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Prisoner Voting in Scotland



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Introduction

1. Section 3 of the Representation of the People Act 1983 ¹ (the 1983 Act) bans all prisoners serving custodial sentences from voting in elections to the UK Parliament, the Scottish Parliament, the European Parliament, the Welsh and Northern Ireland Assemblies and local government elections. This ban applies irrespective of the length of sentence. It does not apply to people held in prison on other grounds, such as those remanded in custody pending trial.
2. Until recently, the rules on the electoral franchise were reserved to Westminster. Section 3 of the Scotland Act 2016 ² included provisions giving the Scottish Parliament powers over voting in local and Scottish Parliament elections. The UK regulations bringing these provisions into force were made on 18 May 2017. ³ The Scottish Parliament can now legislate on prisoner voting for these elections.
3. The 2016 Act also set up new "super-majority" rules for many electoral law issues, requiring Bills to have a two-thirds majority to pass. ⁴ Matters related to "persons entitled to vote" fall within the new super-majority rules. A prisoner voting bill would therefore need a two-thirds majority in the Scottish Parliament to become legislation.
4. Patrick Harvie MSP wrote to us on 15 June 2017 requesting that we include consideration of prisoner voting as part of our work programme now that the Scottish Parliament had "greater devolved responsibility for the democratic process". He believed that alternatives to the blanket ban must be actively considered if further legal challenges were to be avoided. ⁵

Background

Approach to evidence gathering

5. On 29 June, we considered Patrick Harvie's letter and agreed to undertake an evidence session on 7 September 2017 to examine the current UK position, the practical issues around voting in prisons, and also the arguments for and against allowing prisoners to vote. We heard from Patrick Harvie MSP; Beverley Smith, a former offender; Chris Highcock, Secretary, Electoral Management Board for Scotland; Michael Clancy, Director of Law Reform, Law Society of Scotland; Tom Halpin, Chief Executive, Sacro; Professor Fergus McNeill, Scottish Centre for Crime & Justice Research; Pete Wildman, Chair of the Electoral Registration Committee, Scottish Assessors Association; Lucy Hunter Blackburn, Executive Committee Member, Howard League for Penal Reform Scotland; David Strang, Her Majesty's Chief Inspector of Prisons for Scotland, HM Inspectorate of Prisons for Scotland; Jan Anderson, Access to Industry.
6. After this session we wrote to the Lord President of the Court of Session, Victim Support Scotland, and Dr Cormac Behan, Lecturer in Criminology at the Centre for Criminological Research, University of Sheffield, to follow-up on some issues raised in evidence. We agreed to hold a further evidence session to explore these issues in more detail.
7. We also wrote to Joe Fitzpatrick MSP, the Minister of Parliamentary Business, on 22 September⁶ to establish whether the Scottish Government would be including prisoner voting in its forthcoming consultation on electoral reform. This consultation was proposed in the Scottish Government's legislative programme for 2016/17, published in September 2016, [A Plan For Scotland: The Scottish Government's Programme For Scotland 2016-2017](#).
 - ” we will take forward a consultation exercise to find out what electoral reforms Scottish citizens would like to see taken forward in future legislation.
8. The Minister for Parliamentary Business responded on 11 October and advised—
 - ” The scope of the exercise is likely to be reasonably broad covering a range of measures to improve the running of elections and aspects of the new powers devolved in the Scotland Act 2016. Given the Committee's on-going consideration of the matter the consultation will not cover prisoner voting.
9. On 25 January 2018, we took oral evidence from Dr Cormac Behan, Lecturer in Criminology at the Centre for Criminological Research, University of Sheffield, and Emma Trottier, former public servant with the Correctional Service of Canada and the Department of Public Safety, Government of Canada, to consider international comparators.
10. A number of submissions and witnesses, for example, from electoral organisations and government agencies, such as, the Scottish Prison Service, pointed out they could discuss current processes and the potential impact on their service, but would not make comment on the principle of extending the franchise to prisoners as this was a matter for the Scottish Parliament and the Scottish Government.

11. During our consideration of prisoner voting, the UK position on prisoner voting changed (see paragraphs 23-28). It should be noted that evidence received prior to our meeting of 25 January does not take account of this development. We agreed to continue with our investigation as many of the arguments presented, and the issues outlined, remained relevant despite recent developments.
12. We would like to thank all those who contributed to our consideration of the issues.

The European Convention on Human Rights (ECHR)

13. The UK electoral rules, set out in the 1983 Act were challenged more than ten years ago in the European Court of Human Rights (ECtHR) in the case of *Hirst v United Kingdom (No 2)*⁷. On 6 October 2005, the court ruled in the *Hirst* case that the ban breached Article 3 of Protocol No 1 of the European Convention on Human Rights (the Convention) which requires states to:
 - ” hold free elections (...) under conditions which will ensure the free expression of the opinion of the people.⁸
14. The court emphasised that electoral legislation differs widely in Europe and that human rights law gives Council of Europe States a wide degree of discretion (known as "margin of appreciation") in setting electoral rules. However, it held that the ban fell outside of any acceptable margin of appreciation as it was a blanket one which applied to all prisoners given a custodial sentence irrespective of length or gravity of the offence. The punishment was therefore not proportionate. Given that different states have addressed prisoner voting in different ways, the Court did not rule on compliance. It left it to the United Kingdom Parliament to determine the means of complying with its judgment.
15. Since *Hirst*, there have been a number of other cases challenging the ban, both in the UK courts and at the ECtHR. Both the previous Labour and Coalition Governments at Westminster consulted on proposals to change the law to comply with these cases and, in December 2013, a Joint House of Lords and House of Commons Committee recommended that the Government introduce a Bill so that all prisoners serving sentences of 12 months or less would be entitled to vote in all UK elections.⁹ However, the proposals did not progress to legislation, in part due to lack of support in the House of Commons.¹⁰
16. This lack of progress in complying with the Convention led to condemnation from the Council of Europe – the pan-European organisation responsible for monitoring compliance with the Convention. For example in 2013, the Council's Commissioner for Human Rights, Nils Muižnieks, stated that—
 - ” If the UK, a founding member of the Council of Europe and one which has lost relatively few cases at the Court, decides to “cherry-pick” and selectively implement judgments, other states will invariably follow suit and the system will unravel very quickly. Thus, my message is clear: the Court’s judgments have to be executed and the automatic and indiscriminate ban on voting rights for prisoners should be repealed. If the Court system is to continue to provide protection, there is no alternative to this for member states, other than leaving the system itself.¹¹
17. Of the 47 member states of the Council of Europe, it appears that, in addition to the UK, the only other countries which have a blanket ban on prisoner voting are Armenia, Bulgaria, Estonia, Georgia, Hungary and Russia.¹²

The Scottish Independence Referendum

18. The issue of prisoner voting also arose in Scotland in the run up to the Scottish independence referendum. The UK Government used an Order in Council ¹³ to give the Scottish Parliament powers to legislate on the referendum, including on the franchise.
19. The resulting draft legislation, the Scottish Independence Referendum (Franchise) Bill, followed the UK position and prohibited prisoners from voting in the referendum. Various amendments were lodged during Stage 3 of the Bill aimed at giving prisoners the right to vote in the referendum. These were debated in the Scottish Parliament on 27 June 2013. ¹⁴
20. During this debate, the then Deputy First Minister, Nicola Sturgeon, argued that the Convention rules do not apply to referendums. In addition, she also opposed the amendments on a point of principle, arguing that:
 - ” The principle that a convicted prisoner loses certain rights for the duration of their custodial sentence is a fundamental and long-standing part of the prison process. ¹⁵
21. The amendments were not agreed to and the resulting Act prohibited prisoners from voting in the independence referendum.
22. In 2014 the ban was challenged in the Supreme Court on human rights grounds ([Moohan v Lord Advocate](#)) ¹⁶ . The challenge was, however, unsuccessful as the court ruled that the Convention rules (Article 3 of Protocol No 1) only cover elections and not referendums.

