of the statement of persons nominated and the notice of poll
- the postal vote process
- the provision of polling stations
- the appointment of Presiding Officers and Poll Clerks
- the equipment of polling stations
- the verification and counting of the votes
- the declaration of the result

The Electoral Registration Officers are responsible for compiling and maintaining an accurate register of electors in each area. Like ROs they are independent of the council, personally responsible and are answerable to the courts. EROs work closely with the Returning Officer, providing accurate and relevant registration and absent voting data for each election. This allows the production and distribution of poll cards and postal votes and the provision of electoral registers for polling stations.

The Electoral Management Board for Scotland (EMB) seeks to ensure that the interests of the voter are kept at the centre of all elections planning and

administration. The EMB undertakes this by assisting ROs and EROs in relation to local government elections through the promotion of best practice by providing information, advice or training. The EMB Convener has the power to issue directions to ROs and to EROs in respect of local government elections. The Convener's directions are issued following consultation with all ROs and EROs and with the Electoral Commission.

For the Scottish and UK Parliamentary elections, the EMB acts without statutory power but undertakes a similar role as at local government elections to deliver a well-planned and administered election undertaken in the interests of the voter. The EMB Convener, following discussion with ROs and EROs, recommendations and additional guidance to assist ROs and EROs with a focus on achieving consistency in key voter facing elements of the election.

Written submission from the Prison Reform Trust

The Prison Reform Trust is an independent UK charity working to create a just, humane and effective prison system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliaments, governments and officials towards reform.
www.prisonreformtrust.org.uk

Introduction

The Prison Reform Trust welcomes the decision of the Equality and Human Rights committee to hold a one-off oral evidence scoping session on prisoners voting. The Prison Reform Trust has, along with other NGOs, MSPs, AMs, MPs and peers, long been supportive of reforming the ban on voting rights for prisoners. We believe that there is a clear and unambiguous case for reform. This rests on the conviction that voting is not a privilege. It is a basic human right. It is certainly not a reward to be granted to those whom the Government has judged morally decent.

The UK context

The blanket ban on prisoners voting in the UK is contained in the Representation of the People Act 1983. It is based on the 19th century notion of “civic death”, whereby prisoners cease to count as citizens and lose their identity. By maintaining the blanket ban, the UK is in breach of its international obligations under the European Convention on Human Rights (ECHR), as confirmed by repeated judgements of the European Court of Human Rights (ECtHR). It is also out of step with all but five member states of the Council of Europe, as well as with the majority of developed nations throughout the world. A cross-party group of MPs and peers set up to consider draft government legislation on prisoners voting concluded that the blanket ban should be repealed and proposals brought forward by the UK authorities to comply with the judgement of the European Court.¹ This proposal was rejected by the previous UK Conservative Government and the blanket ban remains in place. We believe the refusal of the UK to move on this issue seriously undermines its credibility as a nation committed to human rights and upholding the rule of law.

¹ <https://publications.parliament.uk/pa/jt201314/jtselect/jtdraftvoting/103/10314.htm>

The Scottish context

We are aware that the debate in Scotland, and related legal judgements, have focussed narrowly on whether the ECHR applies to referendums. Although understandable given the context of the 2014 referendum on Scottish independence, this fails to appreciate the full weight and nature of international opinion coming to bear on the UK and the devolved nations. We share the view expressed by Patrick Harvie MSP in his letter to the Committee that “We [Scotland] now have greater devolved responsibility for the democratic process, and I believe that alternatives to the blanket ban must be actively considered if further legal challenges are to be avoided.”² As the Scottish government accrues more powers in this area, so it can expect greater scrutiny of its adherence to international standards and norms of democratic accountability and representation.

