

STANDARDS PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

SCOTTISH ELECTIONS (FRANCHISE AND REPRESENTATION) BILL

WRITTEN SUBMISSION FROM HER MAJESTY'S INSPECTORATE OF PRISONS FOR SCOTLAND (HMIPS)

1. HMIPS welcomes the opportunity to comment on the provisions in the bill which are intended to extend the franchise in Scottish Parliament and local government elections to convicted prisoners sentenced to terms of 12 months or less.
2. In principle HMIPS believes that all prisoners should be allowed to vote, but supports the provisions in the bill to extend the right to vote to convicted prisoners with a sentence of 12 months or less as a welcome and proportionate move in that direction.
3. HMIPS notes the report from the Scottish Parliament's Equalities and Human Rights Committee on Prisoner Voting in Scotland, published on 14 May 2018, and concurs with many of the points which were discussed in that thoughtful and balanced report.
4. HMIPS notes that there was no ban on prisoner voting for 20 years prior to 1969 and that prior to 1949 only prisoners convicted of the most serious crimes were banned from voting, whereas from 1969 to 2000 remand prisoners were banned from voting, even though they had not been convicted of any offence. As the Howard League for Penal Reform indicated in their own evidence to the Equalities and Human Rights Committee, 'the history of the UK's approach to the ban is therefore less coherent than often assumed'¹.
5. It has now been established by case law (*Hirst v United Kingdom*) that a blanket ban on prisoner voting is not in keeping with Article 3 of Protocol 1 to the European Convention on Human Rights (ECHR). The ECHR certainly leaves states and governments with a wide margin of discretion to determine proportionality in restricting convicted prisoner voting rights. However the Court made clear in the *Hirst* case that "*the right to vote is not a privilege. In the 21st century the presumption in a democratic state must be in favour of inclusion*"². That seems to imply aiming for maximum suffrage and providing the vote to all prisoners.
6. Moreover international human rights instruments recognise that the purpose of imprisonment is primarily rehabilitative and the deprivation of a person's liberty. Article 10 paragraph 3 of the International Covenant on Civil and Political Rights (ICCPR) states that: "The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation."

¹ Lucy Hunter Blackburn, Howard League of Penal Reform, paragraph 71, the Equalities and Human Rights Committee, Prisoner Voting in Scotland, 3rd report, May 2018

² *Hirst v United Kingdom* (No 2) (2006) 42 E.H.R.R. para 59

7. The deprivation of a person's liberty is the punishment for committing a crime. It does not appear to HMIPS that the loss of voting rights should also form part of the punishment. It is hard to see the loss of voting rights acting as a deterrence to those contemplating crime, therefore it is strange for that to form part of the punishment. Equally, as with society as whole, we can expect a sizeable number of prisoners not to care whether they vote or not. Accordingly, as David Strang, the previous Chief Inspector of Prisons for Scotland, said in his evidence to the Equalities and Human Rights Committee: *"It is an odd punishment because it only affects those who want to vote."*³
8. While many prisoners may not care whether they get the opportunity to vote, there could be a minority who wish to vote and being denied the right to shape the future in elections may increase their sense of alienation from society. That would not assist with their rehabilitation into society. Withholding the right for prisoners to vote does not seem to contribute positively to the Scottish Prison Service's stated vision for 'unlocking potential and transforming lives'. The Equalities and Human Rights Committee seemed to come to a similar conclusion in their 2018 report: *"From what we have heard it seems unlikely that not being able to vote would deter people from committing crime. Not being able to vote does not seem to be linked to protecting the public from the commission of other crimes. Not being able to vote might, however, impact negatively on an individual's rehabilitation"*⁴.
9. Like the Equalities and Human Rights Committee, we note that many Council of Europe states have no restrictions or virtually no restrictions on prisoner voting. These include Croatia, the Czech Republic, Denmark, Finland, Ireland, Latvia, Lithuania, Norway, Slovenia, Spain, Sweden and Switzerland.
10. We believe there is much in the arguments discussed in the Equalities and Human Rights Committee report in support of extending the vote to all prisoners:
 - a. People are still citizens even if they commit crimes
 - b. Allows and encourages marginalised groups to be part of the community
 - c. Aids rehabilitation and the chances of prisoners becoming law-abiding citizens
 - d. Allows prisoners to hold decision makers to account for decisions made in relation to the justice system – for example the conditions of incarceration
11. The latter issue is inevitably particularly important for HMIPS. Prisoners are of course free to raise complaints with the Scottish Prison Service, the NHS and others about their conditions and treatment. There is also a well-established system of prison inspections and independent prison monitoring to check on such matters overseen by HMIPS. Voting rights however provide an opportunity for

³ David Strang, HMIPS, paragraph 82, the Equalities and Human Rights Committee, Prisoner Voting in Scotland, 3rd report, May 2018

⁴ Paragraph 130, the Equalities and Human Rights Committee, Prisoner Voting in Scotland, 3rd report, May 2018

prisoners to hold to account those with ultimate political responsibility for the funding of the justice system and the conditions in which prisoners are held.

12. Without in any way excusing their crimes, we note that there is increasing recognition that many convicted criminals have themselves been victims of various traumas in their lives, or feel they have been let down in some way by other parts of the justice, care or educational system. Their path into crime often starts with vulnerabilities not properly identified or responded to at the appropriate time or a lack of opportunities, sometimes linked to deprivation and other barriers that are not easily overcome. Exclusion from the electoral process may potentially only add to their sense of alienation and marginalisation in a way that may not help with efforts to encourage rehabilitation and reduce the risk of re-offending. That would not be in the best interests of society, even though that may not necessarily be fully recognised by the public.

Conclusions

13. HMIPS therefore in principle supports extending the right to vote to all prisoners, and feels that any distinction in voting rights linked to the length of sentence may be perceived by the general public and some prisoners to be somewhat arbitrary.
14. HMIPS recognises, however, that extending the vote to all prisoners may not chime with public opinion. **The provisions in the bill extending the franchise to convicted prisoners with a sentence of less than 12 months therefore appears to HMIPS to provide a reasonable and proportionate measure.**
15. Turning briefly to the practicalities of extending the vote to convicted prisoners, we recognise that the Electoral Commission and the Electoral Management Board for Scotland are best placed to comment on these technical and logistical issues and the Scottish Prison Service is best placed to comment on the practical impact, if any, on the smooth running of Scotland's prisons. We are aware, however, that similar challenges have been successfully overcome in many countries where all prisoners get to vote or where particular categories of prisoners are allowed to vote. We believe there are examples of countries where polling stations have been successfully set up in prisons.
16. For our part, however, **HMIPS support the provisions in the bill relating to registration of prisoners, linked where possible to a previous home address, and voting by proxy or by postal vote only.** HMIPS recognises that proxy or postal vote may be easier to administer than bringing polling boxes into prisons and better mitigate concerns around maintaining order and security in Scotland's prisons.

**HM INSPECTORATE OF PRISONS FOR SCOTLAND
6 SEPTEMBER 2019**