Recent UK developments

23. In the course of our short-life inquiry, there have been a number of developments.

Current UK position on prisoner voting

24. On 2 November 2017, David Lidington MP, the former Lord Chancellor and Secretary of State for Justice, delivered a statement to the House of Commons on the UK Government's response to the Hirst judgment. The statement explained that the UK Government "continues to believe that convicted offenders who are detained in prison should not vote" and consequently did not propose any changes to the 1983 Act.¹⁷

25. The UK Government did, however, propose changes to Prison Service guidance so that—

(a) Those who are in the community on temporary licence can vote. Temporary licence is a form of discretionary and temporary parole aimed at the resettlement and rehabilitation of offenders.

(b) It is made clear to those given custodial sentences that they will lose the right to vote in prison. The statement argues that this addresses a concern of the Hirst judgment that UK offenders are not given sufficient clarity that they cannot vote while serving a prison sentence.

26. The Lord Chancellor's statement noted that the UK Government would work with the three devolved administrations on this issue, in particular to reflect the differences in law and practice in Scotland and Northern Ireland. It indicated that the changes to temporary licence would affect up to one hundred offenders at any one time and argued that the proposals complied with the legal obligations in the Hirst judgment.¹⁸

27. On 2 November 2017 the UK Government submitted the proposals for complying with the Hirst judgment to the Council of Europe's Committee of Ministers.¹⁹

28. On 7 December 2017, the Committee of Ministers found that the proposals were an adequate response to the judgment, thus accepting the UK's proposals. It emphasised that the "margin of appreciation" in this area is wide and that a "wide range of policy alternatives is available to the government in this context."²⁰

29. We ask the Scottish Government to provide an estimate of how many prisoners will be entitled to vote in Scotland under the approach taken by the UK government if the UK Government approach is followed.

Electoral reform in Wales

30. The Wales Act 2017 gives the Welsh Assembly powers to legislate on electoral law for local and Welsh Assembly elections. The Welsh Government published its consultation on electoral reform on 18 July 2017.²¹ The closing date for responses

was 10 October 2017. The Welsh Government included prisoner voting in its consultation on electoral reform.

31. The consultation explained that extending the franchise to prisoners raises complex questions, such as—
- where a prisoner should be deemed resident for the purposes of voting; and
 - whether the right to vote should be granted to all prisoners or linked to specific criteria such as the length or type of sentence.
32. Because of these complexities, the consultation did not include any firm policy proposals. Instead it posed the following questions—
- ” Q41 Should Welsh prisoners be allowed to register to vote and participate in Welsh local government elections? If so, should it be limited to those sentenced to less than twelve months, four years, or any sentence length?
- Q42 By what method should prisoners cast a vote?
- Q43 At what address should prisoners be registered to vote?
33. The consultation explained that these questions were aimed as a test of public opinion and would be taken into account when considering whether or not to legislate on this subject.
34. At the time of writing our report, the Welsh Government had yet to set out a course of action as it was in the course of reviewing the responses received.

Electoral reform in Scotland

35. Further to the Minister for Parliamentary Business' letter of 11 October 2017, Joe Fitzpatrick MSP advised us by letter ²² that the Scottish Government had launched its consultation on Future Electoral Reform on 19 December 2017. On prisoner voting, the letter said—
- ” As part of the process of looking at the franchise for Scottish Parliament and local government elections, the Scottish Government is aware that the Scottish Parliament's Equalities and Human Rights Committee is currently taking evidence on the issue of prisoner voting. This is in relation to Scottish Parliament elections and evidence is being taken from a wide range of witnesses with expertise in justice and elections. We 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. ²³

Practicalities of voting in prison

36. Various witnesses indicated that extending the franchise to prisoners would mean changes to electoral administration.
37. The Scottish Prison Service (SPS) provided us with written evidence on how it currently implements government policy as regards a prisoner's right to vote (i.e. for the limited number of prisoners who can currently vote, such as those on remand pending trial). The evidence explains that SPS contacts the Elections and Constitution Division at the Scottish Government prior to any elections to confirm the franchise requirements, voting arrangements and key dates for registering to vote and the final dates for postal or proxy voting. A Governors and Managers Advice Notice is then issued to support staff answering potential questions from those in custody. Normally, this will include information on who in custody is eligible to vote; how to register to vote (including details of Electoral Registration Officers); and how to make an application for absent voting and completion of the ballot paper. The notice also advises that those registered for an absent vote may be sent election literature and on application, be allowed to write to the campaign organisation's agents in the constituency/ward in which they are registered.²⁴
38. It seems clear that a number of aspects of the current processes and procedures would require amendment or development if the rules on prisoner voting were changed. The Electoral Management Board explained that "current rules and legislation around polling would not be immediately compatible". To create a workable system, electoral organisations stated that changes would be needed around: establishing entitlement to register (including applications, annual canvass and appeal hearings); entry on register (including marker and residence); methods of voting including postal vote, proxy vote or ballot; secrecy of ballot; promoting registration and access to campaign arguments.
39. The Electoral Management Board also indicated that timetables and processes would need to be revised, but said there might be opportunities with electoral reform and the modernisation of the process to take account of new technologies by which a prisoner could cast a vote.²⁵
40. A few areas highlighted stood out as requiring further explanation, in particular: establishing entitlement to register, methods of voting, entry on the register, and prisoners' engagement with elections.

Establishing entitlement

41. Not all prisoners would meet the eligibility criteria to vote and a process would require to be established to identify prisoners' entitlement to vote.
42. The Electoral Commission explained that, depending on the approach taken, an offender who had been convicted of excluded crimes (in other words ones where a voting ban still operated) might not qualify to vote. It also explained that there might be prisoners who do not meet the nationality requirements for registering to vote, i.e. if they are not a British citizen, a qualifying Commonwealth citizen or a citizen of a European Union state. The Commission suggested a specific application form to register prisoners, which would replicate the application to register process for

anonymous electors and could be attested to by the prison governor or other prescribed prison staff.²⁶

Methods of voting

43. The Electoral Management Board for Scotland was concerned that, if the registration was to be based on previous address, then the “multiplicity of contests and potentially different franchises across the UK would pose particular challenges.”²⁷
44. In the Republic of Ireland prisoners vote by postal vote. Chris Highcock of the Electoral Management Board for Scotland suggested this could be an approach Scotland could adopt, and one which would avoid organisational issues—
- ” If the franchise was such that people were registered all over the UK, there might be 30, 40 or 50 ballot boxes and lots of ballot papers, and people would have to get the right one. The obvious approach would seem to be postal voting.²⁸
45. However, he cautioned that postal voting was not without difficulty and cost, noting for example, that the replacement of spoiled or lost postal votes made the process more administratively complicated. However, he considered “postal voting could be made to work”.²⁹
46. In contrast, Dr Behan indicated that the Republic of Ireland’s experience of postal voting was a straightforward one—
- ” Prisons are flexible institutions in the way in which they respond to changes to penal policy over time. In the Republic of Ireland, prisoners were given their ballot paper, the ballot paper was put into an envelope, the envelope was signed and mini-polling booths were set up in each prison. Voting was organised by the local electoral authorities and it was not a huge or onerous task for the prison authorities.³⁰
47. Prisoners with low literacy levels may also need assistance in completing any applications to vote by post. The Electoral Commission believed the Scottish Prison Service would need to consider how to provide this support as there was a relatively short window between the issue of postal ballot packs by Returning Officers and the deadline for returning the completed postal ballot in time for it to be counted.³¹

