

Briefing for the Citizen Participation and Public Petitions Committee on petition [PE2015](#): Extend the right to vote in Scottish local government and Scottish Parliament elections to all prisoners

Brief overview of issues raised by the petition

- There are a number of groups of people living in Scotland who do not have the right to vote in Scottish Parliament and local elections. These include under 16s, asylum seekers, and prisoners serving sentences of more than 12 months. The petitioner seeks to extend the right to vote in these elections to all prisoners.
- In 2005, the [European Court of Human Rights ruled](#) that the UK was in breach of the [European Convention of Human Rights](#) (ECHR) in relation to prisoner voting rights. The [Scotland Act 1998](#) requires that the Scottish Parliament must act in accordance with the ECHR.
- Prior to 2020, all prisoners in Scotland were unable to vote in Scottish Parliament and local elections. This was because the [Representation of the People Act 1983](#) banned prisoners in the UK serving custodial sentences, regardless of length, from voting in elections for devolved legislatures and local government elections. This ban did not apply to people held on remand, those on parole, or people on home detention curfew.
- Following the devolution of powers over Scottish Parliament and Scottish local government elections under the [Scotland Act 2016](#), the Scottish Government [conducted a consultation](#) on prisoner voting between December 2018 and March 2019. The Scottish Parliament then passed the [Scottish Elections \(Franchise and Representation\) Act 2020](#):
 - The 2020 Act gave [prisoners serving sentences of 12 months](#) or less the right to vote in Scottish Parliament and local government elections. Eligible prisoners can exercise their right to vote [by post or proxy](#).
 - The 2020 Act also requires [Scottish Ministers to undertake a review](#) of the changes and lay a report before the Scottish Parliament by 4 May 2023.
- The 2020 Act had been subject to [section 31\(5\) of the Scotland Act 1998](#) - which requires a two-thirds majority in the Scottish Parliament for Bills that

relate to some protected subject matters. It is the Presiding Officer who determines whether a Bill relates to such matters, which are listed as:

- (a) the persons entitled to vote as electors at an election for membership of the Parliament,
 - (b) the system by which members of the Parliament are returned,
 - (c) the number of constituencies, regions or any equivalent electoral area, and
 - (d) the number of members to be returned for each constituency, region or equivalent electoral area.
- The Scottish Government ran [a consultation on electoral reform](#) between 14 December 2022 and 15 March 2023.
 - The consultation asked whether people detained in hospital in connection with offending behaviour should be given the right to vote. Such people are currently disenfranchised [under section 3A of the Representation of the People Act 1983](#).
 - The consultation did not include a direct question on prisoner voting and referenced the Scottish Government’s statutory duty to report on the operation of prisoner voting by virtue of [section 6 of the Scottish Elections Franchise and Representation\) Act 2020](#). However, it did state that “any comments consultees might have would be welcome”

Annie Bosse, Researcher

27 April 2023

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

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