



Prisoners' voting rights (2005 to May 2015)

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Prisoners serving a custodial sentence do not have the right to vote under UK law. Prisoners on remand are able to vote under the provisions of the *Representation of the People Act 2000*.

This Standard Note provides a narrative of events from the judgment of the European Court of Human Rights (ECtHR) on 6 October 2005, in the case of *Hirst v United Kingdom (No 2)*, to the May 2015 General Election. For analysis of recent developments, the House of Commons Library Briefing Paper, *Prisoners' voting rights: developments since May 2015*, covers the period from May 2015.

For information about the European Convention on Human Rights and compliance with the Court's rulings see Library Standard Notes SN/IA/5936, [The European Convention on Human Rights and the Court of Human Rights: issues and reforms](#), and SN/IA/5941, [European Court of Human Rights rulings: are there options for governments?](#)

Two consultations were held by the Labour Government in the 2005-10 Parliament; but no legislation was forthcoming. In the 2010-15 Parliament the issue continued to be contentious.

In December 2010 the Government announced that, in response to the judgment in *Hirst*, it would bring forward legislation to allow those offenders sentenced to a custodial sentence of less than four years the right to vote in UK Parliamentary and European Parliament elections, unless the sentencing judge considered this inappropriate. No timetable was announced for this proposed legislation.

A backbench debate was subsequently held in the House of Commons on 10 February 2011: the motion, which supported the continuation of the current ban, was agreed on a division by 234 to 22.

On 1 March 2011 the Government referred the latest ECtHR ruling on the issue, the *Greens and MT* judgement, to the Grand Chamber of the European Court of Human Rights. This in effect appealed the Court's decision that the UK had six months to introduce legislation to lift the blanket ban. On 11 April 2011 this request for an appeal hearing was dismissed and the Court gave the UK Government a deadline of six months from this date to introduce legislative proposals.

On 6 September 2011 the Government announced that it had requested an extension to this deadline to take account of the referral of *Scoppola v Italy (No 3)* (a case similar to that of *Greens and MT*) to the Grand Chamber. The Court granted an extension of six months from the date of the judgment in the case. The United Kingdom Government made submissions to the Grand Chamber as a third party intervener in the case.

The Grand Chamber's judgment in the case of *Scoppola v Italy (No 3)* was announced on 22 May 2012. The Grand Chamber confirmed the judgment in the case of *Hirst (no 2)* (which held that a general and automatic disenfranchisement of all serving prisoners was incompatible with Article 3 of Protocol No 1); but it accepted the UK Government's argument that member states should have a wide discretion (or 'margin of appreciation') in how they regulate a ban on prisoners voting. The delivery of the judgement in the *Scoppola* case meant that the UK Government had six months from 22 May 2012 to bring forward legislative proposals to amend the law.

On 22 November 2012 the Government published a draft Bill, the *Voting Eligibility (Prisoners) Bill*, for pre-legislative scrutiny by a Joint Committee of both Houses. The Committee published its [report](#) on 18 December 2013 and recommended that the Government should introduce legislation to allow all prisoners serving sentences of 12 months or less to vote in all UK Parliamentary, local and European elections. The Lord Chancellor and Justice Secretary, Chris Grayling, made a brief [response](#) to the Committee's report on 25 February 2014; but the Government have not responded substantively and did not bring forward a Bill with the 2014 Queen's Speech.

On 16 October 2013 the UK Supreme Court dismissed the appeals of George McGeoch and Peter Chester, both prisoners serving life sentences for murder, who had brought domestic law proceedings in 2010 challenging the ban. The Supreme Court rejected a separate head of claim that the blanket ban was incompatible with European Union law. However, the Supreme Court also maintained the position determined in Strasbourg that the UK's blanket ban was contrary to the European Convention on Human Rights; although it refused to make a further 'declaration of incompatibility' with the *Human Rights Act 1998*, considering that it was unnecessary in the circumstances.

In two recent judgments in August 2014 and February 2015 (*Frith and others v UK* and *McHugh and others v UK*) relating to a large number of outstanding claims by prisoners, the European Court of Human Rights noted the continuing violation of Article 3 to Protocol No. 1 to the Convention, but did not award the applicants any compensation or legal expenses.

In December 2014, the Government announced that prisoners would not be enfranchised prior to the General Election of 2015.

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1 Background

Prisoners serving a custodial sentence do not have the right to vote. This ban was enshrined in Section 3 of the *Representation of the People Act 1983* as amended by the *Representation of the People Act 1985*:

3 Disfranchisement of offenders in prison etc

(1) A convicted person during the time that he is detained in a penal institution in pursuance of his sentence [or unlawfully at large when he would otherwise be so detained] is legally incapable of voting at any parliamentary or local government election.

(2) For this purpose –

(a) “convicted person” means any person found guilty of an offence (whether under the law of the United Kingdom or not), including a person found guilty by a court-martial under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 or on a summary trial under section 49 of the Naval Discipline Act 1957, or by a Standing Civilian Court established under the Armed Forces Act 1976, but not including a person dealt with by committal or other summary process for contempt of court; and

(b) “penal institution” means an institution to which the Prison Act 1952, the Prisons (Scotland) Act 1952 or the Prisons Act (Northern Ireland) 1953 applies; and

(c) a person detained for default in complying with his sentence shall not be treated as detained in pursuance of the sentence, whether or not the sentence provided for detention in the event of default, but a person detained by virtue of a conditional pardon in respect of an offence shall be treated as detained in pursuance of his sentence for the offence.

(3) It is immaterial for the purposes of this section whether a conviction or sentence was before or after the passing of this Act.

The disenfranchisement of prisoners in Great Britain dates back to the *Forfeiture Act 1870* and has been linked to the notion of ‘civic death’. The 1870 Act denied offenders their rights of citizenship. The *Representation of the People Act 1969* introduced a specific provision that convicted persons were legally incapable of voting during the time that they were detained in a penal institution after the *Criminal Law Act 1967* amended the 1870 Act. It is worth noting, however, that in Chapter 2 of its report (which is discussed further at section 23 of this paper), the Joint Committee on the Draft Voting Eligibility (Prisoners) Bill determined that there had been a partial enfranchisement of prisoners between 1948-1969 and that prisoners had indeed voted: an article in *The Times* in 1950 reported that “among the postal votes to be returned in Manchester were a number from prisons in Cardiff, Lincoln, Preston and Manchester.”¹

The RPA 1969 enacted the recommendations of the Speaker’s Conference of 1967-68, one of which was that ‘a convicted prisoner who is in custody should not be entitled to vote.’² These provisions were later consolidated in the *Representation of the People Act 1983*.

¹ See: [Draft Voting Eligibility \(Prisoners\) Bill Joint Committee report](#), HL 103/ HC 924, 18 December 2013. See also: C.R.G Murray, *A Perfect Storm: Parliament and Prisoner Disenfranchisement*, (2012) Parliamentary Affairs 1-29.

² Final Report of the Conference on Electoral Law, Cm 3550, February 1968

The Ministry of Justice included a history of prisoners' voting rights as Appendix B to its second consultation paper on the issue published in April 2009:

1. The provisions governing prisoners' disenfranchisement reflect, in part, the domestic residence based system of electoral registration in the United Kingdom and the purposes and consequences of legal custody. They are the combined result of the common law and statutes governing the franchise and criminal justice.

19th century: from a property-based franchise to the Forfeiture Act 1870

2. The expansion of electoral suffrage has a long history. In 1832, the franchise was given to men who owned land valued at not less than ten pounds. At common law, before 1870, convicted traitors and felons forfeited their lands; the loss of property rights therefore had the consequential effect of excluding them from the suffrage. Persons convicted of a misdemeanour only (a less serious crime) did not lose their property rights on conviction and, accordingly, any imprisonment did not legally disenfranchise them unless they were physically prevented by the fact of being in prison on the day of the poll.

3. The Forfeiture Act 1870 removed the rule by which felons forfeited their land, but section 2 of the Act provided that any person convicted of treason or a felony and sentenced to a term of imprisonment exceeding 12 months lost the right to vote at parliamentary or municipal (local) elections until they had served their sentence. The Act applied to England, Wales and Ireland. The Forfeiture Act 1870 reflected earlier rules of law relating to the forfeiture of certain rights by a convicted "felon". It continued to have effect until the Criminal Law Act 1967, which abolished the distinction between felonies and misdemeanours and consequently amended the 1870 Act so that only persons convicted of treason were left disenfranchised.

20th century: Representation of the People Acts 1918-1969

4. The Representation of the People Act 1918 brought about changes to the general voter registration requirements. In the nineteenth century, entitlement to the franchise had been exercised by making a claim to the overseers of the electoral roll. Once registered, an elector remained on the roll almost indefinitely (unless they moved to a different place), as it was not annually revised. Under the 1918 Act, new arrangements were put in place to revise the register twice a year following house to house and other inquiries by local authority staff. Electors generally had to be able to prove six months residence at a qualifying address in the parliamentary constituency (or related area) in which they wanted to register. Persons in custody, whether in lunatic asylums or prisons, were specified as not falling within the interpretation of "resident" at those places for the purposes of the new electoral registration requirements.

5. In 1968, a multi-party Speaker's Conference on Electoral Law recommended that convicted prisoners in custody should not be entitled to vote. In consequence, the Representation of the People Act 1969 introduced specific provision that convicted persons were legally incapable of voting during the time that they were detained in a penal institution. The 1969 Act applied to persons detained in penal institutions even if convicted abroad and repatriated to prisons in the UK. It also specified the types of "convictions" covered by the legal incapacity, including courts-martial, but not those whose detention related to fine defaults or contempt of court.

In 1999 the Home Office *Working Party on Electoral Procedures* (chaired by the then Home Office Minister, George Howarth), identified the disenfranchisement of convicted but unsentenced prisoners and prisoners detained on remand as an accidental effect of the residence criteria for registration as an elector. The *Representation of the People Act 1983* had provided that a penal institution could not be regarded as a place of residence for registration purposes and individuals who were imprisoned could therefore not register as electors as they were not able to establish any other address for registration purposes.

