Prison Reform Trust Submission to the Joint Select Committee Consultation on the Draft Voting Eligibility (Prisoners) Bill

The Prison Reform Trust is an independent UK charity working to create a just, humane and effective prison 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.

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Memorandum

The Prison Reform Trust welcomes the convening of this committee of inquiry into the eligibility of convicted prisoners to take part in UK elections. On 31 March 2013, the prison population in England and Wales stood at 83,769.[1] The vast majority, 71,638, are sentenced prisoners who are denied the right to vote. The only other adult UK citizens who cannot vote in general elections are hereditary peers who are members of the House of Lords, life peers, patients detained in psychiatric hospitals as a result of their crimes, and those who have been convicted of corrupt or illegal electoral practices in the previous five years. Remand prisoners, people held in contempt of court and fine defaulters held in prison are all eligible to vote.

Following the judgment of the European Court of Human Rights in *Hirst vs. UK* in 2005, it has been repeatedly highlighted that the automatic and indiscriminate ban on all convicted offenders, barring those on remand or in custody on default, does not comply with Article 3 Protocol 1 of the European Convention on Human Rights 1950. Despite that judgment, which called for the UK to amend its position according to the convention, successive governments have delayed taking action to implement reform.

It is difficult to understand why politicians would rather flout international law than have people in prison act responsibly by voting in elections. The Prison Reform Trust, allied organisations and church and faith groups have consistently voiced their concern over successive governments' prevarication on this issue. Calls for reforms to be put in place to allow the last election to be conducted under conditions which comply with the Convention went unheeded. The refusal of the UK to move on this issue seriously undermines the credibility of its stance as a nation committed to human rights and upholding the rule of law.

The Prison Reform Trust is pleased that the present committee represents a degree of forward momentum. The Government has outlined three options in the draft bill: a ban on prisoners sentenced to four years or more; a ban on prisoners sentenced to more than six months; and a ban on all convicted prisoners – a restatement of the existing ban. The Committee of Ministers in the Council of Europe has made clear that retaining the existing ban is in breach of the Court ruling. It is regrettable that all three options retain an automatic ban on some sentenced prisoners, regardless of their particular offence.

[1] Table 1.1a, Offender management statistics (quarterly) October to December 2012, Ministry of Justice

We call for two further options to be considered:

1. Fully enfranchise everyone serving a prison sentence.
2. Give judges discretionary powers to decide upon disenfranchisement as a part of a sentence proportionate to a crime.

This second option has been adopted in a number of Council of Europe countries, including France, Germany and Belgium and has been mooted by MPs and peers in parliamentary debates. The UK has been given a sufficiently wide margin of appreciation for Parliament to decide on the best way to implement reform.

There would be few problems in extending the franchise to prisoners. The Electoral Commission already has mechanisms in place for remand prisoners to vote and identifies them as "hard to reach voters" with whom it is important to engage.

1. What are the historical and philosophical justifications for denying prisoners the right to vote?

People are sent to prison to lose their liberty, not their identity. Prisoners in many other countries retain their right to vote. In South Africa the constitutional court declared:

> The universality of the franchise is important not only for nationhood and democracy. The vote of each and every citizen is a badge of dignity and personhood. Quite literally, it says that everybody counts.

In the UK, the blanket and indiscriminate ban on sentenced prisoners voting is contained in Section 3 the Representation of the People Act 1983, amended in 1985 and 2000. It dates back to the Forfeiture Act 1870 which introduced the notion of 'civic death', barring people in prison from active participation in the democratic process. Under the ban, prisoners cease to count as citizens and lose their identity.

The notion of "civic death" is selectively applied to convicted prisoners, who continue to contribute financially to society. Prisoners are not exempt from paying tax on their savings, capital gains and any earnings that they receive during their sentence. If they are considered "alive" in terms of their financial activity, then they should be treated in the same way when it comes to basic human rights such as voting.

The former Archbishop of Canterbury, Dr Rowan Williams, has emphasised the importance of treating prisoners as citizens. At a 2011 meeting of the all-party parliamentary penal affairs group, he argued:

> The notion that in some sense, not the civic liberties but the civic status of a prisoner is in cold storage when custody takes over is one of the roots of a whole range of issues around the rights of prisoners.[2]

The former president of the Prison Governors' Association, Paul Tidball, supported this argument, highlighting the importance of citizenship in the process of a prisoner's resettlement. He has stated that:

> The blanket ban on sentenced prisoners voting is out of step in a modern prison service and runs counter to resettlement work which aims to ensure that prisoners lead a responsible, law-abiding life on release.[3]

[2] http://www.guardian.co.uk/uk/2011/feb/09/archbishop-canterbury-votes-for-prisoners
[3] Prison Reform Trust (2010) Barred from Voting, London: Prison Reform Trust