Entry on the register

48. Patrick Harvie MSP felt communities would find it unreasonable if a large number of people were able to vote in the constituency where they live, simply because the prison happened to be located there. His preference was to see voting “placed in the context of a relationship with the community to which the person will ultimately return when they leave prison”. For that reason, he considered that prisoners should remain registered to vote where they were resident when they were sentenced or registered from within prison to vote in the constituency in which they were previously resident.³²

49. Emma Trottier, former Canadian Public Servant, explained that the largest prison facility in Canada housed about 500 prisoners and that concerns were initially raised that inclusion of a large number of prisoner votes in one ‘constituency’ would overly influence the election results for that area. However, this did not apparently transpire because prisoners “do not vote in the riding of their penitentiary or prison; they vote in their home riding”.³³
50. The Scottish Assessors Association (SAA) also believed the decision as to residence was a critical one—
 - ” if the prison was deemed to be the address to be used for registration it would allow the possibility of voting in person. Registering all prisoners at the prison address would have a noticeable impact on the number of electors in the local government ward in which the establishment was located. It would also in effect identify the elector as a prisoner.³⁴
51. Jan Anderson from Access to Industry, which supports ex-offenders, advised that many of the women she worked with were homeless. She believed that, for many of these women, postal voting would be preferable to voting from a prison address.³⁵
52. The Electoral Commission advised that further thought would be needed as to how prisoners’ new voting entitlement was clarified on the register. It explained that a new marker could be created to distinguish a new type of voter as a ‘prisoner voter’, for example to denote that prisoners can vote in local elections but not in European elections. However, it emphasised that consideration should be given to any human rights implications from this identification on the register (for example the right to privacy).³⁶
53. Chris Highcock told us that, although there were issues to be addressed, the EMB for Scotland was of the view that once the policy direction was settled, the Board would be able to tease them out in a consultation.³⁷
54. Pete Wildman, SAA, also believed “there are no fundamental barriers to removing the ban” as long as there was a thorough consultation with all stakeholders.³⁸
55. Whatever the approach adopted, Chris Highcock stressed the need to maintain “the fundamental right to vote in secret”. He explained that any new system should, “preserve the principle that a vote is private and that people should be able to cast it free from influence, bullying or threats from other people.”³⁹

Conclusion

56. We note the issues highlighted in evidence to us around the electoral administration needed to support prisoner voting. It seems clear that it would be necessary to create a bespoke system. In particular we note the delicate balances which would need to be found between respecting the views of communities and ensuring prisoners, many of whom have experienced trauma and abuse, are treated with dignity and fairness.
57. Evidence received from practitioners and other countries suggests the practical issues involved are manageable. Consultation with a wide range of relevant

stakeholders would be essential to ensure that all administrative and timetable issues are resolved. Also, we are clear that there would be a need for legislation to be amended to implement the specific requirements of enfranchising this group, irrespective of whether a decision is taken to—

- remove the ban for all prisoners;
- remove the ban for prisoners sentenced to short sentences, but retain it for more serious offences with longer sentences;
- retain the ban for specific offences, such as, electoral fraud or tax evasion;
- remove the ban near the end of prisoners' sentences, as part of the process of preparation for release.

Prisoners' engagement with elections

Voter turnout in prisons

58. The Committee heard evidence on the take-up of voting in prisons, in both Canada and Ireland.
59. Emma Trottier advised that evidence suggests that prisoners vote in the same proportion as the rest of Canadians in the general population.⁴⁰
60. Dr Behan described the experience in Ireland—
- ” In the first election in which prisoners were allowed to vote, in 2007, 14 per cent of the prison population registered and 10 per cent overall voted, so 75 per cent of those who had registered actually went out to vote...The take-up has been generally under 10 per cent since then.⁴¹
61. Dr Behan explained that there could be a concern that all prisoners would vote for one candidate. He indicated that this concern was not borne out by his research which demonstrated that the voting pattern of the prison population reflected that of the general population in the Republic of Ireland.⁴² He also explained that those sent to prison were predominantly young, urban males with a low educational attainment who tended to have low levels of trust, civic engagement and did not vote outside of prison. He considered it was not unsurprising that “the demographic of those who vote on the inside reflects the demographic outside, or indeed vice versa”.⁴³

Conclusion

62. According to most recent prison population statistics published by the Scottish Government, there were 7,984 prisoners held in custody in 2013-2014.⁴⁴ We note from Dr Behan's evidence that in Ireland 14% of the prison population registered to vote with 10% going on to cast their vote. Using Ireland's experience, applied to the 2013-14 Scottish figures, we estimate that 1,118 prisoners would register to vote with around 112 prisoners going on to use their vote in Scotland.

63. **We ask the Scottish Government for updated prison population statistics, so we can gain a better estimate of the maximum number of prisoners who could be entitled to vote.**

Politicians' engagement with prisoners

64. There was discussion amongst the witnesses as to how politicians could engage with prisoners as part of the electorate. Dr Behan told us—
- ” If prisoners are enfranchised, they become part of a hard-to-reach group and, as a result, special measures need to be put in place to encourage and engage them...It all comes back to how we encourage civic engagement among prisoners. ⁴⁵
65. Emma Trottier explained that, in the Canadian correctional service, where applicable, prisoners receive web-based information and watch the news on television. She said, “Every effort is made to ensure that they have the information to make an informed decision on their vote”. ⁴⁶
66. Jan Anderson also spoke about awareness raising in prisons—
- ” I love the idea of something like a hustings. It could be really positive work if there was time in prison to engage the women in some of the issues of the day—it could be an opportunity to look at rehabilitation and reintegration. ⁴⁷
67. Dr Behan encouraged politicians to go into prisons in the same way as they would with other institutions like universities. He argued that politicians should “have hustings in prisons, engage with prisoners and put it to them that they, too, have a responsibility to participate in elections as a form of civic engagement.” ⁴⁸ He explained that, as well as giving prisoners a connection with the outside, this would also bring the outside into prison. ⁴⁹
68. Dr Behan also considered that awareness raising could have benefits for politicians and policy makers too as—
- politicians would see how their policies manifest as conditions in the institution; and this could
 - stimulate debate about policies and how prisoners are engaged in that debate.
69. He went on to say—
- ” At the end of the day, prisons are public institutions. They might be closed, but what goes on there takes place as a result of penal policy that is decided by politicians, which reflects the society that prisoners are part of...If politicians were to go into prisons to see what impact penal policy has on a day-to-day basis and whether it is effective and leads to what the public good should be, which is people coming out of prison and not committing crime again, that would enrich their understanding of the impact of their policies. ⁵⁰
70. We note the potential benefits of civic engagement for prisoners' sense-of-self and community. We also note that increased engagement with prisoners could benefit politicians and policy makers' understanding of penal policy and the lives of prisoners. Further consideration of how we engage with prisoners, should the

franchise be extended, will be needed. This could be included as an issue to be explored in any consultation exercise undertaken.