- The International Covenant on Civil and Political Rights (ICCPR) gives every citizen the right to participate in the conduct of public affairs, to vote in elections which have universal suffrage and to have equal access to public service. The United Nations Human Rights Committee, which monitors compliance with the ICCPR, has expressed concern on several occasions about countries which do not allow their prisoners to vote. The Committee “fails to discern the justification for such practice in modern times, considering that it amounts to an additional punishment and that it does not contribute towards the prisoner’s reformation and social rehabilitation, contrary to Article 25 of the Covenant.”³
- The ECtHR has been critical of countries where restrictions on the right to vote are largely derived unquestioning and passive adherence to historical tradition, which is certainly the case in the UK. It has observed that the right to vote must be acknowledged as “the indispensable foundation of a democratic system.”⁴
- Successive UK Governments have justified the ban on the grounds that it prevents crime and punishes offenders, whilst enhancing civic responsibility and respect for the law. However, the ECtHR found no

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[http://www.parliament.scot/S5_Equal_Opps/General%20Documents/Correspondence from Patrick Harvie MSP on prisoner voting rights 15 June 2017.pdf](http://www.parliament.scot/S5_Equal_Opps/General%20Documents/Correspondence_from_Patrick_Harvie_MSP_on_prisoner_voting_rights_15_June_2017.pdf)

³ Concluding Observations of the Human Rights Committee: United Kingdom of Great Britain and Northern Ireland 12/06/2001 CCPR/CP/73/UK at paragraph 10

⁴ Hirst v The United Kingdom (No 2)

evidence to support the claim that disenfranchisement deterred crime and considered that the imposition of a punishment on all prisoners regardless of their crime or individual circumstances indicated no rational link between the punishment and the offender. It judges the ban “runs counter to the rehabilitation of the offender as a law abiding member of the community and undermines the authority of the law as derived from a legislature which the community as a whole votes into power.”⁵

- In the words of the ECtHR: “Nor is there any place under the Convention system, where tolerance and broadmindedness are the acknowledged hallmarks of democratic society, for automatic disenfranchisement based purely on what might offend public opinion.”⁶

Scottish Referendum (Franchise) Act

Against this background, we were disappointed by the inclusion of Sections 2(2)(b) and 3 in the Scottish Referendum (Franchise) Act. These parts of the Act were included exclusively to impose a blanket ban at the referendum even if changes were introduced at Westminster between the enactment of the legislation and the date of the referendum in September 2014. Without these parts of the Bill, the franchise for the referendum would have simply been in line with whatever was current practice for elections more generally at the time, including whatever rules applied for convicted prisoners. During the Parliamentary debate on the legislation, the Prison Reform Trust, the Howard League for Penal Reform, and other civic society bodies and academics, submitted evidence arguing that there was no coherent or defensible case for applying a stricter ban on prisoner voting at the referendum than for elections more generally.⁷ In particular, we draw attention to the views of the Electoral Commission, in response to a Ministry of Justice consultation in 2009, which specifically sought views on whether any change should apply only to national elections, or also local elections and referendums:

“We are not taking a view on which prisoners should or should not be able to vote. However, we feel that prisoners who have been allowed the vote should be entitled to vote in all elections that their age, nationality and

⁵ Ibid.

⁶ Ibid.

⁷

http://www.parliament.scot/S4_ReferendumScotlandBillCommittee/Howard_League_and_others.pdf

deemed place of residence would allow them to, were they not imprisoned.”⁸

Conclusion

The former First Minister Alex Salmond once described the potential for Scotland to be “a beacon for progressive opinion south of the border and further afield”. The Scottish government’s support for a blanket ban on prisoners voting specifically applied to the 2014 referendum was in direct contradiction of that vision. The current ban achieves no purpose. It neither protects public safety, nor acts as an effective deterrent. It does not function as a means to correct the behaviour of offenders and does not assist in their rehabilitation. It is not articulated at the point of sentence and bears no relation to the crime committed and so is an additional and arbitrary punishment. Its application to the 2014 Scottish referendum meant people in prison in Scotland were denied a voice in the debate on the future direction of their country. We hope that the Committee will use its influence to support proposals which recognise that at least some, if not all, convicted prisoners in Scotland are expected to be contributing citizens, who have a stake in the potentially life-changing constitutional decisions facing the country now and in the years to come.

⁸ <http://docplayer.net/21332632-1-the-electoral-commission-the-commission-welcomes-the-uk-government-s-second-consultation-on-prisoners-voting-rights.html>

Written submission from the Scottish Assessors Association

The Scottish Assessors Association welcomes the opportunity to contribute to the Equalities and Human Rights Committee's Evidence Session into Prisoner Voting.