Dr Peter Selby, former Bishop to HM Prisons and President of the National Council for Independent Monitoring Boards for Prisons, has argued that:

> Denying convicted prisoners the right to vote serves no purpose of deterrence or reform. What it does is to state in the clearest terms society's belief that once convicted you are a non-person, one who should have no say in how our society is to develop, whose opinion is to count for nothing. It is making someone an "outlaw", and as such has no place in expressing a civilised attitude towards those in prison.[4]

Furthermore, the Catholic Bishops of England and Wales also support the right of prisoners voting, on the grounds that

> Prison regimes should treat prisoners less as objects, done to by others, and more as subjects who can become authors of their own reform and redemption. In that spirit, the right to vote should be restored to sentenced prisoners.[5]

One of the observations made by the ECtHR in its 2004 ruling was that "There is no evidence that the legislature in the UK has ever sought to…assess the proportionality of the ban as it affects convicted prisoners."[6] It was 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.

2. Why is the right to vote considered to be a human right?

Basic principles for electoral democracy are set out in international law and include the right to vote. The European Convention on Human Rights, Protocol 1, Article 3, states:

> The parties 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 guarantee has been enshrined in UK law in the Human Rights Act (2000) and does not make exclusions for sentenced prisoners. 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.

In the Concluding Observations of its International Convention on Civil and Political Rights, Human Rights Committee, on 6 December 2001, the United Nations declared that the ban on prisoners voting is a "principal subject of concern". 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."

In April 2001 a case was taken to the High Court by three sentenced prisoners who argued that the ban on their right to vote was incompatible with the Human Rights Act. The High Court found in their favour that the Government was acting unlawfully in maintaining this

[4] Prison Reform Trust and UNLOCK press release (2 March 2004) Barred from Voting: Coalition calls for prisoners to be given the vote.
[5] Prison Reform Trust (2010) Barred from Voting, London: Prison Reform Trust
[6] Hirst v UK (No 1)

ban. One of the three applicants, John Hirst, took his appeal to the European Court of Human Rights.

In March 2004 the ECtHR judgment of *Hirst v UK* found unanimously that the UK Government was in violation of Article 3, Protocol 1 of the European Convention on Human Rights, guaranteeing the right to vote. In its conclusion the court states that "The fact that a convicted prisoner is deprived of his liberty does not mean that he loses the protection of other fundamental rights in the convention." Furthermore the right to vote must be acknowledged as "the indispensable foundation of a democratic system."[7]

Following *Hirst* there have been similar judgments from the ECtHR. These have underlined the importance of the principle of proportionality which were laid down in the *Hirst* judgment. Notable among these are *Greens and MT, Scoppola v Italy* and *Frodl v Austria*. In each case the judgement of the Court in *Hirst* has been reaffirmed. The UK Government has been called upon by the Committee of Ministers in the Council of Europe to embark on legislative procedures to amend the blanket ban on prisoners voting.

The Commissioner for Human Rights at the Council of Europe, Thomas Hammarberg, has argued that "Prisoners, though deprived of physical liberty, have human rights…Measures should be taken to ensure that imprisonment does not undermine rights which are unconnected to the intention of the punishment."[8]

3. Is disqualifying prisoners from voting a suitable part of their punishment?

No. The ban 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. Following the principle of "just deserts", to make the punishment fit the crime, it would be appropriate to strip offenders of their voting rights in cases of electoral fraud.

The blanket ban perpetuates the marginalisation of ethnic minorities from the democratic process. Approximately 2% of the UK population is black, yet an estimated 11% of the prison population is black. This disproportionate level of black people in prison is greater than in the United States, the Commission for Equality and Human Rights has noted.[9] As a result, black men are significantly more likely to be affected by a ban on voting than white men.

Voting in elections should be seen as an important part of the process of resettlement and rehabilitation of prisoners. This is a vital function of the imprisonment of offenders and engendering a feeling of civic responsibility should be central to that function.

During the 10 February debate in the House of Commons several Members spoke in favour of a change to the law. Tom Brake (Lib Dem) asked if there was anything to be gained by inflicting civic death on prisoners, arguing that "prison serves to protect and punish, but also to rehabilitate."[10] Sir Peter Bottomley MP (Conservative) called attention to the fact that a ban does not achieve any discernible objective; 'it is clearly not a deterrent; I do not see that it is a punishment; I do not see that it helps rehabilitation; and I do not think that it is much of a penance either[11] Again, on the 22 November, Peter Bottomley asked:

[7] Hirst v UK (No 1)
[8] http://commissioner.cws.coe.int/tiki-view_blog.php?blogId=1&date_min=1298934000&date_max=1301608799
[9] Equality and Human Rights Commission, How Fair is Britain? 11 October 2011
[10] HC Deb 10 February 2011 c544
[11] HC Deb 10 February 2011 c564

