

SCOTTISH INDEPENDENCE REFERENDUM (FRANCHISE) BILL
SUPPLEMENTARY EVIDENCE FROM THE HOWARD LEAGUE FOR PENAL
REFORM AND OTHERS

This supplementary note is submitted by the Howard League for Penal Reform in Scotland, the Prison Reform Trust, SACRO, Positive Prison? Positive Futures, Professor Fergus McNeill and Emeritus Professor Mike Nellis in response to the Committee's questioning of the Deputy First Minister (DFM) on 28 March 2013.

We very much welcome the Committee's interest in the subject of prisoners' voting rights. We are disappointed that the Government remains firm in its wish to impose a blanket ban on prisoners voting in the referendum. However, we are pleased that the DFM recognised that there is a debate to be had on this issue and that it is right and proper for the Parliament to consider alternative views as the Bill proceeds. We look forward to having the opportunity to promote those alternative arguments as the legislation moves forward.

The DFM in her oral evidence expanded on the material provided with the Bill. We would like to respond to this.

Does the Bill remove rights?

The DFM emphasised several times that the Bill simply repeats the existing position and does not remove any rights; for example, "I am not removing a right, because the right does not exist at the moment. I am simply clarifying in the bill that we do not intend to give convicted prisoners in jail a right that they do not currently have".

Points in response:

- Regardless of the historical precedent for banning convicted prisoners *as a class* from voting in elections and previous referendums, legislating to apply a ban in September 2014 will have the clear legal effect of removing the right to vote from *individuals* who would otherwise have been able to take part in a referendum of unprecedented constitutional importance. Many of the individuals who will be affected by the ban are not in prison at the moment, do not expect to be there in 2014 and are presently fully expecting to take part in this referendum. From their perspective, there will be a clear sense of an important right having been removed. We hope very much that the Government will acknowledge this.
- Even taking the Government's argument on its own terms, it is our understanding that the Bill is explicitly drafted with the express purpose of removing any *future* voting rights convicted prisoners might otherwise have.
- We understand that Section 2(2)(a) by itself means that anyone legally incapable of voting in a local government election, which at the moment includes convicted prisoners, by virtue of Sections 2, 3 and 4 of the Representation of the People Act 1983, will also be unable to vote in the referendum.

- On that basis, Section 3 (and associated section 2(2)(b)) is unnecessary and will have a practical effect *only if* legislation at Westminster between now and the referendum confers voting rights on at least some convicted prisoners in local elections, as an extension of any changes made for national elections. As we understand, the whole purpose and effect of Section 3 is therefore to ensure that any new voting rights granted to prisoners between now and September 2014 do not apply to the referendum. This is consistent with the explanation of Section 3 given in the Policy Memorandum and the Explanatory Notes.
- Therefore, while it is technically correct to state that the Bill removes no *existing* rights from any class of citizens, unless our understanding is incorrect, the Bill is drafted specifically to ensure that if a future change to the law grants relevant voting rights to certain convicted prisoners, these *future* rights will then be removed for the particular purpose of the referendum.

It may be that our understanding of the drafting is not right and the Committee may therefore want to seek clarification of this point from the Government.

The precise operation of the sections 2 and 3 has implications for potential amendments to the Bill: it would be very helpful for the technical effect of each section and sub-section on prisoners' voting rights to be put beyond doubt.

The importance of the Government's view and the basis for it

The DFM was keen to emphasise that the decision will rest with the Parliament rather than the Government, noting that "Parliament will have a debate and Parliament will decide".

However, the Government is promoting the Bill and has a majority in the Parliament. We believe it therefore remains important for the Government to set out fully its own reasoning.

The DFM set out the rationale for the government's position as: "People who do not commit crimes and do not get sent to jail will have the right to vote. That is a pretty simple principle.... If someone commits a crime that results in them being sent to jail, they forfeit their right to vote. I do not believe that a case has been made for changing that principle for the referendum ... if someone commits a crime and the judge sees fit to send them to jail, they should forfeit their right - well, they do not have the right to vote in those circumstances just now, and that should continue to be the case."

We still hope that the Government will feel able to address directly the points made in our initial evidence, in particular:

- The argument that the right to vote is more important, not less, in the referendum than in other contexts and explain why it is so determined to remove voting rights in the referendum even if by September 2014 at least some convicted prisoners have acquired voting rights in elections.

- The essential relationship between voting and citizenship and the potential contribution of participation in voting to successful reintegration into the community
- The potential for exclusion from the referendum contributing to prisoners' sense of exclusion from wider society, working against successful rehabilitation.
- The disproportionate effect of the ban on those from the most vulnerable and deprived backgrounds.
- The fact that the vast majority of those who commit crimes will be unaffected by the ban, as they serve their sentences in the community, and that the distinction between offences which attract prison sentences and those which do not is often not clear-cut.
- The unusually acute anomalies that will arise in applying the ban at the referendum, particularly in relation to those serving short sentences.
- Why for this particular policy, the historic position in the UK should be relied on so heavily as an argument in itself against change.
- Why it rejects the approach of the overwhelming majority of European countries, which allow at least some prisoners to vote, and prefers a blanket ban for the referendum which will leave Scotland isolated in European terms and potentially even, by then, in UK terms.

We are grateful for this opportunity to submit additional evidence and hope it may be helpful to the Committee in identifying issues that could benefit from further consideration or clarification.

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