

Prison Reform Trust response to the Equality, Local Government and Communities Committee inquiry into voting rights for prisoners – January 2019

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective penal system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform. The Prison Reform Trust provides the secretariat to the All Party Parliamentary Penal Affairs Group and has an advice and information service for people in prison.

The Prison Reform Trust's main objectives are:

- reducing unnecessary imprisonment and promoting community solutions to crime
- improving treatment and conditions for prisoners and their families
- promote equality and human rights in the criminal justice system.

www.prisonreformtrust.org.uk

Introduction

The Prison Reform Trust welcomes the opportunity to respond to the Committee's inquiry into voting rights for prisoners. As a small charity, we regret that we do not have the capacity to provide a version of this submission in the Welsh language.

1. Arguments for and against giving some or all prisoners the right to vote in Welsh elections, and whether distinctions might be drawn between different categories of prisoner on the basis of sentence length, expected date of release, or types of offence

PRT believes all prisoners in the UK should be enfranchised and able to take part in national and local elections. Enabling prisoners to vote and participate in Welsh elections would be an important step in the right direction. We welcome the Welsh government's interest in this policy area, and note that 50% of respondents to its consultation on voting reform agreed that prisoners should be allowed to register to vote, with 48% disagreeing.¹ We hope that the Committee's inquiry will act as a spur to reform to bring Wales into line with international standards of human rights and democratic participation.

The Prison Reform Trust has long been supportive of ending 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. Preventing people in prison from voting achieves no purpose. It

¹ <https://beta.gov.wales/electoral-reform-local-government-wales>

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.

- 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.”²
- The European Court of Human Rights (ECtHR) has been critical of countries where restrictions on the right to vote are largely derived from 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.”³
- Successive UK Governments have justified restricting the right to vote on the grounds that it prevents crime and punishes offenders, whilst enhancing civic responsibility and respect for the law. However, the ECtHR found no 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.”⁴
- 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 an automatic disenfranchisement based purely on what might offend public opinion.”⁵
- The cross-party group of MPs and peers set up in 2012 to consider draft government legislation on prisoners voting concluded that “In a democracy the vote is a right, not a privilege: it should not be removed without good reason.” Furthermore, it found that “there are no convincing penal-policy arguments in favour of disenfranchisement”, and that “enfranchisement might assist prisoner rehabilitation by providing an incentive to re-engage with society.”⁶
- The Scottish Parliament’s Equality and Human Rights Committee 2018 inquiry on prisoners voting concluded that the current ban should be lifted, and the right to vote be restored to all prisoners. The Committee’s chair Christina McKelvie MSP said: “We are acutely aware that prison is a place

² United Nations, Concluding Observations of the Human Rights Committee: United Kingdom of Great Britain and Northern Ireland. CCPR/CO/73/UK; CCPR/CO/73/UKOT, 6 Dec 2001, para. 10.

³ Judgment in the case of *Hirst v The United Kingdom (No. 2)*, 30 March 2008

⁴ *Ibid.*

⁵ https://www.echr.coe.int/Documents/FS_Prisoners_vote_ENG.pdf

⁶ <https://publications.parliament.uk/pa/jt201314/jtselect/jtdraftvoting/103/10302.htm>

people go to be punished, and that there will be individual cases people find distasteful; but we need to think about rehabilitation, and not further excluding and alienating people from society.”⁷

PRT shares the view of the Scottish Parliament’s Equality and Human Rights Committee that the right to vote should be restored to all prisoners. We do not believe distinctions should be made between different categories of prisoner on the basis of sentence length, expected date of release, or types of offence. Many other European jurisdictions have no restrictions on prisoners voting. These include Croatia, the Czech Republic, Denmark, Finland, Ireland, Latvia, Lithuania, Macedonia, Montenegro, Serbia, Spain, Sweden, Switzerland and Ukraine. At the very least, if a ban is to be maintained for some groups of prisoners, then the Committee should consider the example of countries such as Germany and Norway, where restriction on voting rights is reserved for offences which target the state or democratic order.

The UK government’s decision in 2017 to extend the franchise to prisoners on temporary release to comply with the original 2005 ECtHR judgement is only a very modest step in the right direction. In reality, it will extend the franchise to just a couple of hundred people at a time. No one in prison serving a custodial sentence who has not been granted release on temporary licence (ROTL) or home detention curfew (HDC) will be able to vote, and so the vast majority of people in prison will remain disenfranchised. This is far from being a model for compliance in the rest of Europe, where all but seven member states of the Council of Europe enable people in prison to vote. It has been described by the leading human rights lawyer Sean Humber as “a very cynical attempt” and “trying to do the bare minimum and falling short.”⁸

2. Practical issues, such as electoral registration (including address), voting method, prisoner engagement with the political process, the provision of political and citizenship information and education

The Prison Reform Trust does not profess to have expertise in electoral administration. We would simply highlight that there are already mechanisms in place which allow remand prisoners to vote by post or proxy. Though prisoners cannot register at the prison address, an amendment to the Representation of the People Act (2000) enabled them to register using a declaration of local connection, allowing them to use the address where they would be living if they were not on remand or an address where they have lived in the past. A system of postal or proxy voting was set out by the Electoral Commission in its response to the Ministry of Justice’s consultation on prisoner voting in 2009. The UK Government’s draft Voting Eligibility (Prisoners) Bill envisaged that any prisoners granted the right to vote would vote by post or proxy, and would “be entitled to register to vote not at the prison, but at their former address or, if they did not have a former address, the area where they had a local connection.” The Ministry of Justice’s second stage consultation paper, issued in 2009, supported this method of registration.

