

Prison Reform Trust response to the Scottish Government consultation on electoral reform – March 2018

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective penal system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform. The Prison Reform Trust provides the secretariat to the All Party Parliamentary Penal Affairs Group and has an advice and information service for people in prison.

The Prison Reform Trust's main objectives are:

- reducing unnecessary imprisonment and promoting community solutions to crime
- improving treatment and conditions for prisoners and their families.

www.prisonreformtrust.org.uk

Response

The Prison Reform Trust welcomes the opportunity to respond to the Scottish Government consultation on electoral reform. We note that the government is not consulting directly on the issue of prisoners voting, but instead has noted the separate Scottish Parliament's Equality and Human Rights Committee inquiry on prisoners voting. The consultation states that the government "will respond in due course to any recommendations the Committee makes and on the UK government's proposals to resolve the 2005 Hirst case, which were supported by the Committee of Ministers in December 2017."

Nonetheless, the Prison Reform Trust has chosen to submit evidence on prisoners voting to this consultation, as it did to the Committee's separate inquiry. In particular, we would urge the government to be ambitious in seeking to bring Scotland into line with international norms of democratic accountability and representation. We would urge it not to following the example of the UK government by extending the franchise to only a handful of people on temporary release. While this move has been accepted by the Committee of Ministers, after more than a decade of delay by the UK government in complying with the Hirst judgement, it is far from consistent with the spirit of the original judgment and is only a modest step towards enabling people in prison to exercise their civic responsibilities.

The Prison Reform Trust has, along with other NGOs, MSPs, AMs, MPs and peers, long supported the extension of voting rights to people in prison. We believe that there is a clear and unambiguous case for reform. This rests on the conviction that voting is not a privilege. It is a basic human right. It is certainly not a reward to be granted to those whom the government has judged morally decent. Preventing people in prison from voting achieves no purpose. It neither protects public safety, nor acts as an effective deterrent. It does not function as a means to correct the behaviour of offenders and does not assist in their rehabilitation. It is not articulated

at the point of sentence and bears no relation to the crime committed and so is an additional and arbitrary punishment. In particular:

- The International Covenant on Civil and Political Rights (ICCPR) gives every citizen the right to participate in the conduct of public affairs, to vote in elections which have universal suffrage and to have equal access to public service. The United Nations Human Rights Committee, which monitors compliance with the ICCPR, has expressed concern on several occasions about countries which do not allow their prisoners to vote. The Committee “fails to discern the justification for such practice in modern times, considering that it amounts to an additional punishment and that it does not contribute towards the prisoner’s reformation and social rehabilitation, contrary to Article 25 of the Covenant.”
- The European Court of Human Rights (ECtHR) has been critical of countries where restrictions on the right to vote are largely derived from unquestioning and passive adherence to historical tradition, which is certainly the case in the UK. It has observed that the right to vote must be acknowledged as “the indispensable foundation of a democratic system.”
- Successive UK Governments have justified restricting the right to vote on the grounds that it prevents crime and punishes offenders, whilst enhancing civic responsibility and respect for the law. However, the ECtHR found no evidence to support the claim that disenfranchisement deterred crime and considered that the imposition of a punishment on all prisoners regardless of their crime or individual circumstances indicated no rational link between the punishment and the offender. It judges the ban “runs counter to the rehabilitation of the offender as a law-abiding member of the community and undermines the authority of the law as derived from a legislature which the community as a whole votes into power.”
- In the words of the ECtHR: “Nor is there any place under the Convention system, where tolerance and broadmindedness are the acknowledged hallmarks of democratic society, for an automatic disenfranchisement based purely on what might offend public opinion.”
- The cross-party group of MPs and peers set up in 2012 to consider draft government legislation on prisoners voting concluded that “In a democracy the vote is a right, not a privilege: it should not be removed without good reason.” Furthermore, it found that “there are no convincing penal-policy arguments in favour of disenfranchisement”, and that “enfranchisement might assist prisoner rehabilitation by providing an incentive to re-engage with society.”

The UK government’s decision in 2017 to extend the franchise to prisoners on temporary release is only a very modest step in the right direction. In reality, it will extend the franchise to just a couple hundred people at a time. No one in prison serving a custodial sentence who has not been granted release on temporary licence (ROTL) or home detention curfew (HDC) will be able to vote, and so the vast majority of people in prison will remain disenfranchised. This is far from being a model for compliance in the rest of Europe, where all but five member states of the Council of Europe enable people in prison to vote. It has been described by the leading human rights lawyer Sean Humber as “a very cynical attempt” and “trying to do the bare minimum and falling short.”

Therefore, in seeking to comply with its international obligations, we would urge the Scottish government to look beyond the UK to other European jurisdictions, where

voting is a normal part of resettlement and rehabilitation. For instance, in Croatia, the Czech Republic, Denmark, Finland, Ireland, Latvia, Lithuania, Macedonia, Montenegro, Serbia, Spain, Sweden, Switzerland and Ukraine there are no restrictions on prisoners voting. At the very least, Scotland should consider the example of countries such as Germany or Norway, where restriction on voting rights is reserved for offences which target the state or democratic order; or other countries such as France and the Netherlands, where judges are able to exercise discretion over the decision to withdraw the franchise. On this issue, we hope the Scottish government will take the opportunity to lead by example, as a model for upholding international standards of democratic accountability and human rights.