



The Rt Hon Lord Carloway
Lord President

Parliament House
Edinburgh, EH1 1RQ

26 September 2017

Christina McKelvie MSP,
Convenor,
Equalities and Human Rights Committee,
T2.60,
The Scottish Parliament,
Edinburgh.
EH99 1SP

Dear Ms McKelvie,

PRISONER VOTING IN SCOTLAND

I thank you for your letter of 21 September 2017. I understand that the Committee wish to explore the possibility of the judge, or sheriff, in a particular case deciding whether a prisoner should lose his right to vote in particular elections and for what period. I have consulted the senior judiciary (the High Court judges). All are opposed to such a course of action.

There is a major problem of principle with the matter being determined by the court. The development of policy in this area is primarily a matter for Parliament, which is best placed, after due democratic consultation, to decide where the boundaries should lie. It is for Parliament to decide when and how someone may be deprived of their right to elect a parliamentarian. Unelected judges should not just invent the rules; they should only determine whether the rules have been lawfully applied. It is not for the judiciary to construct a scheme by developing case-law over time, with the uncertainty that such an approach would entail.

It is essential that Parliament legislates in this field, setting out the key principles. Parliament could, for example, consider whether a person, who is sentenced to a particular period of years in custody, should lose his right to vote for that, or for an extended or shorter, period. Rather like the sex offender "register" provisions, such a prohibition might operate automatically on sentencing and this would be clear to both the prisoner and the prison authorities. It is ultimately for Parliament to determine such a fundamental matter of democratic principle.

Tom Sionby