

**SCOTTISH ELECTIONS (REDUCTION OF VOTING AGE) BILL  
SUBMISSION FROM HOWARD LEAGUE SCOTLAND**

1. The Howard League for Penal Reform in Scotland ('Howard League Scotland' or 'HLS') is grateful for the invitation to comment on the Scottish Government's Scottish Elections (Reduction of Voting Age) Bill.
2. The aim of the Howard League for Penal Reform in Scotland is to promote just responses to the causes and consequences of crime. Scotland's imprisonment rate is one of the highest in Western Europe.
3. We understand that the Committee is interested in the legal question of how the European Convention on Human Rights (ECHR) may be relevant to the Bill, in the light of decisions relating to prisoner voting by the European Court of Human Rights (ECtHR).

The HLS position on the current ban

4. The HLS opposes the current UK blanket ban on voting by all convicted prisoners as a matter of principle. The UK is the only established democracy in Europe to apply such a ban.
5. There are typically fewer than 300 convicted young offenders (i.e. below the age of 21) serving custodial sentences in Scotland on any one day. They are drawn disproportionately from Scotland's most deprived communities and commonly have backgrounds characterised by severe trauma, neglect or abuse.
6. Strengthening their connection to society and encouraging a sense of wider civic responsibility is as important for this group of young people as for older prisoners and for young people more generally: arguably, it matters even more. If the Parliament has the powers to enable at minimum some of this group to vote, we believe it should do so, not because of any wider questions of legislative competence but because it would be the right thing to do.
7. Doing so would put down a marker about the value placed on democratic rights, social justice and effective rehabilitation in Scotland. HLS does not have a view on what specific alternative should replace the current ban: further information is provided below on the general position in Europe and on recent developments at Westminster. HLS would stand ready to assist the Committee further in any way it would find helpful in making a progressive change to the law.

Legal issues

8. We do not feel able to offer a view on the legal position. The Parliament's powers and duties in this area will depend on the interaction of ECHR, general devolution law and the specific

terms in which powers over the voting age have been devolved. We are not in a position to advise on that, but would simply draw to the Committee's attention that:

- The Bill as currently drafted relies on section 3 of the Representation of the People Act (ROPA) 1983 to remove voting rights from all 16 and 17 years olds serving a custodial sentence.
  - The European Court on Human Rights has found that section 3 of ROPA represents a violation of Article 3 of Protocol No. 1 to the European Convention on Human Rights in relation to elections for Westminster.
  - Protocol No. 1 enshrines the individual's capacity to influence *the composition of the law-making power* and therefore appears to apply to elections to the Scottish Parliament as well as to Westminster.
  - Section 29(2)(d) of the Scotland Act 1998 places limits on the Parliament's legislative competence, intended to ensure that legislation passed by the Parliament is compliant with ECHR.
9. These points strongly suggest that any legislation enabling 16 and 17 year olds to vote at Scottish Parliament elections, but having the practical effect of applying section 3 of ROPA, will need to be considered carefully in the context of ECHR compliance and, in consequence, legislative competence.
10. We are aware that the Scottish Government does not believe that the Order devolving competence over the voting age gives the Scottish Parliament power to amend section 3 of ROPA (written answer S4W-24855). The Committee will want to note that the Scottish Government supports the current ROPA provisions. Notwithstanding the position of the European Court, Nicola Sturgeon MSP, speaking as Deputy First Minister, has said, "I do not believe that prisoners should get to vote in elections" (27 June 2013).
11. **We would strongly recommend that the Committee takes its own legal advice on what powers and duties it has in relation to the voting rights of prisoners aged 16 and 17.** As the Bill relates to the franchise for elections to a law-making body, the legal arguments here will be distinct from those made at the referendum.
12. Our principal concern is that any opportunity to move away from the present blanket ban should be taken as a positive step. It would be much better to embrace whatever potential the Bill may offer for making a progressive change to the law through the normal parliamentary process, than for the legislation to be successfully challenged later in the courts

(by any third party: HLS cannot become involved in any legal cases). For that reason, we hope the Parliament will take particular care to establish the legal position for itself.