> Is denying the vote to someone who has been sentenced to jail after being convicted of a crime a deterrent? It clearly is not. Is it a punishment, given that most criminals have not voted in their lives? Is it a penance? Or is it part of rehabilitation? Having discussed Strasbourg, we ought to start discussing why we are doing this to prisoners.[12]

Lord Ramsbotham, in a Lords debate, argued that ignoring this function of prison makes the system outdated:

> My concern and question relates to the current law passed by Parliament. As far as I understand it, the only law that affects voting is dated 1870. It condemns a person to prison as being a form of living death. That conflicts quite starkly with the Statement about rehabilitation revolutions which we have just heard from the secretary of state.[13]

On 20 April 2011 Lord Woolf was quoted in the *Guardian* as saying "I just can't understand, quite frankly, the antipathy towards it. What we want to do is make prisoners much more responsible, and giving them the responsibility of voting seems to me wholly consistent with that. I think it is very unfortunate that there is all this hyped up fuss about it. I don't know how many prisoners would vote, but I think they should have that opportunity."[14]

4. What are the financial implications of maintaining the current ban in terms of claims by prisoners for compensation?

In its meeting in December 2012 the Committee of Ministers confirmed that "The general election held in the United Kingdom in May 2010, triggered a significant number of repetitive complaints to the European Court (around 2,500)."[15] These claims have been frozen by the Court but could be reactivated in the event that the UK fails to implement the judgment. This could result in the award of substantial damages to people disenfranchised under the blanket ban.

It should also be noted that the failure of the UK to abide by the judgment of the Court will itself have resulted in significant costs to the taxpayer through lengthy and repeated consultations, legal appeals and parliamentary debate. The appendix outlines how successive governments have delayed taking action to implement reform.

5. Is sentence length a legally robust basis on which to retain an entitlement to vote?

The European Court has made clear that the general and automatic disenfranchisement of all serving prisoners is incompatible with the Protocol. ECtHR judges have given the UK a broad margin of appreciation as to how they might reform the ban so that it complies with the ruling. However, a number of rulings of the Court have suggested that a ban based on sentence length could continue to be open to legal challenge under the European Convention.

In *Frodl v Austria* the Court judged that Austria was in breach of Article 3 Protocol 1. The similarity with the *Hirst* case was noted in the judgment. It was reiterated that:

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[12] http://conservativehome.blogs.com/parliament/2012/11/almost-as-many-conservative-mps-yesterday-supported-some-prisoners-voting-as-opposed-all-prisoners-v.html
[13] HL Deb 22 November 2012 c1984. Available at: http://www.theyworkforyou.com/lords/?id=2012-11-22a.1978.0&s=prisoners+voting#g1983.0
[14] http://www.guardian.co.uk/law/2011/apr/20/punishment-easy-part-lord-woolf
[15] https://wcd.coe.int/ViewDoc.jsp?id=2013315

> *Disenfranchisement may only be envisaged for a rather narrowly defined group of offenders serving a lengthy term of imprisonment; that there should be a direct link between the facts on which a conviction is based and the sanction of disenfranchisement; and such a measure should preferably be imposed not by operation of a law but by the decision of a judge following judicial proceedings.* In finding a breach of Article 3 Protocol 1, the Court put much emphasis on the fact that the disenfranchisement operating under United Kingdom law was a "blunt instrument", imposing a blanket restriction on all convicted prisoners in prison and doing so in a way which was indiscriminate, applying to all prisoners, irrespective of the length of their sentence and irrespective of the nature or gravity of their offence and their individual circumstances.[16]

In the case of *Scoppola v Italy (No 3)* the ECtHR did initially rule that there was a violation of Article 3 Protocol 1 of the Convention on Human Rights in banning the applicant's right to vote. In a press release on 18 January 2011 the Court reiterated the rulings in the above cases: "Thus, having regard to the automatic nature of the ban on voting and its indiscriminate application, the Court concluded that there had been a violation of Article 3 Protocol 1."[17]

Following an appeal by the Italian government, however, the ruling was overturned on the grounds that the convicted prisoner's disenfranchisement was not in fact disproportionate. In its comments it made plain that:

> In the circumstances the Court could not conclude that the disenfranchisement provided for in Italian law had the general, automatic and indiscriminate character that had led it, in the *Hirst (No.2)* case, to find a violation of Article 3 Protocol No.1.

6. What would be the likely legal consequences, both domestically and internationally of:

a) keeping the law as it is?

b) passing legislation giving some prisoners the right to vote, but in a way that maintains a form of blanket restriction?

c) seeking to comply by enfranchising the minimum number of prisoners possible consistent with our international legal obligations?