Continuation of the ban on voting for prisoners serving custodial sentences

71. Lucy Hunter Blackburn of the Howard League for Penal Reform, explained that the UK's history of the ban was less coherent than often assumed—

” How we got here was not through a proper democratic debate about the vote and the prison system. The process was more arbitrary. There was no ban for the 20 years prior to 1969, and it was brought in with no parliamentary scrutiny. In 1969 there was a process behind closed doors to look at electoral reform, and the ban was put into legislation with no real debate. Prior to 1949, I think it was, only people in the most serious cases were banned from voting, but from 1969 to 2000 we banned remand prisoners, who were people who had not been convicted of any offence.⁵¹

72. Some of the commonly held arguments against allowing prisoners to vote are that—

- disenfranchisement stresses to prisoners that participating in a liberal democracy involves a responsibility not to harm others;
- it would be undemocratic to allow prisoners to vote, as a majority of the electorate are against prisoners voting;
- imprisonment is a form of punishment, which leads to the loss of a range of rights linked to daily life, such as, the right to privacy, intimate relations and the right to communicate freely with the outside world.

‘Civic death’ and “the social contract”

73. We were introduced to the notion of ‘civic death’ and how this related to prisoners in custody today who are banned from voting.

74. Dr Behan explained the background to ‘civic death’—

” Disenfranchisement has its roots in the ancient concept of ‘civil death’ based in Greek, Roman, Germanic and Anglo-Saxon law. In ancient Greece, ‘civil death’ meant that certain offenders forfeited all their civil rights, including the right to property and possession, the right to inherit and bequeath, the right to bring suit, the right to vote and the right to appear in court.⁵²

75. Professor McNeill told us about the most extreme form of disenfranchisement—

” a person’s civic status so demeaned by punishment that they no longer had the right to life. It was not the state that executed them; anyone could kill them if they wanted to with impunity, because they were non-citizens.⁵³

76. Witnesses also indicated that prisoner voting bans are often justified on the grounds of breaking of “the social contract”. Dr Behan set out the basis to this stance—

- ” Those who argue for disenfranchisement of prisoners use a social contractarian model with reference to Hobbes, Locke, Rousseau and Kant. Modern proponents of prisoner disenfranchisement tend to argue that those who have broken the law should not be allowed to elect those who make the law.⁵⁴
77. Professor McNeill considered that, in many cases, those in prison are already “substantially disenfranchised before their formal disenfranchisement by punishment”. Additionally, he believed the idea of civic death or disenfranchisement directly contradicted more modern aims linked to rehabilitating offenders.
- ” The problem arises from the fact that we are holding on to ancient and medieval sentiments that drive the desire to exclude while at the same time trying to have a modern conception of reintegration. My fundamental view is that we cannot have both.⁵⁵
78. Professor McNeill summarised the problems associated with “the social contract” argument—
- ” we have a society in which people who avoid their tax liabilities still have profound influence in political processes, including through the funding of political campaigning. On the other hand, we remove from civically wounded people all their rights to participate and regard that as somehow just. In my view, there are absurdities in the broader social contract position.⁵⁶
79. Patrick Harvie MSP also argued that the loss of entitlement to vote from a blanket ban was arbitrary—
- ” There will be many examples of two people having committed exactly the same offence on exactly the same day, perhaps together, but, because of different circumstances in their lives, one receiving a custodial sentence and the other receiving a non-custodial sentence. Alternatively, they might be sentenced on different days and, because of when a weekend falls, serve a different length of time in prison. One of them might happen to be in prison during the course of an election or before the cut-off date for registration for voting in an election while the other might be luckier and be able to exercise the right to vote.⁵⁷
80. Short sentences seemed particularly prone to the arbitrary impact of a blanket ban, as explained by The Howard League on Penal Reform—
- ” Actual vote loss depended on a combination of the date of sentencing diet, how long has previously been spent on remand, early release and timing of elections, rather than the sentence or offence committed. Also, short-term prison sentence and those receiving a community penalty may be very similar. For example, someone who has spent eight weeks on remand might be banned from voting only for three or four weeks, as that is their sentence period because of when their sentencing diet falls.⁵⁸
81. However, Howard League Scotland believed “a custodial sentence by itself sets too low a threshold for the loss of such an important right as the right to vote. Scotland has one the highest rates of imprisonment in western Europe. Applying a blanket

ban therefore sets a lower threshold for losing the vote here than it would in almost all other western European countries”.⁵⁹

82. David Strang, Her Majesty's Chief Inspector of Prisons for Scotland, told us—

” I know that many people in prison are not on the register. However, some people are really keen. Again to go back to 2014, I remember speaking to some men in prison who were very animated about the referendum and had very strong views, but did not have a right to vote. It is an odd punishment because it punishes only those who want to vote.⁶⁰

83. On the legal arguments against a blanket ban, Michael Clancy of the Law Society of Scotland argued that the key provision for assuring compliance in the Hirst case (paragraph 82 of the judgment) could be paraphrased as—

” Don't be indiscriminate, don't make it a blanket restriction, don't apply it automatically, don't have it irrespective of the length of the sentence and don't have it irrespective of the nature or gravity of the offence.⁶¹

84. We have written to the Ministry of Justice, seeking clarification on what aspects were considered in arriving at the UK Government's action plan for complying with the Hirst judgment. In addition, we also asked for further information as to why the Committee of Ministers of the Council of Europe accepted the Ministry's plan, the aim being to assist our understanding of how this translates to Scotland. At the time of writing this report, we are awaiting a reply from the Ministry of Justice.⁶²

Victims of crime

85. It was important to us that we heard a diversity of views, in particular, the voices of victims. We also recognise families and friends of victims of crime will also hold views based on their personal experiences. We received written evidence from Victim Support Scotland (VSS).

86. VSS emphasised that the current blanket ban on prisoner voting is not compatible with human rights legislation. It also noted that the Committee's work provides an opportunity to assess where the ban on the right to vote should sit in terms of balancing the different purposes of punishment. VSS's primary concern was, however, the need for more awareness and information, whilst taking into account the needs of victims. It noted that—

” Whether the ban remains or is removed, in part, or in full, we believe there needs to be explicit and readily available public information on punishment processes. Any changes need to occur alongside awareness campaigns on what the principal purpose of incarceration sets to achieve. We agree that prisoner voting should be seen in the wider context of equalities and human rights, but with the caveat that victims remain paramount to any discussions on legislative changes.⁶³

87. We are conscious in our evidence that we did not hear directly from victims of crimes. Our inquiry is aimed at gathering together the various strands of the issue as they pertain to Scotland and its specific circumstances. As

such we ask the Scottish Government to consider a plurality of views on the issue and consult as wide a range of stakeholders as possible, including victims of crimes and the general public.

Partial ban on prisoners voting

88. A large group of Council of Europe States have some form of partial ban on prisoner voting. In countries operating partial bans, the ban is normally based on either:

- (a) the length of sentence; or
- (b) the type of offence committed.