The Working Party considered that there was no argument of principle to deprive unconvicted prisoners of the franchise and recommended that 'unconvicted remand prisoners should be allowed to continue to be registered on the original register until such time as they are released from remand, or sentenced to a custodial sentence.'³ The Committee recognised that a remand prisoner's home circumstances might change during a period of detention, and therefore recommended that it would be sensible for the names of remanded prisoners to be recorded as 'other electors' rather than against any fixed address. With regard to convicted but unsentenced prisoners, the Working Party recognised that there had been a finding of guilt in the court case, but without the benefit of sentence it would not be clear if the nature and seriousness of the offence justified a custodial sentence. They therefore made no recommendation in respect of this class of prisoner.⁴

The recommendations put forward for remand prisoners were implemented by the *Representation of the People Act 2000*.⁵ The Act did not make provision for the enfranchisement of convicted prisoners, who remain disenfranchised under s3 of the *Representation of the People Act 1983*, as amended.

Successive governments have held the view that prisoners convicted of serious crimes which have warranted imprisonment have lost the moral authority to vote. This position was summarised during questions to the Home Office Minister in the House of Lords in 2003:

Lord Lester of Herne Hill asked her Majesty's Government: Whether denying prisoners the right to vote affects their ability to persuade Ministers of the Crown and those responsible for the Prison Service to improve the conditions in which they are imprisoned; and whether denying prisoners the right to vote amounts to an additional punishment; and whether this is compatible with Article 25 of the International Covenant on Civil and Political Rights as interpreted by the United Nations Human Rights Committee.

The Minister of State, Home Office (Baroness Scotland of Asthal): It has been the view of successive governments that prisoners convicted of a crime serious enough to warrant imprisonment have lost the moral authority to vote. The working party on electoral procedures, which examined and reviewed all electoral arrangements after the general election held in 1997, published its findings on 19 October 1999. It could find no reason to change the existing system in which convicted prisoners found guilty of a crime serious enough to warrant imprisonment are denied the right to vote for the duration of their imprisonment.

Prisoners have a variety of ways in which they can express their views about conditions in prison, including by writing to their Member of Parliament – and many do so.

³ *Working Party on Electoral Procedures 1999*, para 2.3.12

⁴ *Working Party on Electoral Procedures 1999*, para 2.3.13

⁵ Part I, section 5

Article 25 of the International Covenant on Civil and Political Rights covers the rights of the individual to be involved in public affairs and to vote in periodic free elections without unreasonable restrictions. The covenant has not been incorporated into English law, but the UK is signed up to the covenant.

Parliament has decided that the convicted prisoners have forfeited their right to have a say in the way the country is governed for the period during which they are in custody. This temporary disenfranchisement pursues a legitimate aim and is proportionate, and is considered a reasonable restriction within the terms of Article 25. It does not, in our view, affect the substance of Article 25, which is concerned with universal franchise and the free expression of the people in the choice of legislature. Long-standing precedent set by the European Court of Human Rights upholds that certain sections of society, including convicted prisoners, can be excluded from voting.⁶

The Prison Reform Trust has long campaigned for prisoners to be given the vote. In December 1998 it published a briefing, *Prisoners and the Democratic Process*, which argued that voting rights helped prisoners to develop a sense of social responsibility and should be extended to all UK prisoners. The Prison Reform Trust also presented evidence to the Home Affairs Select Committee inquiry into *Electoral Law and Administration* in 1997-98.⁷

On 2 March 2004 the Prison Reform Trust and Unlock (the National Association of Ex-Offenders) launched the 'Barred from Voting' campaign to secure the right to vote for prisoners. The PRT argued that 'giving prisoners the vote would encourage them to take responsibilities that come with citizenship. It would also encourage politicians to take more of an active interest in prisons, which in turn would raise the level of debate about prisons and penal policy.' Backing the 'Barred from Voting' campaign, among others, were former Conservative Home Secretary Lord Douglas Hurd, Liberal Democrat Simon Hughes and Labour peer Baroness Kennedy QC. A letter to the *Guardian* from politicians and prison reformers also supported the group's aims.⁸

The debate achieved greater prominence in March 2005, during the run up to the general election, when Charles Kennedy, then Leader of the Liberal Democrats, called for 'imprisoned criminals to be allowed the right to vote.' In a Channel 5 programme, he told interviewer Kirsty Young, 'we believe that citizens are citizens. Full stop....If you take the view as we do in principle that an individual citizen is an individual citizen that means that you have the entitlement that goes with it in terms of voting.'⁹

There were press reports during the 2005 general election campaign quoting Alan Milburn, Labour's general election co-ordinator, as stating that the Liberal Democrats were more interested in the rights of 'criminals and the yobs' than 'hardworking families who play by the rules,' and criticising Charles Kennedy for 'wanting convicted criminals to have a say in who runs Britain.'

The Conservatives also opposed the Liberal Democrats' views. The then Shadow Home Secretary, David Davis, told *politics.co.uk* that the Liberal Democrats' policy of votes for prisoners 'betrays an extraordinary sense of priorities.' He added, 'We believe that the criminal justice system is already weighted too far in favour of the criminal not the victim. It is

⁶ [HL Deb 20 October 2003 c143 WA](#)

⁷ Appendix 14 HC 768 1997-98

⁸ *The Guardian*, [Don't deny the vote](#), 2 March 2004

⁹ Channel 5, Tuesday 1 March 2005

very important that the Liberal Democrats are never allowed to implement this policy which would unbalance it even further.’

2 The position in other countries

At least eighteen European nations, including Denmark, Finland, Ireland, Spain, Sweden and Switzerland, have no form of electoral ban for imprisoned offenders. In other countries, electoral disqualification depends on the crime committed or the length of the sentence; in some countries prisoners are only allowed to vote at certain elections. In France, certain crimes are identified which carry automatic forfeiture of political rights and Germany’s ban extends only to prisoners whose crimes target the integrity of the state or the democratic order, such as terrorists.

European countries which do not allow prisoners the right to vote include Bulgaria, Estonia, Georgia, Hungary and Liechtenstein.

For further information see the table in Appendix 1 to this Note which gives details of the current position in the Council of Europe countries. This information was provided by the Foreign and Commonwealth Office in response to a Parliamentary Question in the House of Lords on 21 March 2011¹⁰ and was updated in July 2012.¹¹

Russia and Japan exclude all convicted prisoners from voting. In Australia, prisoners can vote in two of seven states, while in the United States, some prisoners are banned from voting even after their release from jail.

The Joint Committee on Human Rights noted, in a report published in 2008, that Ireland had passed legislation in 2006 to enable all prisoners to vote by post in the constituency where they would ordinarily live if they were not in prison. In the same year, Cyprus, which had also previously had a blanket ban on voting for prisoners, passed legislation to provide for full enfranchisement of its prison population.¹²

3 *Hirst v the United Kingdom (No. 2)*

In 2001, three convicted prisoners challenged an Electoral Registration Officer’s decision not to register them to vote.¹³ The High Court dismissed their applications, which in the case of two of them was for judicial review, and in the case of the third (*Hirst v HM Attorney General*), was for a declaration of incompatibility under the *Human Rights Act 1998*, ruling that it was a matter for Parliament, rather than the courts, to decide whether prisoners should have the vote.

On 30 March 2004 the European Court of Human Rights (ECtHR) gave its judgement in the case of *Hirst v The United Kingdom*. John Hirst, a prisoner serving a life sentence for manslaughter at Rye Hill Prison in Warwickshire, had challenged the ban on prisoners’ voting. He had first challenged the ban in the High Court, but lost in 2001 when the court ruled that it was compatible with the European Convention for prisoners to lose the right to a say in how the country was governed.

¹⁰ [HL Deb 21 March 2011c122](#)

¹¹ [Dep 2012-1305](#)

¹² *Monitoring the Government’s response to human rights judgments: annual report 2008*. Thirty-first report of the House of Commons and House of Lords Joint Committee on Human Rights. HC 1078, 2007-08.

¹³ *R v (1) Secretary of State for the Home Department (2) Two Election Registration Officers, Ex Parte (1) Pearson (2) Martinez: Hirst v HM Attorney General (2001) [2001] EWHC Admin 239*

Seven judges at the ECtHR ruled that the UK's ban on prisoners' voting breached Article 3 of Protocol 1 of the European Convention on Human Rights, which guarantees 'free elections...under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.'¹⁴ The Department of Constitutional Affairs released a statement stating that: 'we have always argued that prisoners should lose the right to vote while in detention because if you commit a crime that is serious, you should lose the right to have a say in how you are governed...This judgement questions that position.'¹⁵

The Government subsequently appealed the decision. The appeal was held on 27 April 2005 but the final decision was not announced until 6 October 2005.

In its judgment, *Hirst v UK (No. 2)* [2005] ECHR 681, the Grand Chamber of the European Court of Human Rights held, by a majority of 12 to 5, that there had been a violation of Article 3 of Protocol No. 1 (right to free elections) to the European Convention on Human Rights. In its decision the Court found that prisoners

...generally continued to enjoy all the fundamental rights and freedoms guaranteed under the Convention, except for the right to liberty, where lawfully imposed detention expressly fell within the scope of Article 5 (right to liberty and security). There was, therefore, no question that prisoners forfeit their Convention rights merely because of their status as detainees following conviction. Nor was there any place under the Convention system, where tolerance and broadmindedness were the acknowledged hallmarks of democratic society, for automatic disenfranchisement based purely on what might offend public opinion.