The Government has outlined three options in the draft bill: a ban on prisoners sentenced to four years or more; a ban on prisoners sentenced to more than six months; and a ban on all convicted prisoners – a restatement of the existing ban.

The Committee of Ministers noted in its meeting of 4-6 December 2012 that the third option in the Bill, which retains the blanket ban in its present form, would still not be considered compatible with the European Convention. In the *Hirst (No.2)* and *Greens and M.T.* the Court found the UK Government was in breach of Article 3 Protocol 1 of the Convention on Human Rights due to the imposition of a blanket ban on all serving prisoners. The Committee of Ministers noted in its meeting that the Secretary of State for Justice had acknowledged that the "the Government is under an international legal obligation to implement the Court's judgment" when he announced the draft Bill, and that supports the

[16] European Court of Human Rights (8 April 2010) Judgment in the case of Frodl v Austria (Application no. 20201/04)
[17] http://www.echr.coe.int/ECHR/EN/hudoc

view that the third option, which retains a blanket ban, "cannot be considered compatible with the European Convention on Human Rights."[18]

It is regrettable that all three options retain an automatic ban on some sentenced prisoners, regardless of their particular offence. As we outline above, while the UK has been granted a wide margin of appreciation in implementing the European Court's ruling, these options may continue to be open to legal challenge under the European Convention.

We urge the Committee to recommend to the UK Government that two further options be considered:

Option 1: Extending the franchise to all sentenced prisoners

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. People remain people, even when behind bars.

Enfranchisement is certainly not a reward to be granted to those whom the Government has judged morally decent. There are at least eighteen countries in Europe with no form of electoral ban for prisoners. These include Denmark, Finland, Ireland, Spain, Sweden and Switzerland.

Option 2: Granting the power for judges to decide whether to enforce disenfranchisement at the point of sentence

This option would be easy to implement by following the example and mechanisms established in France and Germany and Belgium. It would satisfy the requirements of the Court by ensuring that proportionality and discrimination are incorporated into the ban on prisoners' franchise.

The Hirst judgement stressed that disenfranchisement infringed a fundamental right protected by the European Convention and enshrined in the Human Rights Act. Any decision to impose disenfranchisement as a penalty must, therefore, be relevant, necessary and proportionate. In *Hirst (No.2)* and subsequent judgements including *Calmanovici v Romania (2008)*, *Frodl v Austria (2010)*, and *Scoppola No.3 v Italy (2011)*, the Court expressed the importance of the proportionality in the sentencing of offenders. The Scoppola judgement gives a wide margin of appreciation for implementation.

Subsequent ECtHR judgments have reinforced the finding in *Hirst*. In its judgment of *Frodl v Austria* the Court ruled that automatic and indiscriminate disenfranchisement of all prisoners serving a sentence in excess of one year was unlawful: "It is inconceivable that, therefore, that a prisoner should forfeit his Convention rights merely because of his status as a person detained following conviction." The judgment added that "…the principle of proportionality requires a discernible and sufficient link between the sanction and the conduct and circumstances of the individual concerned." The Court concluded that "…it is an essential element that the decision should be taken by a judge…and that there must be a link between the offence committed and issues relating to elections and democratic institutions." The result of this ruling was contested, but the appeal was turned down in November 2010. Consequently Austria is in the process of reforming its ban.

This judgment was reiterated in *Scoppola v Italy*, following which the Court ruled that it was unlawful for a ban to be applied indiscriminately and irrespective of the offence committed, with no consideration of the nature and seriousness of that offence. Previously this

[18] https://wcd.coe.int/ViewDoc.jsp?id=2013315

interpretation has been adopted by the Committee of Ministers. In 2010 the Committee stated that:

> The measures to be adopted should ensure that if a restriction is maintained on the right of convicted persons in custody to vote, such a restriction is proportionate with a discernible and sufficient link between the sanction and the conduct, and circumstances of the individual concerned.[19]

In a Commons debate in February 2011, Denis MacShane (Labour) spoke in support of the ECtHR, pointing out that in other European countries the right to vote is removed according to individual sentences: "in France, a judge adds a loss of civic rights to sentences for serious crimes, which is a compromise that satisfies the European Court of Human Rights and could easily be introduced here."[20] In reply to a question as to whether the Government had carried out consultations with other countries in Europe in regards to prisoners voting, on 8 January 2013 Lord McNally said that "The Government have not consulted these countries. We are aware of the different approaches to prisoner voting in these and other states, and these various approaches have formed part of the Government's wider consideration on this issue."