Length of sentence

89. For example, we understand that in Poland the ban is limited to those convicted of a serious crime with a sentence of more than three years, whereas in the Netherlands prisoners sentenced to one year or more may only have their right to vote removed by the court if they have committed a crime “affecting the foundations of the state”.
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Type of offence

90. We heard from witnesses that there have been cases in Italy where those involved in electoral fraud have been disenfranchised. Michael Clancy of the Law Society of Scotland indicated that there may be a case for entering into such a discussion with the Scottish Sentencing Council about this type of approach. He put the proposal in context noting that “at the moment disenfranchisement does not come up in that way. It is not an add-on or an option; it is a consequence”.⁶⁵ Professor McNeill explained that this lack of intention is referred to by criminologists as the “collateral consequences of punishment”.⁶⁶

91. Patrick Harvie MSP also believed there might be an argument in principle in relation to electoral fraud. One of the consequences would be that those convicted of electoral fraud would lose their right to vote in a system they had abused. In terms of punishment, however, Patrick Harvie MSP considered a person would be unlikely to pose a threat to the safety of society and therefore unlikely to attract a significant prison sentence.⁶⁷

92. The Scottish Court and Tribunal Service (SCTS) anticipated that the loss of voting rights for specific categories of offence would operate in a similar way to the current provision and automatically apply. A disqualification from voting by reason of conviction for a specific offence would therefore not impact on the SCTS.

Preparation for release or end of sentence

93. Both Patrick Harvie MSP⁶⁸ and David Strang, the Chief Inspector of Prisons for Scotland, stressed that there were arguments that prisoners who were preparing for release ought to face issues related to being an active participant in society. Patrick Harvey MSP indicated that voting was a small aspect of this, but believed it could be an important symbolic aspect. David Strang agreed that voting and taking part in the democratic process would mean a person would be less likely to reoffend and more likely to be a responsible citizen.⁶⁹

Role of the judiciary and the courts

94. We understand that countries that have partial bans often grant the judiciary varying degrees of discretion in applying or disapplying the ban on voting. It seems that countries following this approach include amongst others: the Netherlands, Belgium, France, Poland, Cyprus, Romania, Slovakia.
95. We wrote to the Lord President of the Court of Session about the possibility of a judge or sheriff deciding in a particular case whether a prisoner should lose their right to vote in particular elections and for what period. The Lord President replied to us stressing that, after “due democratic consultation”, the key principles should be decided by Parliament and not be left to be developed on a case by case basis by individual judges. The Lord President suggested an approach similar to the sex offender register where “a prohibition might operate automatically on sentencing and this would be clear to both the prisoner and the prison authorities.”⁷⁰
96. The Scottish Court and Tribunal Service (SCTS) highlighted that there may be an impact on courts if resumption of voting rights could only apply following a court application by the prisoner. The re-instatement of the right to vote would then have an impact on the SCTS in terms of—
- court time
 - associated staff and accommodation resources, and
 - costs involved for any relevant IT changes.
97. Other potential issues were identified if provisions allowing court applications were applied retrospectively. This could result in a significant number of applications being made when the legislation came into force, which could delay hearings unless adjustments were made to normal court programmes, resulting in further costs.
98. Also, if legal aid was not to be made available for these applications, it was likely they would be lodged by unrepresented parties. This had the potential to extend the duration of any hearings and lead to increased costs for matters such as transportation of prisoners between prisons and the courts if a hearing is required.
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99. The evidence we have taken, and the experience of other countries and their approach to allowing some prisoners to vote, demonstrates there is still a considerable level of risk that a scheme, which identifies which prisoners can vote, could be successfully challenged on human rights grounds. Creating a robust scheme to enable some prisoners to vote would require a significant amount of legal analysis. We therefore consider that, if a scheme of voting is to be devised, such work should be undertaken by the Scottish Government.

Enfranchising all prisoners to vote

100. The final option available to us for consideration is to remove the blanket ban on prisoner voting entirely and to allow all prisoners to vote irrespective of the type of offence or length of sentence.
101. It appears that many Council of Europe states have no restrictions or virtually no restrictions on prisoner voting. These include Croatia, the Czech Republic, Denmark, Finland, Ireland, Latvia, Lithuania, Norway, Slovenia, Spain, Sweden and Switzerland.
102. The arguments for giving all prisoners the right to vote are similar to those put forward to support some prisoners being allowed to vote—
 - people are still citizens even if they commit crimes
 - allows and encourages often marginalised groups to be part of the community
 - aids rehabilitation and the chances of prisoners becoming law-abiding citizens
 - allows prisoners to hold decision-makers to account for decisions made in relation to the justice system – e.g. the conditions of incarceration.
103. They are all interconnected to some extent, so we have focussed on those issues not explored thus far in the report.

Voting assists rehabilitation

104. Tom Halpin, SACRO examined the argument that people who commit crimes are no longer citizens. He particularly questioned whose moral compass was being used to arrive at that view. He stated—
 - ” Dividing people into good or bad does not reflect the reality. The vast majority of the people who are termed “offenders” quickly reappear in different parts of the system as victims. They are citizens first and foremost. The stories of working with people as they make those changes are, frankly, inspirational. For so many, the root causes of the situations that brought them into offending behaviour go back to vulnerabilities and issues of deprivation and lack of opportunity—those are fundamental to their situations.⁷²
105. He went on to explain how losing the right to vote impacted on individuals’ rehabilitation—

” I can think of one man who I would describe as a fighting drunk—a newspaper headline would probably describe him as that as well. When we worked with that individual, we found that he had experienced at a young age horrendous family bereavement that he had never coped with and which left him deeply distressed and traumatised. When we worked with him, he turned around to become a leader within his cohort; he had a positive impact on the people around him and is now a true inspiration. When we work with someone like that, they go into deep issues in their life. To tell them that they are disenfranchised at the same time as telling them that they have a future as a citizen weakens that work. ⁷³

106. Quakers Scotland also considered that encouraging voting within prisons would “bring opportunities, and indeed incentives, to increase citizenship education within the prison population”. ⁷⁴

107. Jan Anderson identified with the view that some prisoners were the product of their circumstances—

” pretty much 100 per cent of the women who I am working with have experienced poverty and disadvantage, and have had a huge amount of psychological trauma and abuse in their lives. In many ways, I would describe them as the walking wounded. ⁷⁵

Prisoners holding decision-makers to account

108. A separate issue is whether allowing prisoners the vote could help in holding decision-makers to account for decisions made in relation to the justice system e.g. the conditions of incarceration. ⁷⁶

109. Patrick Harvie MSP was asked whether the need to hold decision makers to account could be an additional reason to remove the voting ban for all prisoners. He replied as follows—

” If I thought that there was a consensus in favour of removing altogether the ban on prisoners voting, I would have no difficulty with that. My suspicion is that that will not be where the consensus lies on the issue. ⁷⁷

Public and media pressure

110. We are aware allowing prisoners the vote is one of the most emotive subjects in the UK and one which exerts significant pressure on politicians generally.

111. In illustration of this point Patrick Harvie MSP said—

” David Cameron put it in what might be described as rather headline-grabbing terms when he said that he felt physically sick at the idea of prisoners voting. ⁷⁸

112. Based on evidence from witnesses it seems that the same pressure on politicians was not evident in Canada and the Republic of Ireland when they removed their prisoner voting bans.

