

Equalities and Human Rights Committee of the Scottish Parliament

Evidence Session on Prisoner Voting

7 September 2017

Written submission from the Electoral Management Board for Scotland

BACKGROUND

Prisoners serving a custodial sentence do not have the right to vote under UK law. Prisoners on remand are able to vote under the provisions of the Representation of the People Act 2000.

At its meeting on 29 June, the Equalities and Human Rights Committee considered a letter from Patrick Harvie MSP requesting that, as part of its work programme, the Committee consider the question of prisoners voting in Scotland. The Committee agreed to undertake “a one-off oral evidence scoping session” at its meeting on 7 September 2017. This was to consider the issues raised by Mr Harvie in relation to prisoner voting. Following this the Committee will consider what further action, if any, may be required on this issue.

OVERVIEW: DISCUSSION POINTS ONLY

The Committee has invited the Electoral Management Board for Scotland (EMB) to supply evidence and the EMB is happy to take this opportunity to offer some comment on the practical issues that would need to be considered were prisoners to be included in the franchise.

The paper does not consider the policy position or the various arguments around the whether such a franchise should be in place. It is for Parliament to determine the franchise and to frame the appropriate legislation. The points identified in the paper are offered as a basis for discussion to highlight the key relevant issues. It is not a fully developed discussion paper. It is assumed that any future specific proposals would be subject to consultation and the EMB would welcome the chance to offer detailed comment as part of that.

This paper focuses exclusively on the act of voting. The maintenance of an accurate register of electors is dealt with by Electoral Registration Officers (EROs). The Electoral Registration Committee of the Scottish Assessors Association (SAA), includes all 15 EROs in Scotland has identified a range of issues relevant to prisoners serving custodial sentences given the UK’s approach to registration. They have provided a separate paper, fully endorsed by the EMB, as written evidence to the Committee to inform that aspect of the discussion.

CONTEXT - PATRICK HARVIE’S OPTIONS

The letter from Patrick Harvie MSP referred to what he characterised as “an increasingly clear legal view that the blanket prohibition on prisoners voting is not human rights compliant” and proposed that “alternatives to the blanket ban must be actively considered if further legal challenges are to be avoided”. He suggested some such alternative approaches:

- the resumption of voting rights at the end of a longer sentence

- sentencing guidelines dealing with restriction of voting rights; or
- the loss of voting rights for specific categories of offence.

This paper does not explicitly address these options. They are all in the domain of policy debate and for the determination of Parliament. The focus here is on the practicalities of applying the franchise to prisoners serving custodial sentences. In practice, however, broadly similar challenges would be faced in each of those three options. Those are addressed below.

REGISTRATION VS POLLING

The paper supplied by the EROs considers possible practical issues around the registration of offenders serving custodial sentences. In common with this paper, it does not offer a view on whether prisoners *should* be enfranchised or not as that is a matter of political policy. ROs and EROs will apply whatever legislation is in place to deliver elections according to the rules.

As noted in the SAA paper, the disenfranchisement of convicted prisoners in Prisons and Young Offenders Institutions is covered by Section 3 of the Representation of the People Act 1983. The disenfranchisement of offenders detained in secure hospitals is covered by section 3A of the Representation of the People Act 1983. Prisoners held on remand are eligible to be registered to vote and the process of registering them is dealt with by Section 7A of the Representation of the People Act 1983.

Electoral Registers are compiled for each election by the EROs listing electors entitled to vote in that electoral event. The Returning Officers (ROs) use these registers to facilitate polling. A voter must be on the register for a ballot paper to be issued either at a polling station or through the absent vote process. Absent voters can either vote using a postal vote, with its associated security checks, or through an appointed proxy.

The remainder of this paper briefly identifies issues that would need consideration were the franchise extended on some basis to convicted prisoners detained in prisons, young offenders institutions and secure hospitals.

THE VOTING PROCESS – SECRECY OF THE BALLOT AS FUNDAMENTAL

Separate from any consideration of the actual mechanics of voting the discussion needs to be grounded in the basic principles of democracy. Fundamental is the secrecy of the ballot. This principle was long campaigned for and extended generally in the UK by the Ballot Act of 1872. The right to hold elections by secret ballot is now included in numerous treaties and international agreements. A secret ballot ensures that votes are cast freely without influence. Whatever the voting method it needs to preserve that secrecy as a prerequisite. A voter's choices must be anonymous, so that attempts to influence the voter by intimidation, blackmail, or “treating” are eliminated.

HOW WOULD PRISONERS CAST THEIR VOTE?

The points below are offered to prompt discussion around practical issues that would need to be considered were prisoners to be granted a vote.

Method of Voting: In Person at Polling Place outwith the Prison

- Prisoners would need to be escorted to a polling place to allow them to vote;
- There may be a risk of absconding and an associated threat to public during the transport to and from the polling place;
- Resource would be needed to escort and guard the prisoners during this journey; and
- Transport needed to take the voter to their “home” constituency, either in the area of the prison or at their previous address (depending on the approach taken to registration).

Method of Voting: In person at Polling Place within the Prison

- Polling places would need to be set up in the prison, with facilities to ensure that the ballot was cast in secret;
- If the prisoner remains on the register at their previous address – applying the usual domestic registration – such a polling place would require multiple registers, ballot papers and ballot boxes from Returning Officers across the UK;
- If the prison was treated as the place of residence, that polling district would be dominated by prisoners with a disproportionate effect on the vote within the constituency/ward;
- Ballot papers in the correct boxes would need to be transferred to the correct Returning Officer at the close of poll. This could involve transport across the UK if registration were based on previous home address; and
- The polling place within the prison would need to be staffed. With the associated security/safety issues this might be difficult for the Returning Officer to resource.

