

Standards, Procedures and Public Appointments Committee
Thursday 5 March 2026
8th Meeting, 2026 (Session 6)

Note by the Clerk on the Representation of the People Act 1983 Remedial (Scotland) Order 2025

Overview

1. At this meeting, the Committee will take evidence from the Minister for Parliamentary Business and Veterans and officials on the [Representation of the People Act 1983 Remedial \(Scotland\) Order 2025 \(SSI 2025/353\)](#) before debating motions in the name of the Minister to recommend approval of the instrument.
2. This is a made affirmative Scottish Statutory Instruments (SSI), which requires approval by resolution of the Parliament to remain in force. More information about the instrument is summarised below:

Representation of the People Act 1983 Remedial (Scotland) Order 2025 (SSI 2025/353)

Laid under: [Convention Rights \(Compliance\) \(Scotland\) Act 2001](#)

Laid on: 19 November 2025

Procedure: Made Affirmative

Commencement: The instrument came into force on 19 November 2025.

Procedure

3. Under the affirmative procedure, an instrument cannot remain in force unless it is approved by resolution of the Parliament.
4. Once laid, the instrument is referred to:
 - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
 - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
5. The lead committee, taking account of any recommendations made by the DPLR Committee (or any other committee), must report to the Parliament.
6. The normal practice is to have two agenda items when an affirmative instrument is considered by the lead committee:

- an evidence session with the Minister and officials, followed by
 - a formal debate on a motion, lodged by the Minister, inviting the lead committee to recommend approval of the instrument.
7. Only MSPs may participate in the debate, which may not last for more than 90 minutes. If there is a division on the motion, only committee members may vote. If the motion is agreed to, it is for the Chamber to decide, at a later date, whether to approve the instrument.
 8. This Order is made under section 12 of the Convention Rights (Compliance) Act 2001 allows the Scottish Ministers to make a remedial order where necessary or expedient to ensure compatibility with the European Convention on Human Rights (the “ECHR”).

Delegated Powers and Law Reform Committee consideration

9. The DPLR Committee considered the instruments on 2 December 2025 and reported on them in its [88th Report 2025](#).
10. The DPLR Committee made no recommendations in relation to the instrument.

Purpose of the instrument

11. The Policy Note accompanying the instrument (attached as Annexe A) sets out that the Order allows some persons detained in hospital under orders and directions relating to criminal justice to vote in Scottish parliamentary elections and local government elections in Scotland.

12. The Policy Note explains that—

“the Scottish Ministers must, after making such an order, give appropriate public notice of its contents, and invite written comments to be made within 60 days of this Order being made. In accordance with section 14(3) and (4) of the 2001 Act, the Scottish Ministers must consider all written observations made; and lay a statement before the Scottish Parliament summarising these comments and specifying the modifications (if any) they consider it appropriate to make to this Order.

Section 14(5) of the 2001 Act provides that if modifications are so specified, the Scottish Ministers must make and lay before the Scottish Parliament a further remedial order incorporating the relevant changes. In accordance with section 14(6), either the initial version of the remedial order or the revised version of the remedial order must be approved within 120 sitting days (commencing on 18 November 2025), otherwise the remedial order will cease to have effect.”

13. On 23 February, the Minister for Parliamentary Business and Veterans wrote to the Committee (see Annexe B) providing a statement after consultation. Two

responses were received by the Scottish Government. The statement after consultation “contains a summary and analysis of the written observations received in response to public notice of the content of the Representation of the People Act 1983 Remedial (Scotland) Order 2025 (“the Remedial Order”) and specifies that no modifications will be made to the Order.”

14. While the two responses to the consultation welcomed the Order, additional comments were also made commenting on areas where the Order could go further “focusing on the prohibition on voting where a detained patients’ voting rights are determined by their deemed liability on the basis of the maximum possible sentence for the offence for which the person was convicted or charged and called for further consideration.”

15. In response to the comments provided, the Scottish Government has indicated that—

“It is proposed that a consultation on electoral reform following the election on 7 May 2026 will consider questions raised by consultees and all other aspects of the prohibition in section 3A of the 1983 Act, including the historical rationale for disenfranchisement. That consultation could highlight the points made by both the Royal College of Psychiatrists in Scotland and the Law Society for Scotland. The Government would welcome the further involvement of mental health professionals, advocacy groups and those with lived experience in that process.”

16. The following impact assessments have been carried out:

- [Child Rights and Wellbeing Impact Assessment \(CRWIA\)](#)
- [Equalities Impact Assessment \(EQIA\)](#).

Report

17. Following today’s meeting, a draft report will be prepared by the clerks. The Committee is invited to consider and agree to delegate to the Convener responsibility for approving the report.