That standard of tolerance did not prevent a democratic society from taking steps to protect itself against activities intended to destroy the rights or freedoms set out in the Convention. Article 3 of Protocol No. 1, which enshrined the individual's capacity to influence the composition of the law-making power, did not therefore exclude that restrictions on electoral rights be imposed on an individual who had, for example, seriously abused a public position or whose conduct threatened to undermine the rule of law or democratic foundations. However, the severe measure of disenfranchisement was not to be undertaken lightly and the principle of proportionality required a discernible and sufficient link between the sanction and the conduct and circumstances of the individual concerned. As in other contexts, an independent court, applying an adversarial procedure, provided a strong safeguard against arbitrariness.

The Court responded to the UK Government's submission that the ban was restricted to only around 48,000 prisoners, 'those convicted of crimes serious enough to warrant a custodial sentence and not including those on remand':

...the Court considered that 48,000 prisoners was a significant figure and that it could not be claimed that the bar was negligible in its effects. It also included a wide range of offenders and sentences, from one day to life and from relatively minor offences to offences of the utmost gravity. Also, in sentencing, the criminal courts in England and Wales made no reference to disenfranchisement and it was not apparent that there was any direct link between the facts of any individual case and the removal of the right to vote.

As to the weight to be attached to the position adopted by the legislature and judiciary in the United Kingdom, there was no evidence that Parliament had ever sought to weigh the competing interests or to assess the proportionality of a blanket ban on the

¹⁴ The [judgment](#) is on the ECHR's website

¹⁵ [BBC Online, Prisoner wins landmark vote case](#), 30 March 2004

right of a convicted prisoner to vote. It could not be said that there was any substantive debate by members of the legislature on the continued justification, in the light of modern day penal policy and of current human rights standards, for maintaining such a general restriction on the right of prisoners to vote.

It was also evident that the nature of the restrictions, if any, to be imposed on the right of a convicted prisoner to vote was in general seen as a matter for Parliament and not for the national courts. The domestic courts did not therefore undertake any assessment of the proportionality of the measure itself.

The Court also found that, although the *Representation of the People Act 2000* had granted the vote to remand prisoners, Section 3 of the *Representation of the People Act 1983* remained a 'blunt instrument' which

...stripped of their Convention right to vote a significant category of people and it did so in a way which was indiscriminate. It applied automatically to convicted prisoners in prison, irrespective of the length of their sentence and irrespective of the nature or gravity of their offence and their individual circumstances. Such a general, automatic and indiscriminate restriction on a vitally important Convention right had to be seen as falling outside any acceptable margin of appreciation, however wide that margin might be, and as being incompatible with Article 3 of Protocol No. 1. The Court therefore held, by 12 votes to five, that there has been a violation of Article 3 of Protocol No. 1.

Considering that the Contracting States had adopted a number of different ways of addressing the question of the right of convicted prisoners to vote, the Court left the United Kingdom legislature to decide on the choice of means for securing the rights guaranteed by Article 3 of Protocol No. 1.

4 Other case law from the European Court of Human Rights

Frodl v Austria

The applicant, who was convicted of murder and sentenced to life imprisonment in 1993 in Austria, alleged that his disenfranchisement, because he was serving a term of imprisonment of more than one year, constituted a breach of his rights under Article 3 of Protocol No 1. The [judgment](#) of the European Court of Human Rights, which became final on 4 October 2010, was that there had been a breach of Article 3 of Protocol No 1. The judgment noted the similarities with the *Hirst* case:

28. The Court observes at the outset that the present case has certain similarities with the case of *Hirst* (cited above). In that case the Court found a breach of Article 3 of Protocol No. 1 on account of Mr Hirst's disenfranchisement as a prisoner following his conviction for manslaughter. While the Court accepted in principle that the member States had a wide margin of appreciation and left it to them to decide which restrictions on the right of prisoners to vote could legitimately be imposed, it nevertheless set out several criteria which had to be respected by member States in imposing such restrictions (see *Hirst*, cited above, §§ 61 and 82). Disenfranchisement may only be envisaged for a rather narrowly defined group of offenders serving a lengthy term of imprisonment; 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 (*ibid.*, §§ 77-78). In finding a breach of Article 3 of Protocol No. 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 (*ibid.*, § 82).

As regards the existence of a legitimate aim, the applicant emphasised that the Government did not explicitly list specific aims pursued by the disenfranchisement of prisoners in Austrian law and argued that for that reason alone the measure at issue must be regarded as not being in accordance with Article 3 of Protocol No. 1.¹⁶

Scoppola v Italy (No 3)

The European Court of Human Rights ruled that there was a violation of the European Convention on Human Rights 1950 Protocol 1 Article 3 in *Scoppola v Italy (No.3)* because the voting ban imposed on the applicant following a criminal conviction was unjustified.¹⁷

The applicant, Franco Scoppola was sentenced in 2002 by the Assize Court to life imprisonment for murder, attempted murder, ill-treatment of members of his family and unauthorised possession of a firearm. Under Italian law his life sentence entailed a lifetime ban from public office, amounting to permanent forfeiture of his right to vote. Appeals by the applicant against the ban were unsuccessful. In 2010, his sentence was reduced to 30 years' imprisonment. Scoppola subsequently complained that the ban on public office imposed as a result of his life sentence had amounted to a permanent forfeiture of his entitlement to vote. A press notice issued on 18 January 2011 gave the decision of the court:

The Court reiterated that a blanket ban on the right of prisoners to vote during their detention constituted an "automatic and indiscriminate restriction on a vitally important Convention right ... falling outside any acceptable margin of appreciation, however wide that margin may be". It had held that a decision on disenfranchisement should be taken by a court and should be duly reasoned.

While it was not disputed that the permanent voting ban imposed on the applicant had a legal basis in Italian law, the application of that measure was automatic since it derived as a matter of course from the main penalty imposed on him (life imprisonment).

That general measure had been applied indiscriminately, having been taken irrespective of the offence committed and with no consideration by the lower court of the nature and seriousness of that offence. The possibility that the applicant might one day be rehabilitated by a decision of a court did not in any way alter that finding.

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 of Protocol No. 1.¹⁸

In July 2011 the Grand Chamber of the European Court of Human Rights accepted a referral in the case of *Scoppola*, this was at the request of the Italian government, and a hearing before the Grand Chamber was scheduled for 2 November 2011.

The Grand Chamber's judgment was announced on 22 May 2012. The Court found that there had been no violation of Article 3 of Protocol No. 1 (right to free elections) to the European Convention on Human Rights and that the convicted prisoner's disenfranchisement was not disproportionate. The judgment of the Grand Chamber did not go as far as the court had in the case of *Frodl v Austria*, and therefore it seems that countries

¹⁶ *ibid*

¹⁷ <http://www.echr.coe.int/ECHR/EN/hudoc>

¹⁸ *ibid*

have a wider margin of appreciation in terms of any ban on prisoner voting than had initially seemed to be the case (in particular it is not clear that there has to be a direct link between the facts on which a conviction is based and the sanction of disenfranchisement, nor does the penalty have to be imposed by a judge).

In two more recent cases involving Russia and Turkey the Court has confirmed that general prohibitions on prisoner voting are contrary to Article 3, Protocol 1.¹⁹ These cases, while not affecting the United Kingdom directly, confirm the growing body of case-law on this issue.

A further case, which is directly applicable to the UK, is the 2013 decision in *McLean and Cole v United Kingdom*, which addressed the scope of the right in question in terms of the elections to which it applied. The Court noted that the wording of Article 3, Protocol 1 “is limited to elections concerning the choice of legislature and does not apply to referendums.” The Court also confirmed that the UK’s Convention obligations did not extend to local government elections, as local authorities are “the repositories of powers which are essentially of an administrative nature.”²⁰

5 The first consultation on prisoners’ voting rights 2006-2007

On 2 February 2006 the then Lord Chancellor announced in a written statement that there would be a public consultation about prisoners’ voting rights following the recent ECtHR judgment:

The recent judgment of the European Court of Human Rights in the case of *Hirst*, concerning prisoners' voting rights, has raised a number of difficult and complex issues which need careful consideration. The ECHR indicated that there should be proper debate about those issues. I have therefore concluded that the best way forward would be to embark on full public consultation in which all the options can be examined and which will give everyone the opportunity to have their say.²¹

The consultation document was published on 14 December 2006. Lord Falconer of Thoroton announced its publication in a written statement:

The paper sets out the background to the case of *Hirst v UK*, the conclusions reached by the Grand Chamber, and proposes a number of potential options on which the Government would welcome views. This is a contentious issue. The Government are firm in their belief that individuals who have committed an offence serious enough to warrant a term of imprisonment, should not be able to vote while in prison. None the less, we recognise that we must decide how to respond to the Grand Chamber's judgment.

The Government welcome responses from all sides of the debate. We encourage respondents to consider thoroughly the background material provided and each option before submitting a response. The final date for submitting a response is 7 March 2007. Following the results of this consultation, the Government will produce a second stage consultation document, exploring how any proposed change to current arrangements might work in practice. Once the consultation process has concluded and views have been considered, we will put proposals to Parliament, which must, ultimately, debate and decide upon an issue as significant as this.²²

¹⁹ *Anchugov and Gladkov v Russia* (ECHR 203 (2013)) and *Söyler v Turkey* (ECHR 260 (2013))

²⁰ *McLean and Cole v United Kingdom* (2013), Application Nos. 12626/13 and 2522/12, paragraphs 32, 29

²¹ [HL Deb 2 February 2006 cWS26](#)

²² [HL Deb 14 December 2006 cWS201](#)

The document set out the possible options for the enfranchisement of prisoners and sought views on the retention of the ban on voting for all convicted, detained prisoners. The options included relating disenfranchisement to the length of sentence and allowing judges to determine whether the right to vote should be withdrawn from an offender. The consultation process was to have two stages before any proposals were put before Parliament. The first stage would ascertain whether any form of enfranchisement should be taken forward and the second would look at the possible impact of a change in the law on the conduct of elections in the UK, on electoral administrators and on the prison service.

