UNLOCK

PRISON REFORM TRUST

BARRED FROM VOTING: THE RIGHT TO VOTE FOR SENTENCED PRISONERS

Unlock, the National Association of Ex-Offenders, and the Prison Reform Trust (PRT) challenge the electoral ban on sentenced prisoners voting as contained in section 3, Representation of the People Act 1983, amended by the Representation of the People Act, 1985 and 2000.

We are calling for the ban to be overturned to restore a basic human right that has been denied to sentenced prisoners since the 1870 Forfeiture Act which considered people in prison to be 'civically dead' and imposed the additional punishment of disenfranchisement.

We believe reform of the law is necessary because:

- **It infringes human rights.** Voting and representation are basic human rights and should be enshrined, untouchable and unchallenged. Offending still has to be punished, and offenders called to account, but this can be done without stripping prisoners of rights that people have died to protect.

- **It weakens communities.** The notion of civic death for sentenced prisoners isolates still further those who are already on the margins of society and encourages them to be seen as alien to the communities to which they will return on release.

- **Minority ethnic groups are disenfranchised.** In particular, black men, who are over-represented in the criminal justice system, are eight times more likely to be excluded from the voting process because of the ban on sentenced prisoners. For them and other minority groups, where every vote counts, this does significant damage to political representation.

- **It bears no relation to the causes of crime.** Civic death is not an appropriate response to offending behaviour when the primary causes of crime are related to social exclusion. Instead it exacerbates the problems in the already fractured relationship between society and offender.

- **It achieves little or nothing.** The ban does not protect public safety. It is not an effective deterrent. It is not a means to correct offending behaviour or to assist in the rehabilitation of offenders. It is an unjust additional punishment rather than a proportionate response to crime.

- **Services need improving.** Prisons have long-standing problems, which successive governments have not succeeded in tackling. The notion of civic death legitimises the view that prisoners, and prisons, should be forgotten. Political and economic neglect has led to a failing prison system which currently leaves people more, not less, likely to offend again.

- **Political will is otherwise weak.** Politicians' agendas are determined by votes. There is no incentive for MPs to consider the problems faced by prisoners – such as unemployment and homelessness on release, increasing rates of suicide and widespread drug use – when people in prison are a group with no political voice.

- **Voting by sentenced prisoners works successfully elsewhere.** Almost all of our European neighbours have partial or no restrictions on voting – without detrimental social effects. Our current position is instead in line with just eight European countries.

The case for reform.

The UK Government's current position has been set out by Baroness Scotland of Asthal, Minister of State, Home Office[1]:

"Prisoners convicted of a crime serious enough to warrant imprisonment have lost the moral authority to vote. The working party on electoral procedures … could find no reason to change the existing system in which convicted prisoners found guilty of a crime serious enough to warrant imprisonment are denied the right to vote for the duration of their imprisonment.

Article 25 of the International Covenant on Civil and Political Rights covers the rights of the individual to be involved in public affairs and to vote in periodic free elections without unreasonable restrictions. The covenant has not been incorporated into English law, but the UK is signed up to the covenant.

Parliament has decided that convicted prisoners have forfeited their right to have a say in the way the country is governed for the period during which they are in custody. This temporary disenfranchisement pursues a legitimate aim and is proportionate, and is considered a reasonable restriction within the terms of Article 25. It does not, in our view, affect the substance of Article 25, which is concerned with universal franchise and the free expression of the people in the choice of legislature."

Paul Goggins MP, the Minister for Prisons, recently added that the law should also be preserved because it was a 'tradition'. Sir Stephen Tumin, retired Chief Inspector of Prisons responded, "So was hanging, but we have done away with that one I believe".[2]

The case for reform is powerful. It rests on the view that voting should not be a privilege; it is a basic human right. This entitlement is not a selective reward for those who have been judged morally decent by a Government.