Clerks to the Committee
March 2026

Annexe A: Scottish Government Policy Note

POLICY NOTE

THE REPRESENTATION OF THE PEOPLE ACT 1983 REMEDIAL (SCOTLAND) ORDER 2025

SSI 2025/353

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 12(1) and (3) of the Convention Rights (Compliance) (Scotland) Act 2001 (“the 2001 Act”) and all other powers enabling them to do so.

Purpose of the instrument.

This Order allows some persons detained in hospital under orders and directions relating to criminal justice to vote in Scottish parliamentary elections and local government elections in Scotland.

The Order will come into force on 19 November. The changes will apply to Scottish Parliament and local government elections which take place on or after 7 May 2026. The Order and its effects will expire on 28 February 2030.

Remedial Order procedure

1. Section 12 of the 2001 Act allows the Scottish Ministers to make a remedial order where necessary or expedient to ensure compatibility with the European Convention on Human Rights (the “ECHR”).
2. This Order is subject to the urgent procedure set out in section 14 of the 2001 Act. Section 14(1) confers a power on the Scottish Ministers, for reasons of urgency, to make a remedial order without following the 2 procedures specified in section 13 of the 2001 Act. Section 14(2)(b) requires the Scottish Ministers to lay a statement of reasons for having made this Order – this statement is included as an Annex to this Note.
3. While this Order will come into force on 19 November 2025, section 14(2)(a) of the 2001 Act provides that the Scottish Ministers must, after making such an order, give appropriate public notice of its contents, and invite written comments to be made within 60 days of this Order being made. In accordance with section 14(3) and (4) of the 2001 Act, the Scottish Ministers must consider all written observations made; and lay a statement before the Scottish Parliament summarising these comments and specifying the modifications (if any) they consider it appropriate to make to this Order.
4. Section 14(5) of the 2001 Act provides that if modifications are so specified, the Scottish Ministers must make and lay before the Scottish Parliament a further remedial order incorporating the relevant changes. In accordance with section 14(6), either the initial version of the remedial order or the revised version of the remedial order must be

approved within 120 sitting days (commencing on 18 November 2025), otherwise the remedial order will cease to have effect.

5. The Scottish Ministers are of the opinion that there are compelling reasons (as set out in the Annex) to require the making of this Order.

Policy Objectives

Background

6. In the case of *Hirst v. United Kingdom (No. 2)*, Application no. 74025/01, 6 October 2005, the European Court of Human Rights concluded there had been a violation of Article 3 of Protocol 1 to the ECHR by the United Kingdom insofar as section 3 of Representation of the People Act 1983 (“1983 Act”) imposed a blanket restriction on convicted prisoners detained in prison from voting. The Scottish Government considers it appears that a similar restriction in section 3A of the 1983 Act which applies to offenders detained in mental hospitals under specified orders and directions is in Scotland incompatible with Article 3 of Protocol 1 and Article 14 ECHR.

7. On 7 May 2026 a general election to the Scottish Parliament will be held. The Parliament is a legislature to which the ECHR applies. The Scottish Government and Scottish Parliament require to ensure that the franchise for elections to the Scottish Parliament are compatible with the ECHR

Policy

8. This Order modifies the law relating to Scottish Parliamentary elections and local government elections in Scotland to remove this ECHR incompatibility.

9. It does so by enabling some persons subject to section 3A(1) of the 1983 Act to vote in local government elections in Scotland while they are detained in pursuance of a relevant order or direction, provided any conditions specified are met. Section 11 of the Scotland Act 1998 provides that those entitled to vote in Scottish Parliament elections are those entitled to vote, and registered, as local government electors. Therefore, the modifications made by this Order in respect of the local government franchise will also affect Scottish Parliament elections.

10. The Order comes into force on 19 November. The changes will apply to Scottish Parliament and local government elections which take place on or after 7 May 2026. The Order is subject to a sunset provision and its effects will expire on 28 February 2030. The intention is that this Order is replaced by primary legislation before it expires with a Bill introduced in the next Parliament.

11. The overall number of people to be enfranchised is estimated to be around 20 individuals.

12. The overall objective is to extend voting rights in a way consistent with the provision for prisoner voting set out in the Scottish Elections (Franchise and Representation) Act 2020. The approach in that Act will also inform practical arrangements for newly enfranchised voters to exercise their rights.

Detail of the remedial Order (until its expiry)

13. Article 3 of this Order will allow individuals disqualified under section 3A of the 1983 Act to vote, provided they are subject to an order or direction listed in new subsection (3A), and meet any specified conditions.