The Scottish Assessors Association (SAA) is a voluntary non-statutory body that represents the 14 lands valuation Assessors appointed in terms of section 27(2) of the Local Government etc. (Scotland) Act 1994. Thirteen Assessors are also appointed Electoral Registration Officers (EROs) for 30 local authorities. The SAA Electoral Registration Committee however represents all 15 EROs appointed in terms of section 8 of the Representation of the People Act 1983 by the 32 local authorities in Scotland. EROs in Scotland are independent statutory officials and as such comment is limited to administrative/registration issues surrounding the matters raised in this consultation.

The Chair, Vice Chair and the previous Chair of the Electoral Registration Committee are also members of the Electoral Management Board for Scotland.

Introduction

The SAA does not offer any view on whether prisoners should be enfranchised or not as this is a matter of political policy and for Parliament to determine. Our submission is restricted to the possible practical issues surrounding the registration of prisoners. The submission also covers some of the issues currently encountered by Electoral Registration Officers in processing registration applications from prisoners held on remand. The document is intended to identify some of the issues and is not a fully developed discussion paper. Should specific proposals be developed and put out to consultation then the SAA would welcome the opportunity to provide comment as part of that process.

Current Legislative Provisions

The disenfranchisement of convicted offenders in Prisons and Young Offenders Institutions is covered by Section 3 of the Representation of the People Act 1983.

The disenfranchisement of convicted offenders detained in secure hospitals is covered by section 3A of the Representation of the People Act 1983.

The position for prisoners held on remand is different. They are eligible to be registered to vote, the process of registering them is dealt with by Section 7A of the Representation of the People Act 1983.

Issues for consideration in enfranchising Prisoners

Residence

- 1.1 The majority of electors are registered at the address at which they are resident. However some electors register by way of declaration to an address at which they were formerly resident, examples of the type of electors registered this way include, homeless citizens, patients resident in psychiatric hospitals and remand prisoners. The names of electors declaring to a former address appear in the Register of Electors under the heading "Other Electors" with no address details shown.
- 1.2 If offenders serving custodial sentences were to be enfranchised then a decision would be needed as to whether they should
 - a) Register at the establishment in which they are detained
 - b) Register by way of declaration of local connection to their previous address
 - c) Register at their home address

In the case of remand prisoners they may register either at the prison or by way of Declaration of Local Connection. They may remain registered at their home address if their absence is for a short enough period to be deemed temporary.
- 1.3 The decision as to residence is a critical one, for example if the prison was deemed to be the address to be used for registration it would allow the possibility of voting in person. Registering all prisoners at the prison address would have a noticeable impact on the number of electors in the local government ward in which the establishment was located. It would also in effect identify the elector as a prisoner.
- 1.4 Alternatively registering all prisoners by Declaration of Local Connection would not readily identify them as prisoners as they would appear in the register alongside other electors such as Overseas Electors, Crown Servants and Armed Forces electors. It would have the practical effect of removing the possibility of voting in person thereby restricting voting to postal or proxy voting. The dispersed nature of previous addresses would mean that the number of electors in any individual local government ward would not be affected to any significant extent.
- 1.5 Declarations of Local Connections, unlike ordinary registrations, only last for twelve months. An ERO is required to issue two renewal reminders in

the run up to the expiry date of a declaration. If the applicant fails to renew their declaration in time they are then removed from the Register of Electors and, if appropriate, from the list of Postal and Proxy Voters. Any elector removed from the Register would need to complete a full new declaration and a new postal/proxy application. An ERO with a prison in their area would see an increased workload in issuing and following up declarations on an annual basis. Along with processing any new applications resulting from a failure to renew.

- 1.6 Registering prisoners at their “home” address would raise potential issues particularly for long term prisoners, as the home address could change occupation during the length of their imprisonment and could indeed be demolished. New occupiers may not be happy to have a former resident registered at their address.
- 1.7 The decision as to residence would also potentially impact on which prisoners could register. For example if the franchise was only extended to the Local Government Register in Scotland then the ability of offenders previously resident elsewhere in Great Britain to register would depend on whether they could register at the prison address or not.