Basic principles for electoral democracy are set out in international law. These include the right of citizens to vote. The European Convention on Human Rights, Protocol 1 Article 3 states, "*The parties undertake to hold free elections at reasonable intervals by secret ballot under conditions which will ensure the free expression of the opinion of the people in the choice of legislature*". This guarantee is now contained within the Human Rights Act (2000). It does not make exclusions for sentenced prisoners.

Article 25 of the International Covenant on Civil and Political Rights (ICCPR) provides every citizen with the right to take part in the conduct of public affairs, to vote in elections which have universal suffrage and to have equal access to public service. On a number of occasions, the United Nations Human Rights Committee, which monitors adherence to the ICCPR, has expressed concern about countries that do not allow prisoners to vote.

On 6 Dec 2001, the United Nations in the Concluding Observations of its International Covenant on Civil and Political Rights, Human Rights Committee made it clear that the maintenance of the ban on voting is a "*principal subject of concern*". In Part 10 of the Observations, 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 prisoners' reformation and social rehabilitation contrary to Article 10, paragraph 3, in conjunction with article 25 of the Covenant.*" The Committee concluded, "*The State party should now reconsider its law in depriving convicted prisoners of the right to vote*".

This ban is now 134 years old. It can no longer be considered as an appropriate response to crime and rehabilitation in 2004.

The ban perpetuates the notion of 'civic death'.

Social exclusion is a major cause of crime and re-offending. Removing the right to vote increases social exclusion by signalling to serving prisoners that, at least for the duration of their sentence, they are dead to society.

The additional punishment of disenfranchisement is not a deterrent. There is no evidence to suggest that criminals are deterred from offending behaviour by the threat of losing the right to vote.

Sentencing someone to civic death could be seen as the last resort punishment of a society that has exhausted all of its options. But today, over 16 per cent[3] of people in prison are given a custodial sentence for their first conviction – including many who have committed minor offences such as shoplifting. More than half of all those sent to custody serve a jail term of six months or less.

[1] Hansard, 20 October 2003.
[2] Paul Goggins MP and Sir Stephen Tumim quoted at the UNLOCK Annual Conference 1st December 2003.
[3] Prison Statistics England and Wales, Office of National Statistics, 2003.

The Prison Service, as well as holding prisoners securely, also carries responsibility to rehabilitate and reform those in its care. This requires it to undertake work that reduces the chances of a prisoner re-offending on release – such as instilling values of citizenship. The ban on voting undermines work on resettlement and does nothing to help reduce high re-offending rates. Fifty-nine per cent of all prisoners, and 74 per cent of young men aged 18 to 20 years are re-convicted within two years of release[4]. Many experience a meaningless series of civic deaths and civic resurrections via the revolving door of imprisonment.

The notion of civic death is applied selectively to prisoners. People serving a sentence of any length continue to contribute financially to society from within prison. They pay tax on their savings, capital gains and any earnings that they receive during their sentence. If they are civically alive when it comes to financial contributions, they should be treated in the same way when it comes to basic human rights.

The seriousness of civic death is not reflected in pre-release planning for prisoners or the supervision of ex-offenders in the community. In 2002, over 43,500 sentenced prisoners[5] were released with no post-release supervision or assistance from the Probation Service or other agencies to help them to resettle in society.

The UK Government is pursuing an ambitious programme of civic renewal aimed to improve community cohesion. The notion of civic death works against this policy by excluding those who are already on the margins of society and further isolating them from the communities to which they will return on release.

The ban removes the right to representation.

Although a custodial sentence currently also involves the loss of voting rights and representation, this additional punishment is not articulated as such by the courts. Without the vote, prisoners have no formal, organised and protected right to a voice. This removes one of the pivotal ways of being heard by a Government on issues such as human rights, living conditions and personal safety.

The Prison Service currently holds record numbers of prisoners causing severe overcrowding and reduced regimes. It faces cuts in its budget for the next two years. It has already failed to meet half of its performance targets and prisoner suicides have also increased. Considered civically dead, prisoners have limited, if any, recourse to challenge their worsening conditions.