More than a year after the end of the first consultation period, on 6 May 2008, Lord Lester of Herne Hill QC asked about the progress following the first stage of the consultation process and whether the Government intended to introduce draft legislation to implement the ECHR judgment. The then Minister, Lord Hunt of Kings Heath, replied:

The Government have previously submitted to the Committee of Ministers a timetable based on a two-stage consultation process aimed at establishing the views of the public, electoral administrators and others on how the franchise should be extended and on the wealth of detailed questions about how this would be achieved in practical terms. The first consultation exercise concluded in March 2007. However, since that point the context for the debate about the rights and responsibilities of citizenship, and in particular the exercise of the franchise, in the United Kingdom has changed very significantly.

In July 2007 the Government published *The Governance of Britain*, a Green Paper setting out a range of proposals to reinvigorate democracy and rebuild public trust and engagement in politics. At the core of the Green Paper is a proposal for a national debate on citizenship, and the rights and responsibilities that attach to the concept of being a citizen. The Government committed to taking action to ensure a clearer definition and understanding of the rights and responsibilities that attach to British citizenship. In addition, the Goldsmith review published on 11 March 2008 made recommendations about the right to vote being linked to citizenship.

The Government remain committed to carrying out a second, more detailed public consultation on how voting rights might be granted to serving prisoners, and how far those rights should be extended. In light of *The Governance of Britain* Green Paper and the Goldsmith review, the Government consider it essential that changes to the law to extend the franchise to those held in custody are considered in the context of the wider development of policy on the franchise and the rights that attach to British citizenship, in order that reform in this fundamental area can proceed in a holistic way.

The Committee of Ministers is next due to sit from 4 to 6 June 2008 and the Government have submitted details of our intended course of action. We intended to submit further information to the Committee of Ministers in due course on the form and timing of a further consultation in the light of the wider debate which is now taking place. Following consideration of the outcome of consultation, legislation to implement the Government's final approach will be brought forward as soon as parliamentary time allows.²³

Lord Hunt of Kings Heath added that the Government anticipated that Section 3 of the *Representation of the People Act 1983* would need to be amended either by primary legislation or remedial order in order to comply with the ECHR judgment.²⁴

²³ [HL Deb 6 May 2008 cWA59](#)

²⁴ [HL Deb 6 May 2008 cWA60](#)

In September 2008 the then Lord Chancellor, Jack Straw, replied to a Parliamentary Question about the ECHR judgment and said:

Since the judgment we have kept the Committee of Ministers updated on progress towards implementing the 'Hirst no 2' judgment. During April 2008 we provided the Committee's Secretariat with a detailed note about implementation of the judgment and we have undertaken to submit further information in due course on the form and timing of a further consultation.²⁵

The note to the Committee of Ministers (dated 14 March 2008) can be found in the written evidence to the 31st report of the House of Commons and House of Lords Joint Committee on Human Rights 2007-08.²⁶ The note acknowledged that there had been a delay in the timetable originally envisaged for the conduct of the second consultation which had been due to take place between November 2007 and February 2008.

Options for changing the law

The Labour Government's proposed options for changing the law were set out in the first consultation paper.

Enfranchise prisoners sentenced to less than a specified term

The policy of a number of member states of the Council of Europe is to allow prisoners sentenced for less than a specified term to retain the right to vote but to disenfranchise those who have been given longer sentences. The consultation document noted that in Belgium those prisoners who receive a sentence of longer than 4 months are disqualified from voting; in Austria prisoners who are sentenced for a year or more are disqualified; in Italy prisoners serving 5 years or more are disqualified and in Greece all prisoners who are given a life sentence are permanently disenfranchised.²⁷ The Government acknowledged in the consultation paper that setting the threshold at which prisoners become disenfranchised may lead to inconsistencies and indicated that it was 'not inclined to consider extending the eligible length of sentence beyond low sentence lengths, such as one year in prison.'²⁸

Allow sentencers to decide on withdrawal of franchise

There are two alternative means of doing this. The first would be for legislation to empower judges to determine whether, despite a general disenfranchisement of prisoners, the offender should retain the capacity to vote. The second would empower judges to direct that the offender should be disqualified even if there were no general disqualification of prisoners. Individual consideration would demonstrate a move away from the general ban on prisoners' voting rights but this option would increase the burden on the judiciary when determining sentences.

Enfranchise all tariff-expired life sentence prisoners

The Government indicated in the consultation document that it considered it undesirable to enfranchise prisoners who are kept beyond the original length of their sentence due to their continued threat to the public.

Proposals specific to convicted prisoners found guilty of election offences

²⁵ [HC Deb 10 September 2008 c1981W](#)

²⁶ <http://www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/173/173.pdf> See page 78.

²⁷ *Voting rights of convicted prisoners detained within the United Kingdom- the UK Government's response to the Grand Chamber of the European Court of Human Rights judgment in the case of Hirst v. the United Kingdom: consultation paper.* Department for Constitutional Affairs, 14 December 2006
<http://www.dca.gov.uk/consult/voting-rights/cp2906.pdf>

²⁸ *ibid*, p24

Prisoners who receive custodial sentences after being convicted of certain election offences automatically lose their right to vote under the current ban on prisoners voting. Penalties for election offences which are classed as corrupt practices mean that the convicted offender will be barred from holding elective office for 5 years and in the case of offences relating to postal or proxy votes the offender will also be barred from voting for a period of 5 years. The Government asked whether, in the light of the European Court's judgment, these offences should mean an automatic withdrawal of the franchise.

Proposals specific to unconvicted and convicted offenders detained in mental hospitals

Under Section 3A of the *Representation of the People Act 1983* offenders detained in mental hospitals are not able to register to vote. The Government asked for views on whether any changes to the ban on prisoners voting should be extended to those detained in such hospitals although it would not consider extending the vote to patients who were subject to restriction orders under Section 41 of the *Mental Health Act 1983*.

Responses to the consultation paper

The Labour Government published a summary of responses to the first consultation paper in the second stage consultation paper (see below). A total of 88 responses were received and the Government noted that these were highly polarised; 41 respondents made strong representations for the introduction of full enfranchisement for convicted prisoners and 22 respondents wanted the present ban on the enfranchisement of prisoners to continue. Of the 40 members of the public who responded, 15 were in favour of retaining the blanket ban and 15 were in favour of enfranchising all prisoners. In response to the question as to whether the enfranchisement of prisoners should be determined by the length of sentence they receive, only 4 respondents favoured this; 50 respondents rejected such a system and 34 responded with a 'not applicable/no comment' answer.²⁹

6 The second consultation on prisoners' voting rights 2009

The Ministry of Justice published the second stage consultation paper on 8 April 2009.³⁰ The Labour Government stated that, following the first consultation, it had concluded that 'to meet the terms of the [ECHR] judgment a limited enfranchisement of convicted prisoners in custody should take place, with eligibility determined on the basis of sentence length' but acknowledged that the final decision on the extension of the franchise to convicted prisoners must rest with Parliament.³¹

The consultation paper set out four options as to how the enfranchisement of convicted prisoners determined by their sentence could be implemented:

- i. Prisoners who have been sentenced to a period of less than 1 year's imprisonment would automatically retain the right to vote (subject to certain exceptions based on the type of offence for which they have been convicted). Prisoners sentenced to a term of 1 year's imprisonment or more would not be entitled to vote; or
- ii. Prisoners who have been sentenced to a period of less than 2 years' imprisonment would automatically retain the right to vote (subject to certain exceptions based on the type of offence for which they have been convicted). Prisoners sentenced to a term of 2 years' imprisonment or more would not be entitled to vote; or

²⁹ [Voting rights of convicted prisoners detained within the United Kingdom: second stage consultation](#). Consultation Paper CP6/09, Ministry of Justice, 8 April 2009, p15

³⁰ *ibid*

³¹ *ibid*, p21

iii. Prisoners who have been sentenced to a period of less than 4 years would automatically retain the right to vote (subject to certain exceptions based on the type of offence for which they have been convicted). Prisoners sentenced to a terms of 4 years' imprisonment or more would not be entitled to vote in any circumstances; or

iv. Prisoners who have been sentenced to a period of less than 2 years' imprisonment would automatically retain the right to vote (subject to certain exceptions based on the type of offence for which they have been convicted). In addition, prisoners who have received sentences of more than 2 but less than 4 years could apply to be entitled to vote, but only where a Judge grants permission in their specific case. Prisoners sentenced to a term of 4 years' imprisonment or more would not be entitled to vote in any circumstances.³²

The consultation paper sought views on these options and also on whether the sentencing court should have a role in determining whether a prisoner should lose his right to vote and whether those convicted of electoral offences should not be allowed to retain the right to vote in any circumstances. The consultation paper also addressed practical issues concerning the registration of prisoners including voting by post. The Government suggested that there were significant disadvantages to prisoners being registered in the local authority area in which the prison was located and that they should be registered in the area where they were last resident before they were imprisoned. Prisoners should also be able to register in a particular area by making a 'declaration of local connection' although they would be barred from making such a declaration to register in the constituency in which the prison was situated unless they could demonstrate a genuine connection with this locality.

The consultation paper gave details of the number of sentenced prisoners currently serving sentences in prisons in England and Wales. As at February 2009 there were 63,600 prisoners who were British, Irish, Commonwealth or other EU nationals:

Of that total figure, 6,700 were serving sentences of less than 1 year, 7,200 were serving sentences of 1 year or more but less than 2 years, and 14,900 were serving sentences of 2 years or more but less than 4 years. Therefore:

- If we were to enfranchise all prisoners serving less than one year, approximately 6,700 prisoners would be enfranchised for some or all elections (or 11% of the 63,600 total).
- If we were to enfranchise all prisoners serving less than two years, approximately 13,900 prisoners would be enfranchised for some or all elections (or 22% of the total).
- If we were to enfranchise all prisoners serving less than four years, approximately 28,800 prisoners would be enfranchised for some or all elections (or 45% of the total).³³

7 Scotland

In November 2004, a former prisoner in a Scottish jail, William Smith, brought forward an action that denying inmates the right to vote breached human rights legislation. He lodged the claim while serving a short sentence at Glenochil Prison in Clackmannanshire, having been refused the right to register to vote by the Deputy Electoral Registration Officer in

³² *ibid*, p8

³³ *ibid*, p27

Stirling. Once released, he was granted legal aid to press ahead with his test case at the Court of Session in Edinburgh.