On 22 November 2012 Lord Ramsbotham (Crossbench) highlighted the importance of the extra option in allowing the UK to address its obligations under the Human Rights Act and to move fully into line with the judgements of the ECtHR:

> My Lords, I am very glad that we now have a framework but I am sorry that we are still embarked on the approach from the wrong way round, which is why the consultation has failed. The question should not be who should have the vote – that is what was laid down by the European Court. The question is who should not have the vote. The consultation failed because it asked the wrong questions. I am concerned by that approach, although I am very glad to see that the Government are going to allow consideration of other options such as the one I have always advocated that the sentence should award the removal of the right to vote at the time of sentence noted to a crime. I also note that there is still concern about costs. That is a slight red herring. I have always understood that the costs are minimal because it will be postal voting which happens for all remand prisoners now any way. [21]

Many countries in the Council of Europe, as well as France, enforce bans on certain prisoners voting according to the specific crimes they have committed. For example, convictions for rape or human trafficking carry mandatory removal of the franchise in French courts. The ban is announced and enforced at the point of sentence.

7. Would giving prisoners the right to vote have any significant administrative impact on either the prison system or the Electoral Commission?

8. Is there any evidence to suggest that allowing prisoners to vote would have a significant impact on particular constituencies?

We will answer questions 7 and 8 together.

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[19] 1092nd meeting, 14-15 September 2010, decision adopted http://wcd.coe.int/wcd/ViewDoc.jsp?id=1668965&Site=CM

[20] HC Deb 10 February 2011 c554. Available at: http://www.theyworkforyou.com/debates/?id=2011-02-10b.493.1

[21] HL Deb 22 November 2012 c1984. Available at: http://www.theyworkforyou.com/lords/?id=2012-11-22a.1978.0&s=prisoners+voting#g1983.0

Making provision for prisoners to vote would present few problems. There are already mechanisms in place which allow remand prisoners to vote by post or proxy. Indeed the Electoral Commission has already identified remand prisoners as "hard to reach voters" with whom it seeks to engage. Though prisoners cannot register at the prison address, an amendment to the Representation of the People Act (2000) enabled them to register using a declaration of local connection, allowing them to use the address where they would be living if they were not on remand or an address where they have lived in the past. There would be few practical difficulties in expanding these arrangements so that they encompass the rest of the prison population. A system of postal or proxy voting was set out by the electoral commission in its response to the Ministry of Justice's consultation in 2009. The Ministry of Justice is known to have received positive responses to its audit seeking prisoners' interest in voting.

Martin Narey, former Chief Executive of the National Offender Management Service, affirmed in 2001 that implementing procedures for prisoners to vote "poses no problem for the Prison Service."[22] This has been confirmed more recently by the Electoral Commission, who stated in evidence to the Ministry of Justice second consultation in 2009 that:

> We are not taking a view on which prisoners should or should not be able to vote. However, we feel that prisoners who have been allowed the vote should be entitled to vote in all elections that their age, nationality and deemed place of residence would allow them to, were they not imprisoned.
>
> With regard to the administrative issues, we broadly support the Government's approach as outlined in this consultation. Prisoners should be able to register to vote using a special version of the rolling registration form. Any application should be attested by an appropriate member of the prison staff, who should be under duty to assist in such applications.
>
> As far as possible, any enfranchised prisoner should be treated the same as any other elector. While it may not be desirable or indeed possible for a prisoner to attend a polling station, prisoners should be given the same rights to a postal or proxy vote as any absent voter who could not show that they have a good reason for not being able to attend their polling station. Furthermore, prisoners should have the right to register anonymously on the same basis as a regular voter.
> If a prisoner decides to vote by post, they should have the legal right to a secret ballot and prisons should be compelled to provide a room in which the ballot paper can be marked in secret.
>
> It may be preferable for a new type of elector, a prisoner voter, to be created in legislation, or for the declaration of local connection to be modified. We are happy to discuss with the MoJ how best to implement the decisions made following this consultation.[23]

Prisoners vote by postal vote in many other countries where they have the right to do so. The Government emphasises the importance of rehabilitation in its current approach to prison reform. Engendering a feeling of civic responsibility should be a core component of that aim. Allowing prisoners to vote in elections could serve as a part of a package of rehabilitation and resettlement measures. Maintaining a blanket ban serves no discernible purpose and indeed makes it harder for prisoners to become more responsible citizens.

