

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

SCOTTISH ELECTIONS (FRANCHISE AND REPRESENTATION) BILL

WRITTEN EVIDENCE FROM SHEILA FIELD

1. MY MAIN SUBMISSION

1(a). As a human rights campaigner, I began my battle to get the vote into our jails back in 2016, by writing a paper to our Justice Committee Inquiry into Prison Reforms. Not knowing what the public thought, I first took to the streets of London with an experimental opinion survey, asking Londoners to pick one from four options for giving “some” prisoners voting rights – in general and devolved elections. I did not consider referenda.

1(b). I now know the word “some” is fraught with difficulty, but I took the idea from **Hirst v UK(2)** in which the concept of “some prisoners” is embedded. The difficulty is to find a suitable method of choosing the “some”. It’s nearly as difficult as Brexit. The four options I offered the public were:

1. *Sentences up to one year to keep their franchise.*
2. *Sentences up to three years*
3. *Sentences up to five years*
4. *All prisoners to keep their franchise except max-security category A males and Restricted Status females.*

1(c). My first reason for writing is to tell you that the London public *did not like sentence length* as the means of allocating the vote: they did not understand what the sentence lengths meant, neither did I, and they found them a clumsy instrument. In particular, no one chose sentences up to one year, this being too meagre and mean-spirited: they preferred my radical option 4.

My signers represent roughly 10% of voters (no more than 10%), but they have two outstanding qualities: humility and generosity of spirit. One in ten signers are ex-prisoners with the same two qualities, and I must admit I have become rather fond of these ex-cons: I cannot help it.

1(d). My second point about my initial survey is that the public nagged me to add an option for

all prisoners to keep their franchise regardless of crime, on the grounds that it was unfair to leave anyone out, so I was obliged to retype my survey wording. I deleted “Sentences up to one year” and substituted a new option 4: “All prisoners to have voting rights on the same terms as you and I.” This is the only option that removes our serious breach of Article 14: Prohibition of Discrimination under the Human Rights Act, in that prisoners are just as much citizens as we are, and therefore *equal in status*. The United Nations will not permit us to de-citizenize them, which would also breach Article 3: Prohibition of inhuman and degrading treatment.

Back on the streets the response to the new wording was dramatic. 53% of signers chose “All prisoners to vote”, while 24% chose “All prisoners bar Cat A”. The sentence lengths remained unpopular.

1(e). **My current survey.** Since 2016 I have taken my survey all round London and the south east, and am now taking it to regions in the north. It was necessary to replace the two sentence lengths with clearer options; therefore my current options are as follows.

1. *Judges to decide when sentencing, which prisoners should keep their franchise, as in Germany.*

At my estimate this option would give us 50-60% of inmates with voting rights, even though it is the fussiest option. This option has been discussed albeit reluctantly at Westminster and is the one used in Germany and France; it is also in the Green Party Manifesto here. However, it has drawbacks which prevent my being keen on it, and I discourage signers from choosing it unless they are particularly sensitive about sex offences. Sex offences could be fully excluded under this option.

One drawback is that our judges do not want to use another set of guidelines that is impossible to administer fairly. Another drawback is that this option will not give us many voting prisons, voting prison sections, or whole voting wings. The next option is crucial for that.

2. *All low-risk categories: adult males categories C and D; all females except Restricted Status; all YOs aged 18-21.*

This would give us 70% of inmates enfranchised and is in my view the *top end* of the compromise sought by our Scottish Law Lords in **Smith v Scott**, CSIH 9, 2007 SLT 137, a ruling which has been ignored because it isn't binding. This option would give us many voting prisons, voting sections and voting wings. Why am I so keen on achieving this? Because of the huge political dividend that would result from deliberately creating whole voting prisons. It would lead to MPs/ MSPs regularly visiting their local jail to deal with prison issues big and small. Politicians like yourselves will not visit jails until they are FULL of voters: admit it, you will only pay attention to voters. Once you start entering those dreadful prison barracks and seeing the problems, and finding that inmates are okay human beings – often endearing and funny – you will set up such a clamour in Parliament, demanding prison and probation reforms, that our prisons will finally get some decent reforms!!! You people do not know your own strength.

3. *All prisoners to have voting rights except max-security category A males and Restricted Status females.*

This option would give us nearly 90% of prisoners enfranchised. My signers like this option because on the one hand it is obviously generous, while on the other hand it excludes the crimes that make the public feel most sickened, crimes that are always banished to Cat A: serial killings, premeditated murders, torture of children, terrorist crimes especially bomb-making.

4. *All prisoners to have voting rights on the same terms as you and I.*

This would give us at least 90% of prisoners with franchise, ie. resident UK citizens, resident Irish and Commonwealth citizens, and resident EU citizens. These latter can for now vote in devolved elections -- including the London Assembly and Mayoral elections. I particularly wish to mention that *scores* of EU citizens sign my survey and are aware of the menu of human rights all us fortunate Europeans have under the European Convention. (I also let 16 and 17 year olds sign, because I believe they should all be enfranchised along with prisoners.)

1(f). **My key recommendation** is made on behalf of most of my survey signers – now numbering nearly 4,000 in total. It is that your restriction of voting rights to prisoners on sentences up to one year is lacking in generosity of spirit. It is also counter-intuitive: the huge irony at the depth of the **Hirst v UK(2)** ruling, is that the inmates most likely to *relish* the project of voting and take it seriously, are the long-sentence prisoners who have committed the severe crimes !!!

One way to mitigate your sadly over-cautious approach, is by adding a **Review Clause** to your Bill, saying something like

After five years a review will be conducted to consider extending the franchise to prisoners on longer sentences.

2. OTHER RECOMMENDATIONS

Points (a) and (b) below have been discussed with some of my signers, who tend to concur.

2(a).**Block voting.** With an electoral system of first past the post, as with British general elections, inmates in large prisons must not be allowed to block-vote in the prison constituency in case it is very marginal. For general elections inmates must have a postal vote in the constituency they came from or one where they have a strong local connection. This precaution would not be necessary with *certain* forms of proportional representation.

2(b).**Vote tampering.** This is important. The first essential for introducing postal voting onto the wings, is that prison officers must have control of the wings. In England and Wales we have prisons where the prisoners control the wings because of a power vacuum due to the removal of prison officers under the budget cuts. Prison officers *must have control of the wings*, because discipline *must* be meted out promptly to anyone tampering with an inmate's voting form. It may be advisable to spell it out in no uncertain terms in your Bill that

It is a criminal offence for anyone to confiscate, steal, hide, spoil or delay a prisoner's postal voting form, or to apply any duress or threat concerning the voting choice a prisoner wishes to make. Such offences will be prosecuted.

2(c). **Referenda.** I have never talked to signers about letting inmates vote in referenda, and no signer has so far mentioned it. I presume you have already discussed whether to include referenda among the other voting rights. One neat

way of dealing with this issue, is to mention it *separately* in any Referendum Bill that crops up:

Prisoners who already have voting rights may vote in this Referendum.

I hope my comments are in time and useful to your deliberations. If I bring my survey to Scotland, it will be to the big towns along the Clyde. All the very best to you and Scotland.

**SHEILA FIELD
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