The case was called before the Registration Appeal Court on 17 February 2005.³⁴ The hearing was procedural and a further respondent was allowed as a party to the appeal, namely the Secretary of State for Constitutional Affairs.³⁵ The Registration Appeal Court heard the appeal on 24 November 2006. The *Scotsman* reported:

The results of next year's Scottish Parliament elections could be challenged by prisoners if it goes ahead without inmates getting the vote, a court was told yesterday. A QC warned that the human rights of up to 7,000 prisoners could be violated. Aidan O'Neill told the Registration Appeal Court that legal actions could be brought by prisoners who said they had been wrongly disenfranchised. He argued that interdicts might be sought because the Scottish ministers would be assisting an election being held on the basis of an electoral franchise which was incompatible with the European Convention on Human Rights. He asked three judges to make a declaration that a decision to deny a prisoner the right to vote was incompatible with the convention. A ruling is expected later.³⁶

The BBC reported on 24 January 2007 that three judges at the Court of Session had issued a declaration that the blanket ban on convicted prisoners voting was incompatible with their human rights. Lord Abernethy, who heard the appeal with Lord Nimmo Smith and Lord Emslie, said the elections in May 2007 (for the Scottish Parliament and local government) would take place in a way which was not compliant with the European Convention on Human Rights. The judges said they had come to the view that they "should make a formal declaration of incompatibility to that effect".³⁷

In July 2014, the Court of Session upheld an earlier judgment by Lord Glennie³⁸ that two prisoners who had been convicted of murder were not entitled to vote in the referendum on Scottish independence. The Court of Session ruled (amongst other things) that:

[...] there is a clear and constant line of Strasbourg law determining that A3P1 does not apply to referenda (for example, *X v UK* (application no 7096/75, the British referendum on EEC membership); *Castelli v Italy* (application no 35790/97); *McLean and Cole v UK* (2013) 57 EHRR SE8 at paragraph 32; and other cases cited by the Lord Ordinary in paragraph [22] of his judgment). In such circumstances we do not accept that it would be a natural development of Strasbourg law to hold that A3P1 extends to referenda [...]

[...] As has been established by *X v Netherlands* (application no 6573/74), *X v UK* (application no 7096/75), and further decisions noted in the Lord Ordinary's Opinion at paragraph [37], article 10 [of the European Convention on Human Rights] does not guarantee a right to vote [...].

We take the view that there is no clearly identifiable common law fundamental right to vote in the UK and certainly not a clearly identifiable common law

³⁴ A Scottish Executive report (*Civil Judicial Statistics 2002*, p32) described the Registration Appeal Court in the following terms: 'In the matter of registration of voters, appeal against a decision of a registration officer may be taken to the Sheriff and from his decision appeal lies on any point of law, by way of stated case to a Court consisting of three judges of the Court of Session, appointed by Act of Sederunt.'

³⁵ *William Smith v Electoral Registration Officer and another* XA33/04

³⁶ Prisoners could challenge Holyrood poll, *Scotsman*. 24 November 2006

³⁷ *BBC Online*, [Court rules on prison voting ban](#), 24 January 2007

³⁸ *BBC Online*, [Scottish independence: Killers lose referendum vote bid](#), 19 December 2013

fundamental right to vote in a referendum. Thus, in our opinion, no such right is contravened by the Scottish Independence Referendum (Franchise) Act 2013.³⁹

The Supreme Court dismissed an appeal against the judgment of the Court of Session on 24 July 2014.⁴⁰ The reasoned judgment in the case was published on 17 December 2014.⁴¹

8 Northern Ireland

On 20 February 2007 three prisoners in Northern Ireland, Stephen Boyle, Ciaran Toner and Hugh Walsh, were granted leave by the High Court to seek a judicial review of the decision refusing their application to be put on the electoral register. The hearing took place on Thursday 1 March, just before the Northern Ireland Assembly elections on 7 March 2007.⁴² Mr Justice Gillen said that the elections were a matter of profound importance to the people of Northern Ireland and that no impediment should be put in the path of progress and dismissed the case.

A Parliamentary Question answered on 4 February 2011 asked about the voting rights of prisoners in the elections to the Scottish Parliament and the Minister indicated that there was an appeal before the European Court about whether there was a requirement to enfranchise prisoners for the devolved assembly elections:

Thomas Docherty: To ask the Deputy Prime Minister what legal advice he has received on the application of his proposals for prisoner voting rights to elections to the Scottish Parliament.

Mr Harper: The Government have proposed that the right to vote will be restricted to UK Westminster parliamentary and European parliament elections only as that is the minimum currently required by law. The question of whether there is a requirement to enfranchise prisoners for elections to the devolved legislatures is currently before the European Court of Human Rights in the case of *Toner v. United Kingdom* Appl No. 8195/08. In its written observations on that case, the United Kingdom argued that elections to the Northern Ireland Assembly fell outside the scope of the right to free and fair elections in Article 1 of Protocol 3 to the European Convention on Human Rights.⁴³

9 Reports of the Joint Committee on Human Rights

The House of Lords and House of Commons Joint Committee on Human Rights considered the ECtHR judgment in its sixteenth report of 2006-07 which monitored the Government's response to court judgments finding breaches of human rights. The Joint Committee made the following recommendations:

77. We acknowledge that many people will question why prisoners should be entitled to vote in elections and that the Government would be taking a generally unpopular course if it were to enfranchise even a small proportion of the prison population. Nevertheless, the current blanket ban on the enfranchisement of prisoners is incompatible with the UK's obligations under the European Convention and must be dealt with.

³⁹ [Moohan and Gillon v Lord Advocate \[2014\] CSIH 56](#)

⁴⁰ <http://supremecourt.uk/news/scottish-independence-referendum-prisoner-voting.html>

⁴¹ [Moohan v Lord Advocate \[2014\] UKSC 67](#)

⁴² BBC Online, [Prisoners in legal battle to vote](#), 20 February 2007

⁴³ [HC Deb 4 February 2011 c990W](#)

78. 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. The continued failure to remove the blanket ban, enfranchising at least part of the prison population, is clearly unlawful. It is also a matter for regret that the Government should seek views on retaining the current blanket ban, thereby raising expectations that this could be achieved, when in fact, this is the one option explicitly ruled out by the European Court.

79. We recommend that the Government bring forward a solution as soon as possible, preferably in the form of an urgent Remedial Order. We strongly recommend that the Government publish a draft Remedial Order as part of its second stage of consultation. 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.⁴⁴

The Joint Committee again noted the Government's delay in responding to the ECtHR judgment in its 31st report of 2007-08.⁴⁵ The Committee once again recommended action to resolve the issue:

62. Against this background, the Government's change of approach and failure to set a concrete timetable for its response raises serious questions about its reluctance to deal with this issue. In our previous reports, we have drawn attention to a number of cases where significant delay in implementation has tarnished the otherwise good record of the United Kingdom in responding to the judgments of the European Court of Human Rights. For the most part, these cases have been legally straightforward, but politically difficult. This case appears destined to join a list of long standing breaches of individual rights that the current Government, and its predecessors, have been unable or unwilling to address effectively within a reasonable time frame. The Government should rethink its approach.

63. We call on the Government to publish the responses to its earlier consultation and to publish proposals for reform, including a clear timetable, without further delay. A legislative solution can and should be introduced during the next parliamentary session. If the Government fails to meet this timetable, there is a significant risk that the next general election will take place in a way that fails to comply with the Convention and at least part of the prison population will be unlawfully disenfranchised.⁴⁶

Raising the issue in its fourth report of 2008-09 the Joint Committee said that it accepted that difficult political issues were involved in meeting the requirements of the judgment but said that it remained for the Government to take the initiative and to propose a solution. The Committee suggested amending the *Political Parties and Elections Bill* currently before Parliament to make UK electoral law compatible with the ECtHR judgment. The Committee concluded that

1.19 It is unacceptable that the Government continues to delay on this issue. The judgment of the Grand Chamber was clear that the blanket ban on prisoners voting in our current electoral law is incompatible with the right to participate in free elections.

⁴⁴ *Monitoring the Government's response to court judgments finding breaches of human rights*. Sixteenth report of the House of Commons and House of Lords Joint Committee on Human Rights. HC 728, 2006-07

⁴⁵ *Monitoring the Government's response to human rights judgments: annual report 2008*. Thirty-first report of the House of Commons and House of Lords Joint Committee on Human Rights. HC 1078, 2007-08

⁴⁶ *ibid*, paras 62 and 63

We call on the Government to explore the possibility of bringing forward amendments to this Bill, to give effect to the European Court's judgment.⁴⁷

On 21 July 2009 the Chair of the Joint Committee on Human Rights, Andrew Dismore MP, wrote to the then Lord Chancellor, Jack Straw, asking for further information about the Government's response to the Hirst judgment and the second stage of the consultation in particular. The JCHR asked the Government to publish the responses to the first stage of the consultation and noted that the Government had not commented on the fact that a significant proportion of these responses had been in favour of full enfranchisement of prisoners. The Committee also asked why the Government's proposals in the second consultation were based on a system of enfranchisement which depended on the length of sentence being served by a prisoner given that only four respondents in the first consultation favoured such a system.

The JCHR asked for an explanation of the Government's view that continuing a blanket ban for all prisoners serving a custodial sentence over a set duration was compatible with Article 3 of Protocol 1 of the European Convention on Human Rights and for any information which the Government had provided to the Committee of Ministers since June 2009 to be made available to the JCHR. The Committee also asked whether the Government had made any commitment to ensure that a solution would be in place before the next general election.