#### ECHR and prisoner voting

13. For further background on the decisions of the European Court, we commend to the Committee a European Court on Human Rights Factsheet dated February 2015, which sets out the current position relating to the European Convention on Human Rights and prisoner voting (available here: [http://www.echr.coe.int/Documents/FS\\_Prisoners\\_vote\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Prisoners_vote_ENG.pdf)).

14. In brief:

- In 2005 the Court held that the application of section 3 of the Representation of the People Act (ROPA) 1983 represented a violation of Article 3 of Protocol No. 1 to the ECHR, on account of the automatic and discriminate restriction on the applicant's right to vote due to his status as a convicted prisoner. In three subsequent cases (most recently, earlier this year) the Court has held that there had been a violation of Article 3 of Protocol No. 1 to the Convention, due to the United Kingdom's failure to amend section 3.
- The Court's judgements do not prevent some restrictions being applied to voting by convicted prisoners, but finds the UK's current blanket ban on voting by all convicted prisoners to be disproportionate.

#### The position at Westminster

15. A full statement on recent developments at Westminster is provided in a recent House of Commons Library Standard Note (SN01764, February 2015), available here: <http://www.parliament.uk/business/publications/research/briefing-papers/SN01764/prisoners-voting-rights>

16. As a result of European Court rulings, a draft bill was published by the UK government in November 2012, putting forward for debate an extension of voting rights to certain prisoners. A joint cross-party committee of the Houses of Commons and Lords was established to examine the Bill, which reported in December 2013 and recommended extending the franchise to all those serving a sentence of 12 months or less. No further action has been taken on this legislation. The full report of the joint committee, which provides considerable detailed background and analysis, is available here: <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtdraftvoting/103/10302.htm>

#### The position in Europe

17. On the best available recent research (Standard note SN01764, linked above):

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- At least eighteen European nations, including Denmark, Finland, Ireland, Spain, Sweden and Switzerland, have no form of electoral ban for imprisoned offenders. Norway has provision for removing voting rights from certain offenders, but this appears never to have been used.
- In other countries electoral disqualification depends on the crime committed or the length of the sentence. In France, certain crimes are identified which carry automatic forfeiture of political rights and Germany's ban extends only to prisoners whose crimes target the integrity of the state or the democratic order, such as terrorists.
- Among the Council of Europe countries, aside from the UK a blanket ban is in place in Armenia, Bulgaria, Estonia, Georgia, Hungary and Liechtenstein. A ban also applies in Russia.

## The history of the blanket ban

18. The Scottish Government's support for the blanket ban is based in part on a belief that "the principle that a convicted prisoner loses certain rights for the duration of their custodial sentence is a fundamental and long-standing part of the prison process" (Nicola Sturgeon MSP, 27 June 2013). However, the report of the Westminster joint committee shows that a prohibition in law on voting by all convicted prisoners dates only from 1969, and was inserted into legislation on the recommendation of a parliamentary process the proceedings of which remain unpublished, and without any parliamentary debate. The report records that:

- The statutory prohibition on voting originally covered only certain prisoners: in Scotland, those subject to a sentence of "outlawry", only used in more serious cases; in England, those convicted of a "felony" and sentenced to serve more than twelve months.
- The abolition of outlawry in Scotland in 1949 removed any express limitation on prisoners voting in Scotland.
- The introduction of postal voting in 1948 enabled all Scottish prisoners, and all English prisoners not expressly banned, to vote for as long as they remained on the electoral register at their home address, in practice for up to twelve months. There is evidence of some prisoners voting in the 1950's.
- A complete ban on voting by all prisoners, regardless of the nature of the offence or sentence, was only introduced in the Representation of the People Act 1969. It stemmed from an internal review of electoral law at Westminster, the record of which remains

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unpublished. The provision was not subject to debate, either during the passage of the 1969 Act or when it was re-enacted in ROPA 1983.

- The first explicit parliamentary consideration of prisoners' rights in the context of voting only came in 2000, when legislation was enacted enabling remand prisoners to exercise the right to vote.

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