14. All individuals subject to a temporary compulsion order under section 54 of the Criminal Procedure (Scotland) Act 1995 (the 1995 Act) or a guardianship order under section 58 of that Act will be able to vote.

15. Individuals subject to an interim compulsion order under section 53 of the 1995 Act, or a compulsion order under section 57(2)(a) or 57A(2) will also be able to vote, provided the offence for which they have been convicted or charged was not punishable by imprisonment exceeding 12 months. As they have not been sentenced, their deemed liability for the offence will determine how they are treated, e.g. a person convicted of an offence carrying a maximum sentence of 2 years would remain ineligible to vote while so detained.

16. The Order specifies how liability is to be calculated where an individual has been convicted or charged with multiple offences - by aggregating the maximum terms of imprisonment for each offence, as if the sentences were consecutive. For example, a person convicted of offences carrying maximum penalties of 3 months, 6 months and 6 months respectively would be treated as liable to be sentenced to 15 months' imprisonment (and so not able to vote).

17. The disenfranchisement is removed for individuals subject to a hospital direction under section 59A of the 1995 Act or a transfer for treatment direction under section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003.¹

18. The disenfranchisement will remain for all individuals subject to a compulsion order and a restriction order under section 57(2)(a) and (b) or section 57A and section 59 of the 1995 Act.

19. Articles 4 and 5 and the schedule make provision regarding where a detained person is treated as residing for the purposes of these rules. The individual's usual home address can still count as their residence for voter registration. Their detention does not break their residence if they intend to return there after release and nothing legally prevents them from doing so, or if the address is their permanent home and they would be living there if they were not detained. The individual may make a declaration of local connection to an address they are connected to, such as where they would live if not detained, where they lived before detention - evidence is needed that they would not have been entitled to register by virtue of residence at any place

¹ Rules are set out for how an individual is treated if they have received multiple sentences at the same time, or on separate occasions without any release (other than temporary release) between first and last sentencing. For example, a person sentenced concurrently to terms of 6 months and 7 months would be treated as serving a total of 7 months and therefore would be able to vote. Conversely, a person sentenced to two consecutive terms of 7 months would be treated as serving a single term of 14 months and would remain ineligible to vote while detained.

other than where they are detained.

20. The Order makes provision about the method of voting by detained individuals enfranchised under this Order, who will only be able to vote by post or by proxy and will not be able to vote as proxy.

21. The normal obligation on Electoral Registration Officers to make a personal visit to a detained individual enfranchised under this Order, who has not responded to three successive invitations to register, is disapplied. As eligible persons will be detained in secure accommodation, obliging an ERO to arrange a personal visit would not be practical (for example, the person may have been or may be about to be released). Provision is also made so that the newly enfranchised voters will be recorded on the register of electors using the marker "M", which is also used for qualifying foreign nationals and eligible prisoners.

22. Any individual registered (as a local government elector) by this Order is entitled to remain registered until it expires. After the Order expires, the registration officer must remove those individuals from the register unless they are otherwise entitled to be registered.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

23. The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the Act), the Scottish Ministers certify that, in their view, the Representation of the People Act 1983 Remedial (Scotland) Order 2025 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

24. This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

25. The Scottish Government's Electoral Reform Consultation ran between 14 December 2022 and 15 March 2023. 517 responses to the consultation were received, 94% from individuals, and 6% from organisations. The Scottish Government published an independent analysis of the consultation on 31 July 2023. Copies of the consultation, responses and the analysis are available on the Scottish Government's website.

26. The consultation paper explained that since 21 February 2020, prisoners serving sentences of 12 months or less have been eligible to vote in Scottish Parliament and Local Government elections. This change was made following a decision of the European Court of Human Rights (ECtHR) that the UK was in breach

of Article 3 of Protocol No 1 of the ECHR in relation to prisoner voting rights.

27. The consultation sought views on whether certain persons detained in hospital in connection with offending behaviour should continue not to have voting rights in Scottish Parliament and local government elections. It noted challenges in identifying a comparable threshold for persons detained on mental health grounds in connection with criminal justice, in particular as persons can be detained subject to periodic review rather than for a set term.

28. The inclusion of this matter in the consultation followed discussion of the matter in 2022 in the Scottish Mental Health Law Review, which concluded in its Final Report (p. 479) that voting rights should be extended to people detained under mental health legislation and the apparent blanket disenfranchisement ended for individuals detained under forensic orders.

29. No formal consultation has been undertaken on this Order. Section 14(2) of the 2001 Act provides that Scottish Ministers must, upon making the Order, give notice of the publication of the remedial order to appropriate organisations and invite observations in writing within 60 days of the Order being made. Once the 60 day period has expired, the Scottish Government will lay a statement before Parliament summarising all the observations received and what, if any, modifications they consider appropriate to make to the order. It will be for the Scottish Parliament to approve this Order (or any second remedial order made its place) within 120 days of it being made or it will fall.