The Government responded to the letter from the JCHR on 8 October 2009.⁴⁸ The then Minister of State, Michael Wills, reiterated the Government's position that there were legitimate reasons for removing a prisoner's right to vote. Mr Wills responded to the Committee's questions as follows:

- the individual responses to the first consultation would be sent to the JCHR
- the Government had taken account of the number of respondents who urged full enfranchisement of prisoners but noted that responses to the first consultation paper were heavily polarised
- the Government believed that not allowing the enfranchisement of prisoners who are sentenced to 4 years' imprisonment or more was compatible with the ECHR ruling
- the Government was not entirely opposed to the possibility of giving sentencers some role in the enfranchisement of prisoners
- a remedial order under Section 10 of the *Human Rights Act 1998* would not be appropriate as the means of legislating for the implementation of the response to the *Hirst* judgment⁴⁹
- the most recent update provided by the Government to the Committee of Ministers for the meeting of 2-5 June 2009 was attached as an annex to Mr Wills's letter

⁴⁷ *ibid*, para 1.19

⁴⁸ [Letter](#) from Rt Hon Michael Wills MP, Minister of State, Ministry of Justice, to Andrew Dismore MP, Chair of the Joint Committee on Human Rights, dated 8 October 2009

⁴⁹ 'A remedial order is a form of subordinate legislation which has the power to amend or repeal primary legislation for purposes and in circumstances specified in the Human Rights Act 1998. It is a fast track method of removing incompatibilities with Convention rights which emerge in the course of litigation in courts in the United Kingdom or at the European Court of Human Rights at Strasbourg.' Erskine May, 24th^d ed., 2004, p691

- the Government recognised that the implementation of the judgment was taking some time but, even if the issue was not resolved by the next general election, the Government did not consider that the legality of the election would be called into question.

10 Resolution of the Council of Europe's Committee of Ministers

On 3 December 2009 the Committee of Ministers adopted a resolution calling for the UK Government to lift the blanket ban on prisoners' voting. Interim Resolution CM/ResDH (2009)1601:

EXPRESSES SERIOUS CONCERN 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;

URGES the respondent state, following the end of the second stage consultation period, to rapidly adopt the measures necessary to implement the judgment of the Court;

DECIDES to resume consideration of this case at their 1078th meeting (March 2010) (DH), in the light of further information to be provided by the authorities on general measures.⁵⁰

At their meeting on 2 - 4 March 2010 the Committee of Ministers issued a warning to the UK Government to "rapidly adopt" measures to enable prisoners to vote in the forthcoming general election. The Committee

...reiterated their serious concern that a failure to implement the Court's judgment before the general election and the increasing number of persons potentially affected by the restriction could result in similar violations affecting a significant category of persons, giving rise to a substantial risk of repetitive applications to the European Court;

5. strongly urged the authorities to rapidly adopt measures, of even an interim nature, to ensure the execution of the Court's judgment before the forthcoming general election;

6. decided to resume consideration of this item at their 1086th meeting (June 2010) (DH) in the light of further information to be provided by the authorities on general measures.⁵¹

At their meeting on 1-3 June 2010 the Committee of Ministers expressed 'profound regret' that the ban had not been lifted in time for the general election and

expressed confidence that the new United Kingdom government will adopt general measures to implement the judgment ahead of elections scheduled for 2011 in Scotland, Wales and Northern Ireland, and thereby also prevent further, repetitive applications to the European Court;

⁵⁰ Resolution <https://wcd.coe.int/ViewDoc.jsp?id=1556821&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

⁵¹ [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec\(2010\)1078&Language=lanEnglish&Ver=immediat&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2010)1078&Language=lanEnglish&Ver=immediat&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383)

6. decided to resume consideration of this case at their 1092nd meeting (September 2010) (DH), in light of a draft interim resolution to be prepared by the Secretariat if necessary.⁵²

At its meeting on 2 December 2010 the Committee of Ministers

1. recalled that, in the present judgment, delivered on 6 October 2005, the Court found that the general, automatic and indiscriminate restriction on the right of convicted prisoners in custody to vote, fell outside any acceptable margin of appreciation and was incompatible with Article 3 of Protocol No. 1 to the Convention;

2. recalled that at its meeting in December 2009, the Committee of Ministers adopted Interim Resolution [CM/ResDH\(2009\)160](#), in which it urged rapid adoption of the general measures by the Respondent State;

3. noted that despite this, the United Kingdom general election was held on 6 May 2010 with the blanket ban on the right of convicted prisoners in custody to vote still in place;

4. recalled that in such circumstances the risk of repetitive applications identified by the Committee has materialised, as stated by the European Court in the pilot judgment, Greens and M.T. against the United Kingdom (60041/08 and 60054/08, judgment of 24/11/2010 not yet final), with over 2 500 clone applications received by the European Court;

5. noted that the United Kingdom authorities have confirmed that they will present draft legislation to implement the judgment in the near future as announced on 3 November by the Prime Minister to the United Kingdom Parliament;

6. expressed hope that the elections scheduled for 2011 in Scotland, Wales and Northern Ireland can be performed in a way that complies with the Convention;

7. called upon the United Kingdom authorities to present an Action plan for implementation of the judgment which includes a clear timetable for the adoption of the measures envisaged, without further delay;

8. decided to resume consideration of this item at their 1108th meeting (March 2011) (DH), in the light of further information to be provided by the authorities on general measures.⁵³

11 The Constitutional Reform and Governance Bill 2009-10

The second reading of the Bill in the House of Lords took place on 24 March 2010. Due to the imminence of the dissolution of Parliament all other stages of the Bill in the Lords were expedited. During committee stage on 7 April 2010 an amendment was moved by Lord Ramsbotham, a former Chief Inspector of Prisons, to remove Section 3 of the *Representation of the People Act 1983*, which bans convicted prisoners from voting. Lord Ramsbotham criticised the Labour Government for the delays in the consultations on the issue:

⁵² [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec\(2010\)1086&Language=lanEnglish&Ver=immediat&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2010)1086&Language=lanEnglish&Ver=immediat&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383)

⁵³ <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1715857&Site=CM>

The prevarications included the charade of two so-called consultations. The first, initiated in December 2006 and promising a legislative solution early in 2008, was farcical on two counts: first, it was based on the wrong question. The court having ruled that all convicted prisoners have the right to vote, the issue should have been who should not, rather than who should be allowed to do so. Secondly, there was no response until April 2009, over two years later, and a year after the promised solution. The second consultation, announced at the same time as the results of the first, was also farcical on two counts: first, it lasted for 20 weeks, ignoring the Government's published code of practice laying down a maximum of 12 weeks; and, secondly, because despite frequent questioning it was clear from the start that the Minister of Justice had no intention of doing anything before the election.⁵⁴

Lord Ramsbotham went on to call for action by the next Government and added:

There is another reason why I want to put the issue on the record. The Government's prevarication amounts to nothing less 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? What message does that attitude to the law send, not just to criminals but to young people who may be tempted to turn to crime?⁵⁵

The then Minister, Lord Bach, said that seeking to implement the Hirst judgment as an amendment to the Bill was not appropriate and that it was 'vital that Parliament had proper time to scrutinise, debate and amend proposals for enfranchising prisoners.'⁵⁶ Lord Ramsbotham acknowledged that, in view of the stage of the Bill, the amendment could not be taken forward but said there was a need 'to get on with this issue and avoid the shame of being criticised by Europe for the fact that we have failed to take action.'⁵⁷

12 Urgent Question 2 November 2010

On 2 November 2010 Sadiq Khan, the Shadow Justice Secretary, asked an urgent question about the Government's plans to give prisoners the vote. This followed press reports that the Government was preparing to change the law. The Minister, Mark Harper, said

The Government accept, as did the previous Government, that as a result of the judgment 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.⁵⁸

Mr Harper was asked about the payment of damages to prisoners who have brought legal cases against the Government; he said that there were currently more than 1,000 pending cases and 'a real risk that judges will award millions of pounds in damages to be paid by our

⁵⁴ [HL Deb 7 April 2010 c1643](#)

⁵⁵ *ibid*, c1644

⁵⁶ *ibid*, c1648

⁵⁷ *ibid*, c1649

⁵⁸ [HC Deb 2 November 2010 c771](#)

taxpayers to prisoners who have been denied the vote.⁵⁹ Several Members asked why the UK government had to be bound by the judgment of the European Court of Human Rights; Mr Harper responded that because the UK had been a signatory to the European Convention on Human Rights for sixty years it was bound by the Court's decision. Although Mr Harper was pressed on how the Government intended to implement the judgment he gave no further details about this saying that ministers were still considering the issue.

At Prime Minister's Questions on 3 November 2010, David Cameron was asked about prisoners' voting rights:

Gareth Johnson (Dartford) (Con): Does the Prime Minister agree that it would be wrong for convicted prisoners to be able to vote, as suggested by the European Court of Human Rights? The incarceration of convicted prisoners should mean a loss of rights for that individual, and that must surely include the right to vote.

The Prime Minister: I completely agree with my hon. Friend. It makes me physically ill even to contemplate having to give the vote to anyone who is in prison. Frankly, when people commit a crime and go to prison, they should lose their rights, including the right to vote. But we are in a situation that I am afraid we have to deal with. This is potentially costing us £160 million, so we have to come forward with proposals, because I do not want us to spend that money; it is not right. So, painful as it is, we have to sort out yet another problem that was just left to us by the last Government.⁶⁰

13 Statement on prisoners' voting rights 20 December 2010

On 20 December 2010, Mark Harper, the Minister for Political and Constitutional Reform, announced in a written ministerial statement that offenders sentenced to a custodial sentence of less than four years would have the right to vote in UK Westminster Parliamentary and European Parliament elections, unless the judge considered this inappropriate when making the sentence. The text of the statement is given below:

A bar on sentenced, serving prisoners voting was first put in place in 1870. Successive Governments have maintained the position that, when an individual breaks their contract with society by committing an offence that leads to imprisonment, they should lose the right to vote while they are incarcerated.