113. Dr Cormac Behan indicated in his written evidence that giving prisoners the vote in Ireland was not controversial. He noted that:
- ” there was virtually no disagreement about prisoner enfranchisement in the Oireachtas (Irish Parliament), media or wider civic society. The Oireachtas passed the legislation, with no member speaking against enfranchisement; there was negligible media attention and virtually no public debate about the issue. As the discussions were relatively low-key, very few prisoners were aware of the significance of the change in legislation that enfranchised them. ⁷⁹
114. In stark contrast Dr Behan’s research showed that, in the United Kingdom, “the media have tended to report on the issue as a matter of acute controversy, and they have generally come down against allowing prisoners to vote”. ⁸⁰ He commented that the issue was a “sort of perfect storm of law and order, judicial activism and what can be perceived as European interference”. ⁸¹
115. We see the advantages to entitling all prisoners to vote. This approach recognises that all prisoners are citizens. Removing the ban for all prisoners would simplify the electoral administration to some degree. It would also enable political engagement with every prisoner, rather than creating a further divide between prisoners. In addition, all prisoners would have that link to their communities to help them better integrate back into society once rehabilitated.

Other electoral matters

116. Patrick Harvie MSP raised further issues regarding extending the franchise.
117. He called on this inquiry to have a wider focus than just prisoners. In particular, he wanted it to look at 'residence' afresh in respect of the voting rights of EU citizens and citizens of non-EU countries. He argued there was "an argument for taking national identity out of the equation altogether and making residence the only requirement to vote".⁸²
118. In addition, Patrick Harvie MSP highlighted other communities which faced barriers to participation in voting, such as disability and Gypsy Traveller communities. He hoped that a fresh look at these issues would find practical ways of removing such barriers to ensure that everyone is able to vote.⁸³
119. Both issues are not something we have had an opportunity to consider within the scope of our brief inquiry. We recognise these issues are ones which would require a particular focus.

120. **We understand the Scottish Government's consultation on Electoral Reform is considering the question of extending the franchise to those legally resident (see Chapter Three). We share the concerns raised about barriers to voting faced by disabled people and the Gypsy Traveller community. We ask the Scottish Government to fully consider these issues in its response to the consultation.**
121. **Also, we ask the Scottish Government to undertake comprehensive equality and human rights assessments on the final proposal to ensure groups with protected characteristics and other individuals are not disadvantaged, and to take account of wider treaty obligations. In particular, the International Covenant on Civil and Political Rights which 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.**

Overall conclusion

122. In coming to our conclusion, and having been reassured that the electoral administration aspects are manageable, once a policy direction is agreed, we are left with considering complex democratic, ethical and rights' issues.
123. We consider it a matter of responsibility to deal with these complex issues. It would not be appropriate for us as the Equalities and Human Rights Committee to side-step the issue of whether prisoners serving custodial sentences should be entitled to vote. The Scottish Parliament has newly devolved powers over elections for the Scottish Parliament and local government elections. These powers cannot be ignored.
124. We are aware that any legislation would need a majority vote in the Parliament of two-thirds to become law, but that should not deter us from having the debate.
125. Scotland has to grapple with this issue in a positive, grown-up manner. This report airs the, at times, diametrically opposed arguments and it is down to us to find a just and proportionate balance in a modern society.
126. To present our thinking more easily, the body of our conclusion is set out under four headings—
- the purpose of prison,
 - media and public pressure,
 - democracy, and
 - human rights.

The purpose of prison

127. In attempting to examine what prison is for, there is no outright single answer as a prison sentence can serve a number of functions (some of which are potentially contradictory), for example, deterrence, incapacitation, rehabilitation and retribution.
128. However, in summary at one end of the spectrum there is the view that prison is for punishment and that prisoners by definition should lose their rights when they break the law. The other diametrically opposed view is that offenders are still citizens and should have the ability to participate in democratic society, both as a fundamental right and also to aid rehabilitation. In between these views, prisoners would be both punished and rehabilitated, but the extent to which they would lose their rights would be limited in some way, for example by linking it to the type or length of sentence being served.
129. Professor McNeill of who specialises in questions of punishment and reintegration articulated well the argument against the social contract and prisoners—

” Such people are also wounded in a civic sense, in that they have already been substantively disenfranchised before their formal disenfranchisement by punishment. They come from communities where their life opportunities are severely restricted, where health inequalities are profound and where levels of political participation are already minimal and deeply troubling. They are therefore civically wounded, and then as part of their punishment—or as an accidental consequence of it—we apply civic death in the form of full and formal disenfranchisement during their punishment. To make matters more absurd—in my view—we insist that they resurrect themselves civically at the moment of their release and enter back into society, fully prepared to make a robust and rounded contribution as politically and civically engaged citizens. That is completely paradoxical.⁸⁴

130. From what we have heard, it seems unlikely that not being able to vote would deter people from committing a crime. Not being able to vote also does not seem to be linked to protecting the public from the commission of other crimes. Not being able to vote might, however, impact negatively on an individual’s rehabilitation. On the basis of this evidence, it would seem that decisions on allowing prisoners to vote or not are more linked to issue of ‘retribution’ or punishment than anything else.

Media and public pressure

131. We acknowledge the different backdrop to considering the issue of prisoner voting in the UK, than for example in the Republic of Ireland. In moving forward on this issue we have a responsibility to ensure the debate is inclusive and ensure a wide range of views are considered. We also need to be mindful when presenting the detail of our arguments that the reasoning that supports our views is clearly articulated so there are no barriers to the public’s understanding.
132. Whilst we are aware that this is an emotive issue and that there are a range of arguments both for and against prisoner voting, we strongly believe that decisions should be taken on rational grounds informed by debate rather than on gut feelings or on populism.

Democracy

133. Article 3 of Protocol 1 of the European Convention on Human Rights does not, as such, confer a right to vote, but requires that High Contracting 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.
134. The ECtHR held that whilst this provision did not create “absolute” rights, for example in contrast with the right not to be subjected to torture, universal suffrage was nevertheless “crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law.”

Human Rights

135. Our committee remit extends wider than just the Convention issues. We also have within our remit other human rights contained in any international convention, treaty

or other international instrument ratified by the United Kingdom. It would be remiss of us not to consider the wider human rights' implications of a ban on prisoners serving custodial sentences voting. For example, the right to vote as enshrined in Article 21 of the Universal Declaration of Human Rights and in Article 25 of the International Covenant of Civil and Political Rights (ICCPR).