30. The public notice of the contents of this Order will be published on the Scottish Government's website. Written observations are requested by 1 February 2025. The Government will proactively highlight the publication of the remedial order to relevant organisations, including the Electoral Commission, Electoral Management Board for Scotland, the Scottish Assessors Association Electoral Registration Committee and the Law Society of Scotland.

Impact Assessments

31. The Scottish Government has prepared a Child Rights and Wellbeing Impact Assessment (CRWIA). The CRWIA notes that the provision could allow some 16 and 17 year olds to register to vote in Scottish Parliament and local government elections.

32. An Equalities Impact Assessment (EQIA) has been prepared, outlining the impacts on groups with protected characteristics. There is minimal differential impact on these groups, and where there are differences, the EQIA finds that there is a positive impact.

33. The Scottish Government view is that this Order has no significant impact on data protection, the environment, fairness; island communities and therefore no impact assessments are required for those areas.

Business and Regulatory Impact Assessment (BRIA)

34. The Minister for Parliamentary Business and Veterans confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Financial Implications

35. There are no specific significant costs associated with the changes made in this order.

**Scottish Government
Directorate for Constitution**

November 2025

Representation of the People Act 1983 Remedial (Scotland) Order 2025**Statement of Reasons (as published separately)**

This Statement of Reasons is provided by the Scottish Ministers in accordance with section 14(2)(b) of the Convention Rights (Compliance) (Scotland) Act 2001 (“the 2001 Act”).

The Scottish Ministers have made *the Representation of the People Act 1983 Remedial (Scotland) Order 2025* for the following reasons:

On 7 May 2026 a general election to the Scottish Parliament will be held. The Parliament is a legislature to which Article 3 of Protocol 1 (“A3P1”) of the European Convention on Human Rights (“ECHR”) applies. The Scottish Government and Scottish Parliament require to ensure that the franchise for elections to the Scottish Parliament are compatible with A3P1, and the ECHR, as interpreted by the European Court of Human Rights (“ECtHR”). Furthermore, Article 14 ensures the rights enshrined by the ECHR must be enjoyed free from any unjustified discrimination². This requires that they address the ban on voting in Scottish Parliament elections by “forensic” mental health patients who are detained in hospital or other settings in the complex range of circumstances of the orders and directions listed in section 3A(3) of the Representation of the People Act 1983 (“the 1983 Act”).

The disenfranchisement of detained forensic mental health patients originally mirrored that of all those convicted and sentenced to imprisonment for any length of time. In 2005 the ECtHR found in *Hirst v United Kingdom (No 2)* that the UK blanket ban on prisoner voting was in breach of A3P1, which provides that signatory states: “undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.” This has been interpreted to give individuals the right to vote and to stand for election. The breach of A3P1 in respect of prisoner voting was remedied by Part 3 of the Scottish Elections (Franchise and Representation) Act 2020 which enables convicted persons detained in prison on a sentence of 12 months or less to vote in Scottish Parliament and local government elections.

The current voting ban in section 3A(3) of the 1983 Act is a general automatic disenfranchisement of detained forensic mental health patients. A discernible and sufficient link is required between the sanction and the conduct and circumstances of the individual concerned. The current ban prevents forensic mental health patients from voting where mental health patients detained under civil orders and prisoners would be able to vote in analogous circumstances, as provided for following the Scottish Elections (Franchise and Representation) Act 2020. As such, the Scottish Government considers it appears section 3A(3) of the 1983 Act is in breach of A3P1 and Article 14 of the ECHR.

Legislative change is required to deal with this incompatibility of the franchise. Following the necessary policy and legal analysis of the detailed circumstances provided for, a Compliance Order under section 12 of the Convention Rights

² See for instance *X v Mental Health Tribunal for Scotland* [2022] CSOH 78

(Compliance) (Scotland) Act 2001 which is made under the urgent procedure is the most appropriate mechanism to deliver a solution which is workable to allow for election administration in time for the general election to the Scottish Parliament on 7 May 2026. The modifications to the existing law made by the Order are temporary as the Order is time-limited and will expire on 28 February 2030. The Scottish Government would also plan to bring forward a Bill in the next Session of Parliament to give the Parliament the opportunity to consider the issues more fully and in light of further consultation.