Application Process

- 2.1 Since the introduction of Individual Electoral Registration in 2014 the majority of registration applications are made online. The SAA is not in a position to determine if this option would be available to detained offenders, if they could not register online they could do so by way of the paper application form.
- 2.2 All applicants to register to vote are required to supply their National Insurance Number and Date of Birth. Registration applications are matched against government records to verify the identity of the applicant. If the applicant fails to supply their National Insurance number or Date of Birth or does not match against government records then the ERO asks them to provide documentary evidence as set out in Ministerial Guidance. If the applicant is unable to provide the required documentary evidence then their identity must be attested by another registered elector of good standing. Consideration would need to be given as to how the documentary evidence/attestation process would work for convicted applicants who are unlikely to have ready access to the required evidence/attestation. This would be time critical in the run up to an election

and would require staffing resources at a time when ERO's services are already busy.

- 2.3 One of the issues encountered in processing the registration of remand prisoners is that the forms are often not correctly completed and that contacting the applicant for more information is not always as quick and easy as for an ordinary elector. The number of remand prisoners registering is currently low. The widening of the franchise to more or all prisoners is likely to result in more contact from the ERO to detained offenders and consideration should be given as to how this could be facilitated quickly in the run up to an election. Consideration should also be given if penal establishments should be required to assist detained offenders in completing the application forms.
- 2.4 As stated at 1.4 if all prisoners were registered by way of a Declaration of Local Connection then to cast their vote they would need to apply for a postal or proxy vote. Similar issues with regard to the ERO seeking more information in the event of an incomplete form would arise for postal and proxy applications.

Linking of Registration to Sentence

- 3.1 It may be that the right to register as an elector is linked to the length of sentence or to the nature of the crime the person is convicted of. In this instance the practical issue for Electoral Registration Officers is how would that information be communicated to them so that they could ensure that only the correct offenders were registered and thus the integrity of the Register of Electors was maintained. An arbitrary length of sentence may still risk judicial challenge from disenfranchised prisoners.

Annual Canvass/Changes in Registration

- 4.1 Electoral Registration Officers are required to conduct an annual canvass of all residential properties in their area. They must send a Household Enquiry Form and follow it up with a visit if no return is made. It would be logical for penal institutions and psychiatric hospitals to be required to make an annual return to the ERO of all eligible prisoners detained in their establishments. It would be desirable that they would be required to notify the ERO of any changes on a regular basis so that the ERO can ensure the Register is accurate.
- 4.2 The ERO is required to invite any eligible resident at an address who is not on the Register of Electors to register to vote. If they fail to respond to

that invitation the ERO must send at least two reminders and arrange for a member of staff to visit the property to encourage the person to register. The need to visit the property would need consideration in the context of penal establishments to ensure that unnecessary visits were not made and that the EROs staff were not put at risk.

Anonymous Registration

- 5.1 Where an elector is deemed to be at risk if their name and address were to be published in the Register of Electors they may apply to be registered anonymously. Any application to register anonymously must be attested either by a senior police officer or a Chief Social worker or be accompanied by defined court orders. Consideration would be needed as to whether detained offenders could register anonymously and if so how they would access the necessary attestation in the absence of court orders.

Appeal Hearings

- 6.1 When EROs have rejected applications from prisoners to register to vote they have been obliged to offer the offender the right to have their appeal heard. The timescales for holding a hearing are prescribed in law and are relatively short. This has posed practical problems and consideration should be given to allowing appeals to be heard securely and quickly in a safe environment within the establishment at which the offender is detained.

Markers

- 7.1 If the enfranchisement of Prisoners extended only to the Local Government Register of Electors in Scotland it would be necessary to identify them in the Full Register with a mark to show the limit of their franchise. Marks are already used in this way to identify Overseas and European Electors who have a limited enfranchisement. This would in effect identify them as prisoners even when registering by way of a Declaration of Local Connection.

Costs

- 8.1 The enfranchisement of detained offenders will result in additional work and thus costs for local EROs.

Summary

- 9.1 There are no fundamental barriers to the registration of detained offenders. However careful consideration needs to be given as to the practical processes required to ensure that an undue administrative burden is not placed on EROs, that the process is readily accessible to detained offenders and that EROs have ready access to information sources that will assist in ensuring that entries in the Register are correct and up to date. The latter point is critical to maintaining the integrity of the Register which is the foundation of the election process.