136. The Prison Reform Trust argued that voting is not a privilege, it is a basic human right. The Trust believed "it is certainly not a reward to be granted to those whom the Government has judged morally decent."⁸⁵
137. The ICCPR gives every citizen 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 said that it "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."⁸⁶
138. Most recently, in 2015, the United Nations Human Rights Committee repeated its concerns.⁸⁷
139. The ICCPR is not binding in domestic law in Scotland, in the same way that Convention Rights are as a result of the Human Rights Act 1998 and the Scotland Act 1998. It does however create binding obligations under international law which states are required to follow. In addition, the Scottish Parliament has power within the limits of legislative competence specified in section 29 of the Scotland Act 1998 to implement international obligations of the United Kingdom.
140. There is perhaps an argument that we should simply base our decision on the Convention Rights and hence only follow the UK approach recently accepted by the Committee of Ministers of the Council of Europe – i.e. by making minor changes to the rules on prisoner voting to meet the issues raised in relation to the Hirst judgement.
141. However, this approach would only open up the right to vote to a very limited number of prisoners serving custodial sentences.
142. In addition, it seems unlikely that taking such an approach would address the various issues raised in evidence on the need for a more liberal approach to prisoner voting in Scotland.
143. Although the consequences of the Committee of Ministers decision still need to be clarified, we can also imagine that, if only minimal changes to the current regime are made, there may still be the potential for future legal challenge with the costs and uncertainty which this could bring.
144. Consequently, given the evidence we have heard, and the fact that many other countries have followed this approach with little in the way of problems (including a neighbouring country with similar legal and political traditions such as the Republic of Ireland) we think there is a strong argument that Scotland should aim for a higher standard than recently established at UK level and should therefore legislate to

remove the ban on prisoner voting in its entirety. This would be a way for Scotland to show leadership on human rights issues as well as following international standards set out in the International Covenant on Civil and Political Rights.⁸⁸

145. We ask the Scottish Government to legislate to remove the ban on prisoner voting in its entirety.⁸⁹

146. In taking forward this recommendation, we ask the Scottish Government to consider a plurality of views on the issue and consult as wide a range of stakeholders as possible, including victims of crimes and the general public.

“An individual prisoner’s right to vote does not depend on its exercise by all right-holders; its significance lies in the knowledge and awareness that everyone is a right-holder”

Unknown

- 1 The Representation of the People Act 1983, Chapter 2, section 3, Disfranchisement of offenders in prison etc. Available at: <http://www.legislation.gov.uk/ukpga/1983/2>
- 2 The Scotland Act 2016, section 3, Elections. Available at: <http://www.legislation.gov.uk/ukpga/2016/11/section/3/enacted>
- 3 The Scotland Act 2016 (Commencement No. 6) Regulations 2017, 2017 No. 608 (C.54). Available at: <http://www.legislation.gov.uk/uksi/2017/608/made>
- 4 The Scotland Act 2016, section 11, Super-majority requirement for certain legislation. Available at: <http://www.legislation.gov.uk/ukpga/2016/11/section/11/enacted>
- 5 Letter from Patrick Harvie MSP to Convener of the Equalities and Human Rights Committee, 15 June 2018. Available at: http://www.scottish.parliament.uk/S5_Equal_Opps/General%20Documents/Correspondence_from_Patrick_Harvie_MSP_on_prisoner_voting_rights_15_June_2017.pdf
- 6 Letter to the Minister for Parliamentary Business, 22 September 2017. Available at: http://www.scottish.parliament.uk/S5_Equal_Opps/Inquiries/Letter_to_Minister_for_Parly_Business_20170922.pdf
- 7 European Court of Human Rights, Hirst v United Kingdom (No 2). Available at: <http://www.bailii.org/eu/cases/ECHR/2005/681.html>
- 8 European Convention on Human Rights, Article 3 of Protocol 1, page 32. Available at: http://www.echr.coe.int/Documents/Convention_ENG.pdf
- 9 A comprehensive overview of UK developments in this period (including discussion of the various options for changing the law based on previous UK Government consultations) can be found in the House of Commons Library's:
- 10 BBC, 10 February 2011, MPs reject prisoner votes plan. Available at: <http://www.bbc.co.uk/news/uk-politics-12409426>
- 11 Nils Muižnieks, 10 October 2013, Memorandum - Observations for the Joint Committee on the Draft Voting Eligibility (Prisoners) Bill. Available at: <https://rm.coe.int/16806db5c2>
- 12 Prisoner Voting in Scotland – A short Summary, SPICe paper SB 17-85. Available at: http://www.scottish.parliament.uk/S5_Equal_Opps/Meeting%20Papers/20180125PublicPapers.pdf
- 13 Under section 30 of the Scotland Act 1998.
- 14 The Scottish Parliament, The Scottish Independence (Franchise) Bill, Official Report, 27 June 2013, Col 21795: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=8740&mode=pdf>
- 15 The Scottish Parliament, The Scottish Independence (Franchise) Bill, 27 June 2013, Official Report, Col 21802: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=8740&mode=pdf>
- 16 Supreme Court Judgement, Moohan v Lord Advocate. Available at: <https://www.supremecourt.uk/cases/docs/uksc-2014-0183-judgment.pdf>

- 17 UK Government, Secretary of State's oral statement on sentencing, 2 November 2017. Oral statement to Parliament. Available at: <https://www.gov.uk/government/speeches/secretary-of-states-oral-statement-on-sentencing>
- 18 UK Government, Secretary of State's oral statement on sentencing, 2 November 2017. Oral statement to Parliament. Available at: <https://www.gov.uk/government/speeches/secretary-of-states-oral-statement-on-sentencing>
- 19 This is a body made up of the foreign ministers of Council of Europe member states one of whose roles is to ensure that states comply with the judgments of the European Court of Human Rights.
- 20 See: https://search.coe.int/cm/pages/result_details.aspx?objectid=090000168076465d
- 21 Welsh Government. (2017, July 18). Consultation document - Electoral Reform in Local Government in Wales. Available at: <https://beta.gov.wales/electoral-reform-local-government-wales>
- 22 Letter from the Minister for Parliamentary Business, 19 December 2017. Available at: http://www.scottish.parliament.uk/S5_Equal_Opps/Inquiries/Letter_from_MfPB_on_prisoner_voting_and_electoral_review.pdf
- 23 The Scottish Government's Consultation Paper on Electoral Reform, page 24-25, <http://www.gov.scot/Resource/0052/00529431.pdf>
- 24 Scottish Prison Service, Written Evidence: http://www.parliament.scot/S5_Equal_Opps/Inquiries/SPScombined.pdf
- 25 The Electoral Management Board, Written Evidence: http://www.parliament.scot/S5_Equal_Opps/Inquiries/EMB_Scotland.pdf
- 26 The Electoral Commission, Written Evidence: http://www.parliament.scot/S5_Equal_Opps/Inquiries/Electoral_Commission_for_Scotland.pdf
- 27 Electoral Management Board, Written Evidence: http://www.parliament.scot/S5_Equal_Opps/Inquiries/EMB_Scotland.pdf
- 28 Equalities and Human Rights Committee, Official Report, 7 September 2017, Cols 26-28: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11067&mode=pdf>
- 29 Equalities and Human Rights Committee, Official Report, 7 September 2017, Cols 26-28: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11067&mode=pdf>
- 30 Equalities and Human Rights Committee, Official Report, 25 January 2018, Cols 7-8: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11332&mode=pdf>
- 31 The Electoral Commission, Written Evidence: http://www.parliament.scot/S5_Equal_Opps/Inquiries/Electoral_Commission_for_Scotland.pdf
- 32 Equalities and Human Rights Committee, Official Report, 7 September 2017, Col 10: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11067&mode=pdf>