Under the urgent procedure the Order will come into force on the day on which it is made. This is considered necessary in order to allow preparations to be made to permit newly enfranchised persons to exercise the right vote in the election on 7 May 2026. Once the change is in force, the Electoral Commission will commence work on guidance and changes to forms in order to facilitate the new voting rights. Electoral Registration Officers will also begin the process of ensuring that the newly enfranchised persons can register to vote. The deadline to register to vote ahead of the 7 May 2026 election is 20 April 2026. In addition, detained persons cannot vote in person and the standard deadlines for arranging a postal or proxy vote occur on 21 April and 28 April respectively, with applications for a proxy vote at the particular election remaining opening until 5pm on the date of the poll. Commencement as soon as possible will allow communications to voters to assist them with registering to vote and arranging a postal or proxy vote. As the Order will not apply to council by-elections prior to 7 May and Scottish Parliament by-elections cannot be called in the six months prior to a general election to the Scottish Parliament, commencement of the Order at the point it is laid is not expected to have any negative impact.

Therefore, the Scottish Ministers consider that there are compelling reasons for making an Order under section 12 of the 2001 Act as distinct from taking any other action.

Annexe B: Letter from the Minister for Parliamentary Business and Veterans, including statement after consultation – 23 February 2026

Representation of the People Act 1983 Remedial (Scotland) Order 2025: voting rights for persons detained on mental health grounds

In my letter of 18 November 2025 on the above Order I explained that the remedial Order process involved a 60-day period for representations. The period closed on 1 February 2026 and two responses have been received.

I attach a Statement reporting on the representations received and the response of the Scottish Government. The Statement is being laid before the Scottish Parliament in accordance with section 14(4) of the Convention Rights (Compliance) (Scotland) Act 2001 and a copy will be published on the Scottish Government website.

I hope that this is helpful to the Committee.

THE REPRESENTATION OF THE PEOPLE ACT 1983 REMEDIAL (SCOTLAND) ORDER 2025

STATEMENT OF THE SCOTTISH MINISTERS UNDER SECTION 14(4) OF THE CONVENTION RIGHTS (COMPLIANCE) (SCOTLAND) ACT 2001

This statement is laid before the Scottish Parliament in accordance with section 14(4) of the Convention Rights (Compliance) (Scotland) Act 2001.

Introduction

This statement contains a summary and analysis of the written observations received in response to public notice of the content of the Representation of the People Act 1983 Remedial (Scotland) Order 2025 (“the Remedial Order”) and specifies that no modifications will be made to the Order.

Background

The Remedial Order modified the law relating to Scottish Parliamentary elections and local government elections in Scotland. It removed an incompatibility with the European Convention on Human Rights (“ECHR”) in relation to section 3A of the Representation of the People Act 1983 (“1983 Act”), which applies to offenders detained in mental hospitals under specified orders and directions in Scotland.

In the case of *Hirst v. United Kingdom (No. 2)*, Application no. 74025/01, 6 October 2005, the European Court of Human Rights concluded there had been a violation of Article 3 of Protocol 1 to the ECHR by the United Kingdom insofar as section 3 of the Representation of the People Act 1983 imposed a blanket restriction on convicted prisoners detained in prison from voting.

In making the Remedial Order, the Scottish Government considered a similar restriction in section 3A of the 1983 Act, which applied to forensic mental health patients detained in mental hospitals under specified orders and directions in Scotland, was incompatible with Article 3 of Protocol 1 and Article 14 of the ECHR.

The voting ban in section 3A(3) of the 1983 Act was a general automatic disenfranchisement of detained forensic mental health patients. A discernible and sufficient link is required between the sanction and the conduct and circumstances of the individual concerned. The ban prevented forensic mental health patients from voting where mental health patients detained under civil orders and prisoners would be able to vote in analogous circumstances, as provided for following the Scottish Elections (Franchise and Representation) Act 2020. As such, the Scottish Government considered that section 3A(3) of the 1983 Act was in breach of Article 3 of Protocol 1 and Article 14 of the ECHR.

The Remedial Order was brought into force to address this ECHR incompatibility. It does so by making temporary modifications to the law to enable some persons subject to section 3A(1) of the 1983 Act to vote in local government elections in Scotland while they are detained in pursuance of a relevant order or direction, provided any conditions specified are met.

The Remedial Order enables all individuals subject to a temporary compulsion order under section 54 of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) to vote. It also removes the restriction on voting by persons during the time their personal welfare is placed under the guardianship of a local authority (or such other person approved by a local authority) under section 58 of that Act.

The Remedial Order also enables persons detained under section 53, 57(2)(a) or 57A(2) of the 1995 Act to vote, provided that the offence for which they have been convicted or charged is not be punishable by more than 12 months’ imprisonment. Those people will not have been sentenced so their deemed liability for the offence for which they have been convicted or charged is to be taken into account. If a person has been convicted or charged with more than one offence, their liability is to be equal to the aggregate length of the total maximum terms of imprisonment for each offence as if sentenced consecutively.