Engaging prisoners in the political process could contribute to the development of prisoners’ sense of self and community. As with other disadvantaged groups, efforts will need to be made by politicians and statutory authorities to reach out to prisoners and engage with their concerns and provide tailored citizenship information and

⁷ <http://www.parliament.scot/newsandmediacentre/108523.aspx>

⁸ <https://www.bbc.co.uk/news/uk-41803722>

education. Engaging prisoners in the political process would have the advantage of forcing politicians to take account of the political views of prisoners and to actively engage with issues of penal policy. In its report, the Scottish Parliament's Equality and Human Rights Committee noted that "increased engagement with prisoners could benefit politicians and policy makers' understanding of penal policy and the lives of prisoners".

PRT has championed the benefits of "active citizenship" in prisons for many years. Our report "Time well spent" in 2012 and most recently "A different lens", published in December 2017, both describe ways in which existing prisons draw on the knowledge and talent of prisoners to help create safer and more purposeful prison communities. PRT has established a prisoner policy network to provide people in prison with the opportunity to engage with and influence penal policy making. The first report of the network on incentives in prison, which draws on the contributions of an estimated 1,250 people in prison, is due to be published in February. The report's interim findings were fed into the Ministry of Justice's consultation on the incentives and earned privileges (IEP) scheme, and has been received extremely positively by officials.

3. Cross-border issues arising from prisoners from Wales being imprisoned in England and vice versa

Extending the franchise to prisoners from Wales but not other parts of the UK would raise practical considerations, given that many Welsh prisoners serve their sentences in English establishments and vice versa. We do not profess to have the knowledge or expertise to provide solutions to the cross-border issues that would arise. However, the UK and Welsh governments have experience of coordinating services in other areas where policy is devolved, for instance in health policy. While we would prefer to see the franchise extended to all prisoners in the UK, thus avoiding the cross-border issues which would arise from a separate approach by the devolved nations, we do not believe the practical problems to be insurmountable. If it is agreed as a point of principle that Welsh prisoners ought to be able to participate in Welsh national and local elections, then administrative arrangements should be devised to enable them to do so.

4. Whether special considerations apply to young offenders in custody if the franchise is extended to 16 and 17 year olds generally, and

We do not have a view on whether the franchise ought to be extended to 16 and 17 years olds in general. However, if it is decided to extend the franchise to this age group, then this should include 16 and 17 year olds in custody. For any age group, we do not believe the franchise should be withdrawn arbitrarily on the basis of the imposition of a custodial sentence.

5. Other countries' approaches to prisoner voting

We refer the Committee to page 16 of the Scottish Parliament's Equality and Human Rights Committee's agenda for its second meeting, 25 January 2018 (session 5) for an update on the approaches taken by countries in the Council of Europe on prisoners voting:

Due to language barriers and a lack of literature on the subject, it is not possible to provide a fully comprehensive or up-to-date overview of each prisoner voting system in the Council of Europe. However, based on information compiled by the House of Commons Library in its Standard Note on prisoners' voting rights (2005 to May 2015) and more recent work carried out by the human rights organisation Liberty in 2016, and the University of Baltimore, it appears that, in addition to the UK, the only Council of Europe countries which have a blanket ban on prisoner voting are:

- *Armenia*
- *Bulgaria*
- *Estonia*
- *Georgia*
- *Hungary*
- *Russia*

At the other end of the spectrum, many Council of Europe States have no restrictions or virtually no restrictions on prisoner voting. These include:

- Croatia
- Czech Republic
- Denmark
- Finland
- Ireland
- Latvia
- Lithuania
- Norway
- Slovenia
- Spain
- Sweden
- Switzerland

There is also a large group of countries which have some form of partial ban on prisoner voting. In countries operating partial bans, the ban is normally based on either:

- the length of sentence; or
- the type of offence committed.

For example, in Poland the ban is limited to those convicted of a serious crime with a sentence of more than three years, whereas in the Netherlands prisoners sentenced to one year or more may only have their right to vote removed by the court if they have committed a crime "affecting the foundations of the state".^{vi} It appears that the Dutch ban has been applied very infrequently, for example the court refused to allow it in an infamous Islamic terrorism case - the murder of the film director Theo van Gogh in 2004.

Countries which have partial bans often grant the judiciary varying degrees of discretion in applying or disapplying the ban on voting. Countries following this approach include amongst others: the Netherlands, Belgium, France, Poland, Cyprus, Romania, and Poland. In other countries, such as Greece and Italy, the loss of the right to vote is mandatory for certain serious offences.