- 33 Equalities and Human Rights Committee, Official Report, 25 January 2018, Col 7:
<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11332&mode=pdf>
- 34 Scottish Assessors Association, Written Evidence: http://www.parliament.scot/S5_Equal_Opps/Inquiries/Scottish_Assessors_Association.pdf
- 35 Equalities and Human Rights Committee, Official Report, 7 September 2017, Col 17:
<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11332&mode=pdf>
- 36 The Electoral Commission, Written evidence: http://www.parliament.scot/S5_Equal_Opps/Inquiries/Electoral_Commission_for_Scotland.pdf
- 37 Equalities and Human Rights Committee, Official Report, 7 September 2017, Cols 26-28: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11067&mode=pdf>
- 38 Equalities and Human Rights Committee, Official Report, 7 September 2017, Col 26:
<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11067&mode=pdf>
- 39 Equalities and Human Rights Committee, Official Report, 7 September 2017, Cols 26-28: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11067&mode=pdf>
- 40 Equalities and Human Rights Committee, Official Report, 25 January 2018, Col 7:
<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11332&mode=pdf>
- 41 Equalities and Human Rights Committee, Official Report, 25 January 2018, Cols 7-8:
<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11332&mode=pdf>
- 42 Equalities and Human Rights Committee, Official Report, 25 January 2018, Col 11:
<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11332&mode=pdf>
- 43 Equalities and Human Rights Committee, Official Report, 25 January, 2018, Cols 7-8:
<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11332&mode=pdf>
- 44 Scottish Government, Prison statistics and population projections Scotland 2013-14:
<http://www.gov.scot/Resource/0049/00491398.pdf>
- 45 Equalities and Human Rights Committee, Official Report, 25 January 2018, Cols 21-22: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11332&mode=pdf>
- 46 Equalities and Human Rights Committee, Official Report, 25 January 2018, Col 11:
<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11332&mode=pdf>
- 47 Equalities and Human Rights Committee, Official Report, 7 September 2017, Col 17:
<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11067&mode=pdf>
- 48 Equalities and Human Rights Committee, Official Report, 25 January 2018, Cols 7-8:
<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11332&mode=pdf>
- 49 Equalities and Human Rights Committee, Official Report 25 January 2018, Cols 10-12: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11332&mode=pdf>

- 50 Equalities and Human Rights Committee, Official Report 25 January 2018, Cols 10-12: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11332&mode=pdf>
- 51 Equalities and Human Rights Committee, Official Report, 7 September 2017, Col 15: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11067&mode=pdf>
- 52 Dr Cormac Behan, Written evidence: http://www.parliament.scot/S5_Equal_Opps/Inquiries/Response_from_Dr_C_Behan_to_the_Convener_20171010.pdf
- 53 Equalities and Human Rights Committee, Official Report, 7 September 2017, Col 21: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11067&mode=pdf>
- 54 Dr Cormac Behan, Written evidence: http://www.parliament.scot/S5_Equal_Opps/Inquiries/Response_from_Dr_C_Behan_to_the_Convener_20171010.pdf
- 55 Equalities and Human Rights Committee, Official Report, 7 September 2017, Col 22: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11067&mode=pdf>
- 56 Equalities and Human Rights Committee, Official Report, 7 September 2017, Col 22: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11067&mode=pdf>
- 57 Equalities and Human Rights Committee, Official Report, 7 September 2017, Col 9: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11067&mode=pdf>
- 58 Equalities and Human Rights Committee, Official Report, 7 September 2017, Col 15: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11067&mode=pdf>
- 59 Howard League Scotland, Written Evidence: http://www.parliament.scot/S5_Equal_Opps/Inquiries/Howard_League.pdf
- 60 Equalities and Human Rights Committee, Official Report, 7 September 2017, Col 19: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11067&mode=pdf>
- 61 Equalities and Human Rights Committee, Official Report, 7 September 2017, Col 24: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11067&mode=pdf>
- 62 Equalities and Human Rights Committee, Letter to the Ministry of Justice, 8 February 2018. Available at: http://www.parliament.scot/S5_Equal_Opps/Letter_to_UK_Gov_on_Prisoner_Voting.pdf
- 63 Victim Support Scotland, Written Evidence: http://www.parliament.scot/S5_Equal_Opps/Inquiries/Response_from_Victim_Support_Scotland_to_the_Convener_20171011.pdf
- 64 Prisoner Voting in Scotland – A short Summary, SPICe paper SB 17-85. Available at: http://www.scottish.parliament.uk/S5_Equal_Opps/Meeting%20Papers/20180125PublicPapers.pdf
- 65 Equalities and Human Rights Committee, Official Report, 7 September 2017, Col 33: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11067&mode=pdf>
- 66 Equalities and Human Rights Committee, Official Report, 7 September 2017, Col 33: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11067&mode=pdf>

- 67 Equalities and Human Rights Committee, Official Report, 7 September 2017, Col 4:
<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11067&mode=pdf>
- 68 Equalities and Human Rights Committee, Official Report, 7 September 2017, Col 4:
<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11067&mode=pdf>
- 69 Equalities and Human Rights Committee, Official Report, 7 September 2017, Col 19:
<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11067&mode=pdf>
- 70 Equalities and Human Rights Committee, Official Report, 7 September 2017, Col 19:
<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11067&mode=pdf>
- 71 Scottish Court and Tribunal Service, Written Evidence: http://www.parliament.scot/S5_Equal_Opps/Inquiries/SCTS.pdf
- 72 Equalities and Human Rights Committee, Official Report, 7 September 2017, Col 16:
<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11067&mode=pdf>
- 73 Equalities and Human Rights Committee, Official Report, 7 September 2017, Col 16:
<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11067&mode=pdf>
- 74 Quakers Scotland, Written Evidence: http://www.parliament.scot/S5_Equal_Opps/Inquiries/Submission_from_Quakers_in_Scotland_on_prisoner_voting.pdf
- 75 Equalities and Human Rights Committee, Official Report, 7 September 2017, Col 7:
<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11067&mode=pdf>
- 76 Equalities and Human Rights Committee, Official Report, 7 September 2017, Col 6-7:
<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11067&mode=pdf>
- 77 Equalities and Human Rights Committee, Official Report, 7 September 2017, Col 7:
<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11067&mode=pdf>
- 78 Equalities and Human Rights Committee, Official Report, 7 September 2017, Col 6:
<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11067&mode=pdf>
- 79 Dr Behan, Written Evidence: http://www.parliament.scot/S5_Equal_Opps/Inquiries/Response_from_Dr_C_Behan_to_the_Convener_20171010.pdf
- 80 Equalities and Human Rights Committee, Official Report, 25 January 2018, Col 2:
<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11332&mode=pdf>
- 81 Equalities and Human Rights Committee, Official Report, 25 January 2018, Col 5:
<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11332&mode=pdf>
- 82 Equalities and Human Rights Committee, Official Report, 7 September 2017, Col 4:
<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11067&mode=pdf>
- 83 Equalities and Human Rights Committee, Official Report, 7 September 2017, Col 4:
<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11067&mode=pdf>
- 84 Equalities and Human Rights Committee, Official Report, 7 September 2017, Col 22:
<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11067&mode=pdf>

- 85 The Prison Reform Trust, Written Evidence: http://www.parliament.scot/S5_Equal_Opps/Inquiries/Prison_Reform_Trust.pdf
- 86 The Prison Reform Trust, Written Evidence: http://www.parliament.scot/S5_Equal_Opps/Inquiries/Prison_Reform_Trust.pdf
- 87 <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsg%2F0K3H8qae8NhIDi53MeCJ8Es8JxwwaL1HQ8hgVMkgor%2Ba2BnDTW%2FHC6BlyM8TPJNF%2F6qe%2Bcd b0NBnXp%2BA57rBA17cvjmBwuiVD2gg5FYEj>
- 88 Jamie Greene MSP and Annie Wells MSP dissent from paragraph 144.
- 89 Jamie Greene MSP and Annie Wells MSP dissent from paragraph 145.