A person subject to a compulsion order under section 57(2)(a) of the 1995 Act must not also be subject to a further restriction order under section 57(2)(b) of that Act to be legally capable of voting. Similarly, a person subject to a compulsion order under 57A(2) of that Act must not be subject to a further restriction order under section 59 of that Act.

The Remedial Order enables persons subject to directions under 59A of the 1995 Act and section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 where they are serving a sentence of 12 months or less to vote.

Section 11 of the Scotland Act 1998 provides that those entitled to vote in Scottish Parliament elections are those entitled to vote, and registered, as local government electors. Therefore, the modifications made by the Remedial Order in respect of the local government franchise also applies to the Scottish Parliament elections.

The Remedial Order came into force on 19 November 2026 according to the procedure prescribed in section 14 of the Convention Rights (Compliance) (Scotland) Act 2001 (the “2001 Act”). Section 14(2) provides that the Scottish Ministers must, after making such an order, give appropriate public notice of its contents, and invite written comments to be made within 60 days.

In accordance with section 14(3) and (4) of the 2001 Act the Scottish Ministers must consider all written observations made; and lay a statement before the Scottish Parliament summarising these comments and specifying the modifications (if any) they consider it appropriate to make to the Remedial Order.

The consultation process

The public notice of the contents of the Remedial Order was published on the Scottish Government's website on 19 November 2025 and written observations ("responses") requested by 1 February 2026³. Notice was sent to electoral stakeholders including the Electoral Commission, the Electoral Management Board for Scotland and the Electoral Registration Committee of the Scottish Assessors Association. It was also sent to stakeholders with expertise in the area of mental health including the Mental Welfare Commission for Scotland and the Royal College of Psychiatrists in Scotland. COSLA, the Scottish Human Rights Commission and the Law Society of Scotland were also contacted (see full list in Annex A).

Responses

Findings

This section discusses responses received to the Remedial Order, and specifies the modifications (if any) that the Scottish Ministers consider it appropriate to make to the Order in light of them.

Responses and analysis

Responses were received from the Royal College of Psychiatrists in Scotland and the Law Society of Scotland (copies attached at Annex B). Both responses welcomed the changes made by the Remedial Order and made additional observations. Both considered that the Remedial Order could go further, focusing on the prohibition on voting where a detained patients' voting rights are determined by their deemed liability on the basis of the maximum possible sentence for the offence for which the person was convicted or charged and called for further consideration.

The Royal College of Psychiatrists in Scotland urged the Scottish Government to:-

- a) provide clear operational guidance and resources for implementation of the change;
- b) provide confirmation that no additional assessment of mental capacity to vote was required for anyone being enfranchised;
- c) commit to a transparent review of the principles behind voting restrictions; and
- d) engage meaningfully with mental health services and advocacy groups in shaping future legislation.

Scottish Government position

³ <https://www.gov.scot/publications/representation-of-the-people-act-1983-remedial-scotland-order-2025-statement-of-reasons/>

In relation to the Royal College of Psychiatrists in Scotland's comments on practical implementation and resource implications, the Scottish Government is working with the Electoral Commission and Electoral Registration Officers on how best to engage with newly enfranchised voters and hospitals and mental health practitioners in supporting patients to register, and then exercise their right to vote. This includes modification of the form to be used in registering to vote. The Government acknowledges that clear guidance and resources are needed as part of this process. It also acknowledges the specific request that that guidance explicitly confirm that staff are not expected to assess voting competence. The Government can confirm that there is no mental capacity requirement for any persons to register and exercise the right to vote.

The Government notes the comments of both consultation respondents in relation to the maintenance of a prohibition on voting where the maximum possible sentence that could have been imposed for the offence in question is in excess of 1 year. It acknowledges the position of the Royal College of Psychiatrists in Scotland that:

"In conclusion, deemed liability may be a proportionate approach for persons convicted of an offence but it appears harder to justify this blanket restriction for

- persons found unfit to stand trial or not criminally responsible and not subject to a restriction order.
- persons detained in hospital for longer than the custodial sentence a court would otherwise have imposed, due to clinical need, lack of community resources, or risk management decisions."

The Government also notes the comments of the Law Society of Scotland that the Remedial Order only partially implements the relevant recommendation of the Scottish Mental Health Law Review. This is in the context of forensic patients compared to persons convicted persons in certain circumstances. The Society explained:

"...where the patient is given a compulsion order, we don't know what prison sentence the person would have received – only the maximum sentence for the offence. Therefore, a person who received a 6 month prison sentence, for an offence with a maximum possible sentence of over 12 months, will retain the right to vote, but would remain disenfranchised if they received a compulsion order for the same offence."