Method of Voting: By Postal Vote

- Prison authorities would need to facilitate the application process, providing the form and posting it once completed with signature and date of birth by the prisoner;
- Postal votes would need to be delivered to prisoners in good time for them to be completed and returned. The RO would deliver as normal to the prison but it would fall to the prison service to distribute the packs to prisoners;
- Facilities would be needed to allow postal votes to be completed in secret;
- Prison authorities would have to collect completed packs and post them to the relevant ROs. Packs need to be with the RO by 10pm on polling day for them to be counted;
- Postal voters currently have the right to hand a postal vote into a polling place. This would be hard to apply to prisoners;
- An approach would need to be devised to deal with the replacement of lost or spoilt postal votes. Electors can apply for a replacement for lost or undelivered postal votes from 4 working days before polling day. Spoilt postal votes can be replaced at any time although the voter needs to return the original papers to the RO and provide proof of their ID; and
- Current deadlines for the issue, receipt and replacement of postal packs do not reflect any of the challenges that would be involved in the secure delivery to or the receipt of material from prisons.

Method of voting: by the appointment of a proxy

- The completion and return of the proxy application would need to be facilitated by the prison authorities, but the subsequent process would then be as it is for any other proxy voter. Consideration should be given to whether or not such an application would need

“attestation” and the usual demonstration of a sufficient reason for not being able to attend a polling station;

- There would need to be a way by which the prisoner could intimate to the proxy how they wished their vote to be cast. Consideration would need to be given as to how the secrecy of the ballot could be protected;
- The proxy would attend the appropriate polling place and cast the vote on behalf of the prisoner;
- Prisoners could be listed under the category of "other elector" and appear on the register on that basis; and
- Prisoners may not have a friend or family member trusted to vote on their behalf.

A REVISION OF REGULATIONS AND LEGISLATION

The current rules and legislation around polling would not be immediately compatible with the extension of the franchise to convicted prisoners. The timetable and mechanics of voting are assume the voter is at liberty in the community and able to attend a polling place in their polling district within the hours of poll or to receive a postal vote, request and receive a replacement if necessary and return it to the Returning Officer by 10pm on polling day. Some of these elements would be unachievable if the voter was a convicted prisoner serving a custodial sentence. Timetables and processes would need to be revised through legislation if they were to accommodate the challenges of prisoner voting.

There is continuing public debate about the nature and exercise of the democratic process. In recent years in Scotland this has led to the extension of the franchise to 16 and 17 year olds. There is also increasing interest in the opportunities offered by new technologies around “eVoting” and by “live” electronic registers. The points offered for consideration above reflect the current situation around polling. Electoral reform and the modernisation of the process to take account of new technologies may introduce additional opportunities and challenges to the processes by which a prisoner would cast a vote.

Any intention to extend the franchise to prisoners in future should inform current debates about new technology and electoral reform to ensure that new structures can accommodate this franchise.

SUMMARY

Prisoners serving a custodial sentence do not have the right to vote under UK law although those on remand are entitled to vote.

If those serving a custodial sentence were granted a vote there would be numerous challenges associated with each of the current methods of voting – in person, by post or by proxy. The current methods could not simply be extended to apply to prisoners without revisions in the timetable and other changes to the regulations specific to prisoners. Were the registration to be based on previous address then the multiplicity of contests and potentially different franchises across the UK would pose particular challenges.

THE DELIVERY OF ELECTIONS IN SCOTLAND

The key individuals responsible for the delivery of elections in Scotland are Returning Officers (ROs) and Electoral Registration Officers (EROs). Every council must appoint an officer of the council to be the Returning Officer for any elections of councillors to the council. The 32 Returning Officers in Scotland are generally the Chief Executives of the Council and act as Returning Officers for Parliamentary elections for constituencies in their area. They also have responsibilities as “Counting Officers” for referendums.

To ensure the objectivity and neutrality of the role it is a separate appointment totally discrete from the individual’s role as Chief Executive. The Chief Executive answers to local politicians in the council. As RO the individual only answers to the courts so the elections are free of political control.

The Returning Officer is personally responsible for the all tasks relating to the delivery of the election in accordance with the law, including:

- the publication of the notice of election
- the nomination process
- the publication of the statement of persons nominated and the notice of poll
- the postal vote process
- the provision of polling stations
- the appointment of Presiding Officers and Poll Clerks
- the equipment of polling stations
- the verification and counting of the votes
- the declaration of the result

The Electoral Registration Officers are responsible for compiling and maintaining an accurate register of electors in each area. Like ROs they are independent of the council, personally responsible and are answerable to the courts. EROs work closely with the Returning Officer, providing accurate and relevant registration and absent voting data for each election. This allows the production and distribution of poll cards and postal votes and the provision of electoral registers for polling stations.

The Electoral Management Board for Scotland (EMB) seeks to ensure that the interests of the voter are kept at the centre of all elections planning and administration. The EMB undertakes this by assisting ROs and EROs in relation to local government elections through the promotion of best practice by providing information, advice or training. The EMB Convener has the power to issue directions to ROs and to EROs in respect of local government elections. The Convener’s directions are issued following consultation with all ROs and EROs and with the Electoral Commission.

For the Scottish and UK Parliamentary elections, the EMB acts without statutory power but undertakes a similar role as at local government elections to deliver a well-planned and administered election undertaken in the interests of the voter. The EMB Convener, following discussion with ROs and EROs, recommendations and additional guidance to assist ROs and EROs with a focus on achieving consistency in key voter facing elements of the election.

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