Five years ago, in a case known as *Hirst (No.2)*, the Grand Chamber of the European Court of Human Rights ruled that the existing statutory bar on convicted prisoners voting was contrary to article 3, protocol 1 of the European Convention on Human Rights-the right to free and fair elections.

The Court ruled that barring convicted prisoners in detention pursued a legitimate aim, but that a blanket ban was not proportionate. In its judgment, the Court acknowledged that the right to vote under the first protocol was not absolute, and that contracting states to the European Convention had to be given a margin of appreciation-a broad discretion-to decide what limitations on that right would be proportionate.

That judgment was handed down in October 2005. The last Government stated clearly and repeatedly that they would implement the judgment, published a timetable for legislation, and issued two consultation papers about how to do so. But they did nothing. The result is that the United Kingdom stands in breach of international law obligations-obligations that we expect others to uphold-and prisoners are bringing compensation claims as a direct result of the last Government's inaction.

⁵⁹ [HC Deb 2 November 2010 c772](#)

⁶⁰ [HC Deb 3 November 2010 c921](#)

In November 2010, the European Court of Human Rights handed down a further judgment against the UK, Greens and MT. In that judgment, the Court set a deadline for the introduction of legislation of August 2011. There are in the region of 2,500 claims before the European Court of Human Rights which have been suspended pending implementation. We have been given a window to act and it is right that we do so. If we do not, we only increase the risk of damages.

It is plain that there are strong views across Parliament and in the country on the question of whether convicted prisoners should be entitled to vote. However, this is not a choice: it is a legal obligation. So the Government are announcing today that we will act to implement the judgment of the European Court of Human Rights. In deciding how to proceed, we have been guided by three principles. First, that we should implement the Hirst judgment in a way that meets our legal obligations, but does not go further than that. Secondly, that the most serious offenders will not be given the right to vote. Thirdly, that we should seek to prevent the taxpayer having to face future claims for compensation.

The Government will therefore bring forward legislation providing that the blanket ban in the existing law will be replaced. Offenders sentenced to a custodial sentence of four years or more will lose the right to vote in all circumstances, which reflects the Government's clear view that more serious offenders should not retain the right to vote. 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 that 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 judgment.

The right to vote will be restricted to UK Westminster Parliamentary and European Parliament elections only, and not in other elections or referendums. That is the minimum currently required by the law (a case considering whether article 3, protocol 1 applies to elections to the Northern Ireland Assembly is currently before the European Court of Human Rights: the Government's position is that they do not). Prisoners will vote by post or proxy, and will be entitled to register to vote not at the prison, but at their former address or the area where they have a local connection.

We believe that these proposals can meet the objectives that we have set out of implementing the judgment in a way that is proportionate; ensuring the most serious offenders will not be given the right to vote; and seeking to prevent future claims for compensation. We will bring forward legislation next year for Parliament to debate.

While the franchise is reserved to Westminster, the implementation of this policy will clearly have implications for Scotland and Northern Ireland, where the administration of justice is devolved. The Government will work closely with colleagues in the Scottish and Northern Ireland Administrations before legislation is introduced on the practical implications of the approach.

Governments have an absolute duty to uphold the rule of law. And at this of all times we must avoid risking taxpayers' money in ways that the public would rightly condemn. In the light of this, and of the legacy left by the last Government, the only responsible course is to implement the judgment, and to do so in a way which ensures the most serious offenders continue to lose the right to vote.⁶¹

No timetable was announced for the proposed legislation.

⁶¹ [HC Deb 20 December 2010 c151WS](#)

An answer to a Parliamentary Question on 21 December 2010 set out the number of prisoners serving a custodial sentence of four years or fewer:

Gavin Shaker: To ask the Secretary of State for Justice how many people were serving a custodial sentence of (a) five years or fewer, (b) four years or fewer, (c) three years or fewer, (d) two years or fewer and (e) one year or less for each category of offence in the latest period for which figures are available. [32361]

Mr Blunt: The following table provides information on custodial sentences in prison establishments in England and Wales by sentence length band and offence category as at 30 September 2010.

These figures have been drawn from administrative IT systems, which, as with any large scale recording system, are subject to possible errors with data entry and processing.⁶²

<i>Offence category</i>	<i>Sentence length</i>				
	<i>Less than five years</i>	<i>Less than four years</i>	<i>Less than three years</i>	<i>Less than two years</i>	<i>Less than one year</i>
Violence against the person	7,033	5,991	4,846	3,535	1,761
Sexual offences	2,315	1,753	1,232	720	212
Robbery	3,513	2,486	1,500	619	143
Burglary	5,053	4,188	2,954	1,526	507
Theft and handling	3,719	3,517	3,207	2,768	2,047
Fraud and forgery	1,225	1,066	903	698	324
Drug offences	5,866	4,370	2,677	1,085	229
Motoring offences	877	857	823	759	547
Other offences	4,851	4,383	3,849	3,234	2,234
Offences not recorded	190	159	128	107	92

14 Compensation

Mark Harper, the Parliamentary Secretary, Cabinet Office, said on 2 November 2010 that there were more than 1,000 cases of prisoners seeking compensation because the UK had not complied with the European Court's ruling and that there was 'a real risk that judges will award millions of pounds in damages to be paid by our taxpayers to prisoners who have been denied the vote.'⁶³

⁶² [HC Deb 21 December 2010 c1166W](#)

⁶³ [HC Deb 2 November 2010 c772](#)

The Daily Telegraph reported on 1 November 2010 that the bill for compensation could rise to more than £50 million:

Legal experts have suggested that the bill for compensation could rise to more than £50 million if prisoners are not given the vote. In May Lord Pannick, a crossbencher, said there were 70,000 prisoners who could sue, with each in line for damages "in the region of £750."⁶⁴

and the *Independent* reported on 3 November 2010 that the bill could run to hundreds of millions:

... government lawyers have warned that failure to comply with the ECHR could cost hundreds of millions of pounds in legal costs and compensation.⁶⁵

In evidence to the Political and Constitutional Reform Committee on 1 February 2011 (see below) Aidan O'Neill QC was asked about compensation for prisoners:

Q18 Mr Chope: Can I move on to the issue of damages, because we know that in the *Hirst* judgment the court reached the conclusion that, as far as the damages were concerned and what they described as the "concept of just satisfaction", that would be enough that the remedy would be put right by the United Kingdom Parliament. We have heard since, and not least from Mr O'Neill today, of the possibility of massive numbers of cases coming forward where people would be claiming damages. That was seized upon by the Prime Minister as being one of the justifications for introducing the four-year rule, although that seems to have been modified since.

Where does this idea come from, that if we come up with the wrong answer and we have agreed that it could be very difficult to know necessarily whether what Parliament decides is the right answer by the court until there was another case. But, in this area, why are we saying that there would be a big risk of millions of pounds in damages being payable when we know that even in the *Hirst* case no damages were payable?

Aidan O'Neill: It would certainly require a development in the case law. You are absolutely right. *Hirst* in the Grand Chamber says the finding of violation in that case was sufficient just satisfaction. However, it has been six years since *Hirst*. The court has to have something else to recognise the failure of the Government and Parliament to enact something in response to that judgment.

In more recent cases that involved deprivation of the right to vote, but not from prisoners, damages have been awarded. One can see the development in a series of cases in which people in Italy were disenfranchised in Italy by reason of their bankruptcy; damages were awarded of €1,500. At the beginning of this year, *Kiss v Hungary*; damages of €3,000 were awarded to an individual who was disenfranchised by reason of he was under a Mental Incapacity Guardianship Order.

The general principle within the Convention is that you do not get deserving and undeserving victims and so there is certainly space for argument. It would require further argument and further case law to say that if one is awarding damages to bankrupts for disenfranchisement and to those disenfranchised by reason of mental incapacity, then, given that it is entirely clear that the blanket

⁶⁴ Prisoners to get the vote for the first time, *Daily Telegraph*, 1 November 2010

⁶⁵ [Conservatives in disarray over prisoners' voting](#), *Independent*, 3 November 2010

disenfranchisement of people by reason simply of deprivation of their liberty- one has to bear in mind if one is a convicted individual who then gets out of prison on life licence or on parole, you get your vote back immediately. Again, it is this automaticity that is the problem. It is not taken the right seriously enough.

I am saying, as a lawyer advising as to, is there a possibility for damages? Yes, I think there is. I am not saying it definitely is here now but it definitely must be borne in mind.⁶⁶

On 18 February 2011 the High Court ruled that compensation claims from prisoners who were unable to vote in the 2010 general election would not succeed. The Court was told that claims had been launched in county courts nationwide by 585 serving prisoners, with a further 1,000 potential cases pending. Mr Justice Langstaff said

I hold that there are no reasonable grounds in domestic law for bringing a claim for damages or a declaration for being disenfranchised whilst a prisoner. Statute precludes it. Case law is against it. European authority is against the payment of compensatory damages in respect of it. A claim for a declaration is not hopeless, but difficult.⁶⁷

A footnote to the judgment noted that the case was heard a day before Parliament debated the ban on voting by prisoners on 10 February 2011:

Though the subject matter of each is the same – the enfranchisement of prisoners – the role of the courts and of the legislature are distinct. It is no part of the court’s function to express any view as to the nature of legislative change, if any: merely to rule on that which the laws as currently enacted by Parliament require. This judgment is to the effect that, applying those laws, including the Human Rights Act 1998, a prisoner will not succeed before a court in England and Wales in any claim for damages or a declaration based on his disenfranchisement while serving his sentence.

On 18 February 2011 the *Times* published details of a leaked document providing legal advice to the Government on the consequences if the UK does not comply with the ruling of the European Court:

The leaked document...issues blunt warnings to ministers of the huge damage to Britain’s international standing if they ignore the Strasbourg court.