Without direct representation, prisoners rely on the Prisons Inspectorate and Independent Monitoring Boards to evaluate and report on the prison environment and the office of the Prisons Ombudsman to investigate individual concerns. While these are important avenues, none could be seen as a substitute for the vote.

The ban has a differential impact leading to the exclusion of particularly vulnerable groups from the political process. The Social Exclusion Unit has documented the poor social circumstances of most people in the prison system.

The ban disproportionately denies some minority ethnic groups the right to vote. Afro-Caribbean men, who are more likely to receive a prison sentence than other groups, are eight times as likely to be banned from voting as white men. For minority groups, where every vote counts, this does significant damage to their political representation.

This blanket ban on sentenced prisoners' right to representation takes no account of differences between types of crime or lengths of sentence. Disqualifying a sentenced prisoner from voting does not have a practical justification in the way that removing a licence from a dangerous driver does. The deprivation of the right to vote should only be a response to abuse of electoral process, not unrelated crimes on which a ban has no obvious impact.

The ban is outdated and there is considerable support for its removal.

On the few occasions when this matter has been debated in parliament and the press, widespread cross-party support has been voiced for a removal of the ban on prisoners' voting. A High Court ruling (4 April 2001) on the Human Rights test case brought by Pearson, Martinez and others made it clear that the question of sentenced prisoners' voting was

[4] Prison Statistics England and Wales, Office of National Statistics, 2003.
[5] *Ibid*

'plainly a matter for Parliament, not the courts'. More thorough-going parliamentary debate is now needed.

Many senior managers in the Prison Service believe that voting rights and representation form part of the process of preparing prisoners for resettlement in their communities. Those who support the enfranchisement of serving prisoners also include past and present HM Chief Inspectors of Prisons, the President of the Prison Governors' Association and the Anglican and Catholic Bishops of Prisons.

It is operationally possible to remove the ban. People held on custodial remand maintain their voting rights. The Prison Service is able to facilitate prisoners to vote through the postal system. Questions have been raised about the disenfranchisement, or otherwise, of those serving the new sentence of intermittent custody.

The Prison Service and others concerned with the treatment of, and conditions for, prisoners were not consulted when the Act was most recently amended by the Department for Constitutional Affairs. Under the arrangements to establish the new National Offender Management Service, there is scope to re-assess the need for a continuing ban.

A number of countries have overturned bans on prisoners' voting. The political status of prisoners varies around the world. In Canada, Australia and New Zealand, the length of their sentence determines whether or not convicted prisoners retain voting rights.

In South Africa, all prisoners have the right to vote. Handing down a landmark ruling in April 1999, the Constitutional Court of South Africa declared that: "*The universality of the franchise is important not only for nationhood and democracy. The vote of each and every citizen is a badge of dignity and personhood. Quite literally, it says that everybody counts*".

The vast majority of European Union members allow their prisoners full or partial rights to vote. Eighteen European countries, including Ireland, the Netherlands and Spain have no ban. Eight other European countries only ban some sentenced prisoners from voting. In France and Germany, courts have the power to impose loss of voting rights as an additional punishment. The UK is one of only eight European countries automatically to disenfranchise sentenced prisoners, the others being: Armenia, Bulgaria, Czech Republic, Estonia, Hungary, Luxembourg, and Romania.[6] The UK should now exercise its responsibility to afford its citizens the same rights enjoyed by the majority of citizens of the European Union.

The UK ban on prisoners voting is a relic from the nineteenth century, which is neither a deterrent nor an effective punishment. The right to vote poses no risk to public safety. Giving prisoners the vote would encourage them to take the responsibilities that come with citizenship. It would also encourage politicians to take more of an active interest in prisons, which in turn should raise the level of debate about prisons and penal policy.

[6] 'Barred from Voting', Prison Reform Trust briefing. 2002.

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