Dear Member

Scottish Elections (Reduction of Voting Age) Bill

The Society's Constitutional Law Sub-Committee has had the chance to examine this Bill and has the following comments to make:-


However, Section 1 of the Bill which deals with the reduction of the voting age to 16 raises an issue of compliance with Convention Rights under the ECHR. Section 1 of the Bill provides that the voting age in Scotland for local government electors is 16 years or over. It does so by amending Section 2 of the Representation of the People Act 1983 which sets out who is eligible to vote in set local government elections. Section 11 of the Scotland Act 1998 provides that the franchise for local government elections in Scotland also applies to elections for the Scottish Parliament.

Section 2(1)(b) of the 1983 Act provides that "a person is entitled to vote... If he... Is not subject to any legal incapacity to vote (age apart)."

Section 3 of that Act provides for the legal disenfranchisement of offenders in prison.
In its 10th report of session 2014/15 on the Proposals for devolution of further powers for Scotland (HL Paper 145) the House of Lords Constitution Committee noted in Paragraph 88:-

A particular difficulty that may arise relates to prisoner voting rights and the European Convention on Human Rights. The Scottish Parliament cannot make laws that are incompatible with Convention rights. Given that the UK's current blanket ban on prisoners voting is deemed to be in contravention of the Convention, there is a risk that any future legislation by the Scottish Parliament that purports to extend the franchise but which does not enfranchise prisoners in line with the recent judgments taken by the European Court of Human Rights would itself be incompatible with Convention rights and could be struck down. The Scottish Parliament may find its ability to amend the franchise for Scottish parliamentary and local government elections constrained by its human rights obligations. The UK Government should set out its view of how these powers could be exercised within the Scottish Parliament's restricted competence.

The issue of prisoner voting in the context of the independence referendum was dealt with in the Scottish Independence Referendum (Franchise) Act 2013. The case law on that matter was relatively straightforward. However, the complexity of electoral law, the European Court of Human Rights case law and the competence provisions of the Scotland Act mean that adherence to the disenfranchisement for offenders of 16 years old may result in challenges on the basis that the Bill in this respect applies an incapacity which is incompatible with convention rights.

However, any such challenges may, of course, be met by the argument that, as the Section 30 Order which provides the competence for the Bill and the Bill only make provision for reducing the voting age of electors; the Bill therefore it is not in itself incompatible with Convention rights.

Ultimately, of course, the interpretation of the law on this matter is for the courts.

Yours sincerely

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