Written submission from the Scottish Courts and Tribunals Service

We thank you for the invitation to the evidence session of the Equalities and Human Rights Committee in relation to prisoner voting, to which I respond on behalf of the Scottish Courts and Tribunals Service (“the SCTS”).

The SCTS do not intend to participate, by way of attendance, at the evidence session however, as discussed, we enclose a written response.

The response is submitted by the SCTS in fulfilment of its function to provide efficient and effective administration to the courts. This response does not include the views of the Judiciary.

The SCTS cannot comment on whether changes should be made to the current blanket ban which prevents prisoners from voting as these are matters of policy. However, I do provide comment on the potential impact on the SCTS should any of the proposed options outlined in the letter from Patrick Harvie, MSP be considered as future legislative provisions.

Current provision

The present position which operates by virtue of section 3 of the Representation of the People Act 1983 has no impact on the SCTS.

Resumption of voting rights at the end of a long term sentence

There may be an impact on the SCTS depending on how this would be applied.

If there was a provision in legislation enabling the resumption of voting rights at the end of a long term sentence, for example allowing those rights to be exercised for a specified period of time prior to the release date of a prisoner, or for a specified period after imposition of a sentence, this would have no impact on the SCTS.

If a resumption of voting rights could only apply following a court application by the prisoner for the re-instatement of the right to vote then that would have an impact on the SCTS in terms of:

- court time;
- associated staff and accommodation resources, and
- costs involved for any relevant IT changes.

If the provisions allowing court applications were applied retrospectively this could result in a significant number of applications being made on the coming into force of the relevant legislation. This would impact on delays in hearing cases unless

adjustments were made to normal court programmes with resultant costs to the SCTS (additional to those noted above).

This position may be exacerbated if an election was either due or one was anticipated.

If legal aid was not to be made available for these applications, it is likely they would be lodged by unrepresented parties. This has the potential to extend the duration of any hearings and lead to increased costs for matters such as transportation of prisoners between prisons and the courts if a hearing is required.

Orders by criminal courts as part of the sentencing process

The SCTS make no comment on the principle of this. If this is an option that the Committee wishes to explore further, then the SCTS would suggest it may be appropriate to seek the views of the judiciary separately from that of the SCTS.

We consider that imposition of an order as part of the sentencing process would involve the sheriff/ judge considering any sentencing guidelines produced; and on the making of such an order to explain the conditions and requirements of the order. There may also be a requirement for the court to record the reason for making or not making an order and a further requirement on the court to intimate any order to relevant persons.

This would have an impact on the SCTS in terms of:

- court time;
- associated staff and accommodation resources, and
- costs involved for any relevant IT changes.

Additionally it may be anticipated that such an order would be appealable as though it were a sentence of the court, with the associated costs to the SCTS of the appeal process.

Loss of voting rights for specific categories of offence

In anticipation that this would operate in a similar way to the current provision and automatically apply, a disqualification from voting by reason of conviction for a specific offence would not impact on the SCTS

Summary

Without more detailed information on what exactly is proposed for each of the above scenarios it is not possible to fully consider the costs involved but any involvement of

the judiciary/courts would require additional court time, staff resources and relevant IT changes.

Should specific proposals be taken forward, the SCTS would welcome the opportunity to be kept informed of any developments, including, where required, contributing towards any further evidence session, financial memorandum or relevant impact assessment.


Written submission from the Scottish Prison Service

Thank you for your e-mail of 19 July requesting the attendance of a representative from the Scottish Prison Service (SPS) at an evidence session on prisoner voting being held by the Equalities and Human Rights Committee on Thursday 7 September. Whilst SPS is always happy to attend and provide evidence at such sessions, on this occasion, I do not believe that our attendance would be of value to the Committee as we would only be able to provide very limited input into the evidence session. However, I thought it would be helpful to provide some written evidence in regards to how SPS implements current Government policy regarding a prisoner's right to vote; advises eligible prisoners on voting procedures; and ensures the confidentiality for those eligible prisoners who exercise their right to vote.