[22] Leveson, J. (2001) Barred from Voting, Prison Reform Trust.
[23] Electoral Commission response to the Ministry of Justice consultation Voting Rights of Convicted Prisoners Detained with the United Kingdom (second stage) September 2009

9. What lessons can be drawn from the experience of other countries regarding prisoner voting?

The refusal of the UK to abide by the judgment of the European Court undermines the credibility of its stance as a nation committed to human rights and upholding the rule of law. The UK is out of step with most other developed nations and is one of only a handful of European countries which automatically and indiscriminately disenfranchises of people in prison. These include Armenia, Bulgaria, Estonia, Hungary and Romania.[24]

On 22 November 2012 Lord Prescott noted that in his capacity as a member of the human rights committee in the Council of Europe:

> I was sent to release 130 people from an Armenian jail, who had been accused of threats to the state simply by holding a public protest. I was able to get them out of jail because I was able to argue that Armenia is in breach of human rights. However, having listened to them, I know that they would like parliamentary sovereignty to overrule the human rights convention and they are watching Britain to see whether we do this. [25]

According to the *Independent,* General Thorbjorn Jagland, Secretary General of the Council of Europe, said that ECtHR judges had left the UK with a broad margin of appreciation as to how they might reform the ban so that it complies with the ruling. He also argued that "I am concerned that the domestic debate against more political integration in the European Union is confused with the broader aim of human rights." He continued: "The UK has been a leader in human rights and I urge it to continue in this tradition."[26]

As we outline in our response to question 6, there are a number of lessons the UK can draw from the experience of other countries in implementing the ruling of the European Court. Around 40% of countries in the Council of Europe have no restrictions on their prisoners voting and many others only ban some of them from doing so. French and German courts have the power to impose disenfranchisement as an additional punishment at the point of sentence.

The *Hirst* ruling had a positive effect on a number of other Council of Europe countries who previously had automatic and indiscriminate bans. Since 2006 the law has been amended to allow prisoners the vote in Latvia, Ireland and Moldova and there has been a draft Bill introduced in Liechtenstein to grant discretionary power to courts over prisoners serving between one and five years.

[24] House of Commons Library (2013), Prisoners voting rights, House of Commons Library Standard Note, 13 May 2013
[25] HL Deb 22 Nov 2012 c1986. Available at: http://www.publications.parliament.uk/pa/ld201213/ldhansrd/text/121122-0002.htm
[26] http://www.independent.co.uk/news/uk/crime/david-cameron-warned-on-votes-for-prisoners-8399522.html

APPENDIX

The Prison Reform Trust is concerned that, since the *Hirst* judgement, Governments have deliberately delayed putting forward a positive response to the call for compliance with the ECtHR ruling for largely political reasons.

Successive UK Governments have justified the ban 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.[27]

In fact, the ECtHR continues, removal of the right to vote:

> 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.[28]

The ruling of the ECtHR was directed towards the indiscriminate way in which a large category of people is disenfranchised in the UK. The ban on voting applies to all sentenced prisoners regardless of their crime or length of sentence. Furthermore, the actual effect of the ban on the individual depends entirely upon the arbitrary period during which the sentence is served.

In 2005, the Government appealed to the Grand Chamber of the ECtHR, arguing that people in prison have forfeited their right to have a say in how their country is governed. The Grand Chamber rejected the appeal by a majority of 12 to 5, restating the incompatibility of a blanket ban with the Convention on Human Rights, which the UK had signed up to. It was explicitly stated in the judgment that:

> There is no question, that a prisoner forfeits his Convention rights merely because of his status as a person detained following conviction. Nor is there any place under the Convention system, where tolerance and broadmindedness are the acknowledged hallmarks of democratic society, for automatic disenfranchisement based purely on what might offend public opinion.[29]

The Government took over a year, to December 2006, to initiate a consultation procedure to decide how best to implement the Grand Chamber's decision. The Government stated that following consultation it would propose a legislative programme by early 2008. Later it announced that the consultation would take place in two stages, without announcing when the second stage was due to start. The findings from the first stage were not published until April 2009. The Prison Reform Trust, along with UNLOCK, Liberty, the Aire Centre and allied organisations were critical of this process as it did not include the option of all prisoners voting in the list of options under consideration. It did, however, include the option, deemed unlawful by the ECtHR judgement, of retaining the blanket ban. Despite the flawed process only a quarter of respondents favoured maintaining the current ban.

[27] Hirst v UK (No 1)
[28] Ibid.
[29] European Court of Human Rights (6 June 2009) Grand Chamber Judgment Hirst v The United Kingdom (no.2)

In its 2007 report, the Joint Committee on Human Rights argued that "We consider that the time taken to publish the Government's consultation paper and the time proposed for consultation is disproportionate. While the issues involved give rise to political controversy, they are not legally complex."[30] The report added that "We would be disappointed if a legislative solution were not in force in adequate time to allow the necessary preparations to be made for the next general election."

The Committee of Ministers issued an Interim Resolution in December 2009 with the warning that "the substantial delay in implementing the judgment has given rise to a significant risk that the next United Kingdom general election, which must take place by June 2010, will be performed in a way that fails to comply with the Convention." The Committee urged the UK to rapidly adopt the measures necessary to implement the judgment of the Court.