The Scottish Government acknowledges that convicted prisoners' voting eligibility is determined by sentence length, and that voting eligibility for some forensic mental health patients detained under certain orders are assessed by reference to the maximum sentence available for the offence, as no specific prison term applies to such orders. The 12-month threshold reflects the sentencing structure in Scotland and broadly aligns with the approach taken for prisoner voting.

The Government is grateful for the responses from the Royal College of Psychiatrists in Scotland and the Law Society for Scotland. The Government does not, however, consider it appropriate at this stage to make any modifications to the Remedial Order. As stated in the Policy Note which accompanied the Remedial Order, the Order is subject to a sunset provision and its effects will expire on 28 February 2030. The Government considers that any permanent change and any further change in the law

should be preceded by a full public consultation. The intention is that long-term provision will be made by primary legislation in the next Parliament.

It is proposed that a consultation on electoral reform following the election on 7 May 2026 will consider questions raised by consultees and all other aspects of the prohibition in section 3A of the 1983 Act, including the historical rationale for disenfranchisement. That consultation could highlight the points made by both the Royal College of Psychiatrists in Scotland and the Law Society for Scotland. The Government would welcome the further involvement of mental health professionals, advocacy groups and those with lived experience in that process.

ANNEX A

List of organisations contacted

The following organisations were asked if they wished to submit representations on the Remedial Order:

- Scottish Parliament Political Parties Panel
- Electoral Commission
- Electoral Management Board for Scotland
- Scottish Assessors Association, Electoral Registration Committee
- Law Society of Scotland
- COSLA
- the Scottish Human Rights Commission
- the Electoral Reform Society
- The Mental Welfare Commission for Scotland
- Community Justice Scotland
- Association of Electoral Administrators
- Edinburgh Napier's Centre for Mental Health Practice, Policy and Law Research
- Royal College of Psychiatrists
- Office of the Public Guardian
- Additional Support Needs Tribunal
- University of Edinburgh School of Social and Political Science
- University of Glasgow School of Health and Wellbeing
- Scottish Association for Social Workers
- Scottish Independent Advocacy Alliance

ANNEX B

A. RESPONSE FROM THE ROYAL COLLEGE OF PSYCHIATRISTS IN SCOTLAND

January 2026

Legislative Oversight Forum

The Royal College of Psychiatrists in Scotland (RCPsychiS) Legislative Oversight Forum (LOF) was established in 2020 following a decree by Scotland Devolved Council.

The LOF is a gathering of highly experienced and knowledgeable psychiatrists who have daily experience of applying mental health incapacity and safe-guarding laws when providing care and treatment. It seeks to provide a point of reference within and outside of the College. The LOF meets on a monthly basis to discuss current and proposed legislative changes which could impact the practice of psychiatry in Scotland.

Our views

We welcome the Scottish Government's efforts to ensure compliance with the European Convention on Human Rights through the Representation of the People Act 1983 Remedial (Scotland) Order 2025. Extending voting rights to individuals detained on mental health grounds is an important step toward upholding equality and human rights. However, following discussion among our members, we wish to raise several points for consideration:

Practical implementation and resource implications

The Order places responsibility on hospitals and mental health services/staff to support patients in registering and exercising their right to vote, primarily through postal or proxy voting. While we fully support enabling participation, this introduces additional administrative and advocacy responsibilities for already overstretched clinical teams. Clear guidance and resources are needed to ensure that staff can facilitate voting without compromising patient privacy or therapeutic priorities. Consideration should also be given to funding or support for these additional tasks, particularly in secure settings, where processes are more complex and time consuming.

Safeguarding rights and autonomy

Our members feel that voting rights should not be contingent on additional, specific assessments of capacity in this context (I.E – more assessment of 'capacity to vote' additional to existing capacity assessments already carried out).

We recommend the position that there is no additional test for capacity to vote (once standard capacity assessment has been carried out) beyond understanding the purpose of voting and expressing a preference. This approach respects autonomy and avoids discriminatory practices. We ask that guidance explicitly confirms that staff are not expected to assess voting competence.

Any communication materials for patients must be accessible and sensitive to mental health needs.

Deemed liability

The explanatory notes state that the purpose of the order is to give voting rights to persons convicted of less serious offences, defined as those carrying a maximum penalty of less than 12 months imprisonment.

Where a person is detained under sections 53, 57(2)(a) or 57A(2) of the Criminal Procedure (Scotland) Act 1995 and has not been convicted or sentenced, eligibility to vote is determined by “deemed liability”. This means that the maximum possible sentence for the offence charged is used as a proxy for seriousness, rather than the person’s actual disposal or culpability.