Prior to any election, SPS will contact the Elections and Constitution Division at the Scottish Government to confirm the franchise requirements, voting arrangements and key dates for registering to vote and the final dates for postal or proxy voting. We will then issue a Governors and Managers Advice Notice which will provide information to staff to enable them to answer questions from those in our custody regarding the forthcoming election. This will normally include information such as who in our custody is eligible to vote; how to register to vote (including details of Electoral Registration Officers); and how to make an application for absent voting and completion of the ballot paper. The notice will also advise that those registered for an absent vote may be sent election literature and on application, be allowed to write to the campaign organisation's agents in the constituency/ward in which they are registered.

The Advice Notice will also remind staff of the importance of the principle of a secret ballot and remind them that there should be no interference with ballot papers. SPS staff are very familiar with dealing with such confidential correspondence and are aware of the importance of not interfering with such correspondence.

I have attached for information a copy of the Advice Notice issued in March 2017 concerning the Scottish Council Elections that took place on 4 May.

		Governors & Managers: Advice	
READERSHIP		REFERENCE	
Governors-in-Charge Deputy Governors Directors of Private Prisons Controllers Private Prisons		018A/17	
		DATE	
		20 March 2017	
SUBJECT		CONTACT	
POSTAL AND PROXY VOTING FOR THOSE IN CUSTODY SCOTTISH COUNCIL ELECTIONS THURSDAY 4 MAY 2017		Annette Hannan Legal Services Room G14 Calton House Ext 3613	

Purpose

This Notice sets out the arrangements for the voting procedures for eligible individuals for the forthcoming Scottish Council Elections on Thursday 4 May 2017. This information will help you to respond to questions from individuals in relation to voting arrangements.

Background

The franchise for elections is a reserved matter for the UK Government and the Westminster Parliament. The current franchise arrangements for the Scottish Council Elections, as far as they relate to those in custody, remain that only certain individuals are eligible to vote.

Eligibility

To be eligible to vote on Thursday 4 May individuals must be:

- Aged 16 or over on the date of the election

AND

- Currently registered in the register of local government electors

AND

Fall into one of the following categories:

- Unconvicted
- Convicted awaiting sentence (unless sentence is pronounced on polling day)
- Dealt with by committal or other summary process for contempt of court

- Detained for default in complying with their sentence, e.g. fine defaulters

All other individuals are not able to register and vote. The decision on who is able to register is one for the Electoral Registration Officer (ERO) and you should not stop an individual from applying to be registered.

Registration

Applications to register to vote must be made to the local ERO before midnight on Monday 17 April 2017. An individual is required to be resident at a qualifying address to be entitled to register to vote. An individual who is detained at any place in legal custody cannot, by reason of their presence there, be treated for the purposes of electoral registration as resident there. Individuals who are in custody will usually register using their former home address as their place of registration.

Applications for absent voting

Contact details of the EROs can be found on the attached list. Applications to register to vote must be made to the local ERO before midnight on Monday 17 April 2017.

Applications to vote by post must be received by the ERO before 5pm on Tuesday 18 April 2017.

If an individual considers that the timescales for postal voting will be too tight given their personal circumstances he or she may wish to consider using a proxy. Applications to appoint a proxy must reach the ERO before 5pm on Tuesday 25 April 2017. This will result in a proxy paper being issued to the named person who will vote on their behalf.

Please note that applications to vote by post or proxy can only be made if the applicant has already made a successful application to register by midnight on Monday 17 April 2017.

Completion of Ballot Paper

In the case of a postal vote, ballot papers will be sent to eligible individuals shortly before polling day. The envelopes will be marked to indicate that they contain important election documentation. If a ballot paper is received for an individual who has in the meantime been discharged, the envelope should be forwarded unopened to the address given by the individual on discharge.

The postal voting statement contains detailed instructions to the voter. It is important that the voter follows the instructions exactly or their vote may not count. It is imperative that the principle of a secret ballot should be observed and that completed ballot papers should be posted without any interference. The ballot paper should reach the Returning Officer by 10.00pm on polling day, Thursday 4 May 2017. Any ballot papers received after the close of poll will not be counted.

Giving Political Information to those in custody

An eligible individual who has made an application to the ERO for an absent vote may be sent election literature and on application be allowed to write to the campaign organisations' agents in the constituency/ward in which he is registered.

Any enquiries about this Notice should be made to Annette Hannan, Ext 3613.

Signed



Jim O'Neill

Senior Legal Services Manager