In a debate on 15 December 2009 Lord Corbett of Castle Vale criticised "this pick and mix approach to decisions of the court" and Lord Lester highlighted that the continuance of the matter was "very serious" and "affects the reputation of this country to abide by the rule of law." Lord Pannick asked for, and received, "unequivocal assurance" that the Government was not "deliberately delaying the matter until after the next election", though this appeared to have been the case.

On 24 March 2010 Lord Ramsbotham, a former Chief Inspector of Prisons, criticised the Labour government for delays in the consultation procedure. He said that:

> "The government's prevarication amounts to nothing more than deliberate and inexcusable defiance of the rule of law as laid down by the courts. At the same time, they have gone to extreme length to punish those who do the same thing, as demonstrated by the record numbers in our prisons, the fact that we have more life-sentence prisoners than the rest of Europe added together, and that more than 3,000 new laws carrying prison sentences have been introduced. At a time when the reputation of Parliament is at an all-time low, what respect can anyone have for a Government who so flagrantly fail to practise what they preach?" [31]

General election: May 2010

Despite the warning from the Council of Ministers, there was no legislative provision made for prisoners to vote and the General Election in May 2010 went ahead in a way which contravened the European Convention on Human Rights.

Following the election, however, the new government did acknowledge the ruling of *Hirst* and recognised the need for movement on the issue. On 2 November 2010 the then Minister for Political and Constitutional Reform, Mark Harper, answered a Parliamentary question about the Government's plans, stating that:

> The Government accept, as did the previous Government, that as a result of the judgement of the Strasbourg Court in the Hirst case, there is a need to change the law. This is not a choice; it is a legal obligation. Ministers are currently considering how to implement the judgment, and when the Government have made a decision the House will be the first to know.[32]

On 20 December 2010 Harper said that:

[30] Commons Library p.18
[31] Commons Library p.22
[32] Commons Library p.22

> Offenders sentenced to a custodial sentence of less than four years will retain the right to vote, but legislation will provide that the sentencing judge will be able to remove that right if they consider it appropriate. Four years has in the past been regarded as the distinction between short and long-term prisoners, and the Government consider that permitting prisoners sentenced to less than four years' imprisonment to vote is sufficient to comply with the judgement.[33]

Opposition Backbench Debate

In his evidence to the House of Commons Parliamentary and Constitutional Reform Committee on 1 February 2011 Lord MacKay criticised the failure of the Government to comply with the ECtHR judgment. He said:

> The Convention…was initiated…to deal with the…terrible persecution of minorities in Germany…If we believe in the rule of law, we are just as much bound to observe the decisions of the European Court on matters within their competence as we are to obey the decisions of our own courts in matters within their competence.

A backbench debate was held in the House of Commons on 10 February 2011. MPs voted in favour of a motion, sponsored by the former home secretary Jack Straw and former shadow home secretary David Davis, supporting the continuation of the current ban. During the debate Simon Reevel (Con) noted the lack of action on the Government's part and highlighted the seriousness of its refusal to act, stating that:

> "I am pleased that this has not just been an in or out of the European Court of Human Rights debate, because many from all walks of life turn to that Court, whether they are concerned about the DNA database or hunting legislation. Who would criticise Gary McKinnon for taking his case there in the face of the Extradition Act 2003? Who, as a matter of principle, would not cast an eye to Strasbourg if a high-speed train route was being put through their constituency? But if it is not in or out, is it much better to talk about pick and choose? Is it really suggested that we can welcome rulings that we like, and simply ignore those that we do not?
>
> Would we dream of taking that course if it were the House of Lords as was that had found in Hirst's favour, and we were talking about a House of Lords judgment? Or in those circumstances, would the mood be that the Government should get themselves to Strasbourg and try to use the ECHR to overcome that ruling? Do we really suggest that some rights should be regulated by legislation in Parliament, over which there should be no prospect of review in the courts? If so, might we pause and wonder what would be on the list alongside prisoner votes? What if control orders, as were, came back and went on the list? What about challenges to the Extradition Act? I do not believe that prisoners should be allowed to vote, but I am more concerned about the rule of law, because we cannot be law-makers and law-breakers.
>
> Cases such as the Hirst ruling catch the eye, but so do decisions of the UK courts, and there have been too many instances where the ECHR jurisdiction has been necessary…I do not like the Hirst ruling, but I like less the fact that it was ignored for more than five years. On balance, I like even less the idea of picking and choosing when it comes to this nation's legal obligations.[34]

[33] Commons Library p.24
[34] HC Deb 10 February 2011 c554. Available at: http://www.theyworkforyou.com/debates/?id=2011-02-10b.493.1

Despite reservations expressed by a number of MPs regarding the consequences of failing to comply with the judgement of the European Court, the motion against reform was passed by a large majority. Following the motion, on February 11 2011, the Chair of the Committee on Legal Affairs and Human Rights of the Council of Europe Parliamentary Assembly stated:

> I am deeply disappointed by last night's vote in defiance of the ruling by the European Court of Human Rights on prisoner voting. I had hoped that the parliament of one of Europe's oldest democracies – regarded as playing a leading role in protecting human rights – would have encouraged the United Kingdom to honour its international obligations, as our Assembly urged only last month. Every member state must implement the judgments of the court.
>
> The United Kingdom Government has said that it intends to implement this judgment, and I encourage it to find a way to do so that is consistent with its international legal obligations. There are different ways this can be done, as shown by the range of positions on this issue in Council of Europe member states.[35]

Appeals

In March 2011 the Government appealed the Court's six month deadline by referring the latest ECtHR ruling to the Grand Chamber of the European Court of Human Rights, that of *Greens and MT*. The Court refused the request for appeal on 11 April 2011, giving the Government six months from that date to introduce legislative proposals. The Government was granted a further six months from the date of the *Greens and MT* judgment on 31 August 2011.

The government delayed again in order to be able to take account of the upcoming judgement in the case of *Scoppala v. Italy.* The Court ruled in favour of the Italian state. But in its comments it made plain that

> In the circumstances the Court could not conclude that the disenfranchisement provided for in Italian law had the general, automatic and indiscriminate character that had led it, in the *Hirst (No.2)* case, to find a violation of Article 3 Protocol No.1.

There has been repeated pressure on the Government to enact reform, not least from the Committee of Ministers and the Court in Strasbourg. At its 1150th meeting (September 2012), the Committee of Ministers underlined that according to the pilot judgment Greens and M.T., the UK had six months from the date that judgment became final to introduce legislative proposals to amend the electoral law imposing a blanket restriction on voting rights of convicted prisoners in prison, and achieve compliance with the Court's judgment in Hirst No. 2. It noted further that the European Court granted an extension to this deadline and that consequently, the United Kingdom authorities had until 23 November 2012 to comply with the pilot judgment.

In a speech to the BPP Law School in October 2012 the Attorney General stated that, though pressure has come from Strasbourg for the Government to move on this issue:

> None of this makes Parliament subservient to the Strasbourg court. Observing its judgements is an international legal obligation arising by Treaty but it is possible for Parliament to take no action on the judgment, although that would leave the Government in breach of the Treaty and liable to criticism and sanctions from the Council of Europe by its fellow signatories and to damages awarded by the Court."[36]

[35] PACE Legal Affairs Committee head reacts to UK vote on prisoner voting, 11 February 2011
[36] Commons Library p.41

He continued:

> "Some have also argued that the solution for the UK in view of these problems is to withdraw from the convention altogether on the grounds that it is an undesirable and unnecessary fetter of the national sovereignty in decision making. I disagree. Withdrawal would result in reputational damage to the UK's status as a country at the forefront of the promotion of the rule of law and Human Rights. But nothing in that debate undermines Parliament's ultimate sovereignty either."

The importance of the UK's commitment to upholding the rule of law was reiterated in a letter to *The Times* published on 2 November 2012, authored by eleven legal academics and judges including Lord Mackay and Lord Woolf. In their letter they argued that

> Disregard for the European Convention would encourage those nations whose commitment to the rule of law is tenuous. It also contravenes the Ministerial Code. Moreover, such defiance of the Court would not be on a par with measures such as the "veto" of the EU financial treaty, the proposed opt-out from EU criminal measures, or the threat to veto the EU budget. All those measures, whatever their merits are perfectly lawful. In this case the Prime Minister appears set on a course which is clearly unlawful.[37]

Draft Bill

On 22 November 2012, the Lord Chancellor and Secretary of State for Justice introduced to Parliament legislative proposals to amend the electoral law imposing a blanket restriction on voting rights of convicted prisoners in prison in the form of a draft bill (the *Voting Eligibility (Prisoners) Draft Bill)*. An action plan was submitted by the UK Government to the Committee of Ministers on 23 November 2012.

The Committee noted that "the third option [in the Bill] aimed at retaining the blanket restriction criticised by the European Court cannot be considered compatible with the European Convention on Human Rights".[38]

The Committee also highlighted that "the pilot judgment states that the legislative proposals should be introduced "with a view to the enactment of an electoral law to achieve compliance with the Court's judgment in Hirst No. 2 according to any time-scale determined by the Committee of Ministers" and invited the authorities to keep the Committee regularly informed of progress made and on the proposed time-scale".

The Committee decided to resume consideration of the case at the latest at its 1179th meeting (September 2013)

[37] "Votes for prisoners", letter to the Times, 2 November 2012
[38] https://wcd.coe.int/ViewDoc.jsp?id=2013315