Where a person has been convicted of an offence but given a hospital disposal, the justification for offence-based restrictions appears reasonable because criminal responsibility has been established. However, it raises particular concerns in cases involving unfitness to stand trial or acquittal on the grounds of mental disorder.

In post-conviction cases, imprisonment was legally available and the hospital order represents an alternative to punishment. By contrast, for individuals found unfit to stand trial or not criminally responsible, they are not convicted of an offence and imprisonment is excluded as a disposal by the court. In these circumstances, basing voting restrictions on hypothetical punishment depends on an incorrect assumption that punishment could have been imposed and risks attaching penal consequences to detention that is intended to be protective and therapeutic rather than punitive.

Another concern is that deemed liability does not account for the indeterminate nature of hospital detention and may result in patients being disenfranchised for longer than individuals serving determinate prison sentences for comparable offences. While prisoners automatically regain liberty and voting rights at the end of their sentence, patients may remain detained for clinical reasons well beyond the period of imprisonment the court would otherwise have imposed. There is no mechanism within the order or tribunal process to review or restore voting rights in these circumstances, creating a risk of disproportionate, unreviewed, and potentially arbitrary restriction of a fundamental civic right.

The aim of the legislation is to exclude persons charged or convicted of serious offences. The exclusion of voting rights for persons who are subject to a restriction order under section 59 Criminal Procedure (Scotland) Act 1995 is consistent with this aim and we make no recommendations about this.

In conclusion, deemed liability may be a proportionate approach for persons convicted of an offence but it appears harder to justify this blanket restriction for

- persons found unfit to stand trial or not criminally responsible and not subject to a restriction order.
- persons detained in hospital for longer than the custodial sentence a court would otherwise have imposed, due to clinical need, lack of community resources, or risk management decisions.

We recommend that this is reviewed.

Underlying principles and clarity

Members expressed concern about the historical rationale for disenfranchisement, which appears rooted in punishment rather than capacity. The arbitrary nature of the 12-month sentence threshold was noted by our members and should be given consideration. This limit is not based on capacity, risk, or any rational measure of civic responsibility - it appears to be simply a punitive line drawn by legislation. Applying this arbitrary rule to those detained under mental health legislation reinforces stigma. It implies that their voting rights depend on an analogy to criminal sentencing rather than their status as citizens.

We encourage the Government to clarify the principles underpinning these changes and commit to a broader review during the next Parliament, as indicated in the sunset clause. Future legislation must also be informed by consultation with mental health professionals, advocacy groups, and those with lived experience.

Engagement and consultation

We note the constraints of the formal feedback process and the 60-day representation period. We strongly recommend ongoing engagement with stakeholders to ensure practical challenges are addressed and rights are upheld in practice.

Summary of views

In summary, while we support the intent of the Remedial Order, we urge the Scottish Government to: provide clear operational guidance and resources for implementation; confirm that no additional voting capacity assessment is required; commit to a transparent review of the principles behind voting restrictions; engage meaningfully with mental health services and advocacy groups in shaping future legislation.

We would be happy to contribute further to this discussion and assist in developing practical solutions.

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B. RESPONSE FROM THE LAW SOCIETY OF SCOTLAND

In [our response to the 2023 consultation on electoral reform](#) we indicated that persons detained on mental health grounds related to criminal justice should be entitled to vote on the same basis as persons detained on mental health grounds under civil orders. We are therefore pleased that the Representation of the People Act 1983 Remedial (Scotland) Order 2025 has been laid before the Scottish Parliament.

We note that the Order makes those changes which the Scottish Government considers necessary for compliance with the ECHR. We further note, however, that the Order would only partially implement the relevant recommendation of the Scottish Mental Health Law Review and that forensic patients would still be at a disadvantage as compared to other convicted persons in certain circumstances. For example, the

right to vote is restored if the person 'is not liable to be sentenced, in respect of the offence for which the person has been convicted, to imprisonment for a term exceeding 12 months'. However, where the patient is given a compulsion order, we don't know what prison sentence the person would have received – only the maximum sentence for the offence. Therefore, a person who received a 6 month prison sentence, for an offence with a maximum possible sentence of over 12 months, will retain the right to vote, but would remain disenfranchised if they received a compulsion order for the same offence.

We recognise the pressing need to address issues of ECHR compliance ahead of the 2026 Scottish Parliament Elections. We note that the Order is time-limited and that the Minister has indicated that the possibility of further changes should be consulted on with a view to primary legislation in the next Parliament. We consider that the above points should be considered in the context of any future consultation on widening the enfranchisement of forensic patients, and addressed in any future legislation.

I hope that the above is helpful. We would be happy to discuss further.