In the submission, dated February 9, government lawyers estimate that in a ‘worst-case scenario’, 70,000 to 80,000 prisoners at any given time could claim compensation estimated at up to £143 million. But the document goes on to confirm that the Strasbourg court has no legal powers to force the Government to pay compensation for denying prisoners their human rights.⁶⁸

In spite of these concerns, at the time of writing, no prisoner affected by the ban has been awarded compensation (see further para 23.8 and 23.9 below).

⁶⁶ <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmpolcon/uc776/uc77601.htm>

⁶⁷ *Tovey and Another v Ministry of Justice* [2011] EWHC 271 (QB)

⁶⁸ Cameron is clear to defy Europe on human rights, *Times*, 18 February 2011

15 Westminster Hall debate 11 January 2011

Philip Hollobone (Conservative) secured a Westminster Hall debate on prisoners' voting rights on 11 January 2011.⁶⁹ Mr Hollobone argued that the ban on convicted prisoners being able to vote should be retained and that the Government should not comply with the European Court's ruling:

This is very serious issue. The British public do not want prisoners to be given the right to vote. Many other countries in Europe successfully operate blanket bans and have not been challenged in the European Court. My constituents and many other people up and down the land are furious that once again the Government seem to be bending over to the human rights lobby to introduce a measure, which is frankly inappropriate to the balance of crime and justice in this country.

Once again, we seem to be going soft on criminal justice issues. The British people will not put up with that for much longer. Here is a golden opportunity for the new coalition Government to say, "We are going to put Britain first." If we have to pull out of the European convention on human rights, let us consider that and possibly do so. That would certainly have a lot of support in the country. However, if we are going to respond to the appeal judgment from the European Court there are many ways of doing it other than simply applying the four-year rule, which will not address my constituents' concerns. I say to the Government with confidence that if they continue to press this issue in the House, they will be defeated.⁷⁰

Mr Hollobone was supported by a number of Conservative backbenchers; Chris Bryant, speaking for the Opposition, also supported the retention of the ban although he said that he disagreed with those Members who had suggested that the UK should leave the European Court of Human Rights.⁷¹ Two Members spoke in favour of removing the blanket ban. Kate Green (Labour) believed it was morally right that prisoners should have the opportunity to vote:

I do not accept that they lose all aspects of citizenship in losing their liberty as a result of a custodial sentence. I fundamentally disagree with those who feel that prisoners' fundamental human rights should be weakened. In a decent and civilised society it is right that we treat all, including prisoners, with respect.

[...]

If we fail to give prisoners any stake in our society, it is difficult to see why they should wish to reintegrate into that society-why they should feel any sense of obligation to mutual rights, dignity and respect when we do not afford that to them. I see an opportunity alongside this new legislation to improve education and rehabilitation in our prisons.⁷²

Sir Peter Bottomley (Conservative) also supported giving prisoners the vote and he spoke about the rehabilitation of prisoners:

I believe that the key point is whether we can actually say to people who are convicted, "We want to take away your liberty, but we want you to be a member of society". That is the essential issue. That is why we try to teach people in prison to read, to work and

⁶⁹ [HC Deb 11 January 2011 c1WH](#)

⁷⁰ [HC Deb 11 January 2011 c6WH](#)

⁷¹ [HC Deb 11 January 2011 c20WH](#)

⁷² [HC Deb 11 January 2011 c7WH and c8WH](#)

to be interested in things around them, and why we want them to have some sympathy and empathy for the feelings of others, whether victims or otherwise.⁷³

The Minister, Mark Harper, reiterated that the Government was under a legal obligation to comply with the ECHR ruling although the Government did not want to remove the blanket ban. Mr Harper said the Government was following three principles in its approach:

We have to meet our legal obligations, but we want to go no further than that. Secondly, we want to ensure that the most serious offenders are not given the right to vote. That is why we did not say that there would be no line, that the limit would be entirely up to judges. We want to ensure that there is a line, so that anyone above that length of sentence would not be able to vote. We recognise that the most serious offenders should not be able to vote...The third principle is to prevent the taxpayer from having to pay successful claims for compensation.⁷⁴

The Government intended only to enfranchise prisoners for Westminster and European elections.

Mr Harper also referred to the *Greens and M.T.* judgment. This judgment by the European Court of Human Rights on 23 November 2010 gave the UK Government six months from the date the judgment became final to introduce proposals to lift the blanket ban.

16 Political and Constitutional Reform Committee's report, *Voting by convicted prisoners*, 8 February 2011

The Political and Constitutional Reform Committee took evidence from Lord Mackay of Clashfern, Aidan O'Neill QC and Dr Eric Metcalfe of JUSTICE on 1 February 2011.⁷⁵ A backbench debate on prisoners' voting rights was due to be held in the House of Commons on Thursday 10 February 2011 and the Committee's inquiry was intended to inform that debate.

Aidan O'Neill QC told the Committee that the elections to the Scottish Parliament and National Assembly for Wales, not just Westminster and European Parliamentary elections, were also covered by the European Court's judgment:

There are elections coming up on 5 May 2011 in Scotland and Wales. Those elections on the current franchise are going to be Convention-incompatible again; so there is an urgency about that. There is an added urgency to that because elections to the Scottish and Welsh parliaments are covered by not just European human rights law but European Union law. There could be a whole new raft of arguments about the legality of those elections and the possibility—frankly I have to say it—of compensation claims, because at some levels compensation claims for prisoners is what focuses politicians' and governments' minds. In order to avoid that, something has to be done and it has to be done very quickly.⁷⁶

The Committee was also told by Dr Eric Metcalfe that the Government's plans to legislate to give prisoners serving a sentence of less than four years, or less than one year, would

⁷³ [HC Deb 11 January 2011 c16WH](#)

⁷⁴ [HC Deb 11 January 2011 c22WH](#)

⁷⁵ *Voting by convicted prisoners*, Political and Constitutional Reform Committee fifth report 2010-12, minutes of evidence, [HC 776](#)

⁷⁶ *ibid*

continue to be incompatible with the European Convention on Human Rights because it was still a blanket ban:

The court is not going to get into the business of saying that you have to have one way or another way or a particular method. What the court is saying is that you cannot disenfranchise an entire category of people—and in this case the category is between 70,000 to 80,000 people-wide—on a blanket basis. You have to have individualised assessment in each case.⁷⁷

Lord Mackay of Clashfern suggested that another solution would be to give prisoners the right to vote when they became eligible for parole:

Attacks on human rights and on electoral rights and so on are important. It seems to me that attack against individuals of that sort is fundamentally a breach of human rights of these victims and, therefore, it is perfectly reasonable, as part of the punishment, that the deprivation of the right to vote should be imposed. But I would suggest that it is a very important part of rehabilitation to give them the right back when you are hoping they are going to re-join society. This seems to me to be a possible way of dealing with the matter, but I think the debate should certainly take account of what the court said about the aim of the disenfranchisement and deprivation of others' human rights seem to me to be perfectly reasonable as a way of doing that.

There are others like, for example, fraud and that kind of thing. It is deprivation of the right of property of somebody else, which is another human right guaranteed under a Protocol. So it is possible, with a bit of thought, to construct human rights arguments for deprivation in quite a range of cases. Then, I think, it may be wise, so long as it is clear what the cases are, that the court should be responsible for ultimately saying, "In addition to going to prison for seven years you will lose your right to vote until you are eligible for parole", or something like that.⁷⁸

The Prison Reform Trust submitted written evidence to the Political and Constitutional Reform Committee on 3 February.⁷⁹ In its evidence the Trust drew attention to other individuals and organisations that supported the enfranchisement of prisoners:

Prison governors, including Eoin McLennan-Murray, the current President of the Prison Governors' Association, and many senior managers in the Prison Service believe that voting rights and representation form an ordinary part of rehabilitation and resettlement.

Peter Bottomley, Conservative MP and former Minister, notes that:

Ex-offenders and ex-prisoners should be active, responsible citizens. Voting in prison can be a useful first step to engaging in society.

The Catholic Bishops of England and Wales also support the view that prisoners should have the right to vote. Their report *A Place of Redemption* states that:

⁷⁷ *ibid*

⁷⁸ *ibid*

⁷⁹ *Voting by convicted prisoners*, Political and Constitutional Reform Committee fifth report 2010-12, written evidence

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.

At a meeting of the All Party Parliamentary Penal Affairs Group in January 2011, the Archbishop of Canterbury Dr Rowan Williams spoke of the importance of viewing prisoners as citizens for the process of their rehabilitation.⁸⁰

The Committee published its report on 8 February 2011 and concluded:

22. The House is being asked to decide whether it both "acknowledges the treaty obligations of the UK" and "supports the current situation in which no prisoner is able to vote except those imprisoned for contempt, default or on remand". The evidence we have received from our witnesses, including a former Lord Chancellor, is that, however morally justifiable it might be, this current situation is illegal under international law founded on the UK's treaty obligations.⁸¹

17 Backbench debate on 10 February 2011

The Backbench Business Committee granted time for this [debate](#) which took place on 10 February 2011. The motion, in the names of David Davis, Jack Straw, Dominic Raab, Stephen Phillips, Philip Hollobone and John Baron, was as follows:

That this House notes the ruling of the European Court of Human Rights in *Hirst v the United Kingdom* in which it held that there had been no substantive debate by members of the legislature on the continued justification for maintaining a general restriction on the right of prisoners to vote; acknowledges the treaty obligations of the UK; is of the opinion that legislative decisions of this nature should be a matter for democratically-elected lawmakers; and supports the current situation in which no sentenced prisoner is able to vote except those imprisoned for contempt, default or on remand.⁸²

David Davis opened the debate and suggested that the motion split cleanly into two parts; firstly whether the requirement to give prisoners the vote was 'sensible, right and proper' and secondly who should decide, the European Court of Human Rights or the House of Commons on behalf of the British people.⁸³ Mr Davis said that prisoners had rights but these were not the same as those of a free British citizen. He argued that 'if you break the law, you cannot make the law' and said that a crime that was serious enough for the perpetrator to be sent to prison meant that 'a person has broken their contract with society to such a serious extent that they have lost all these rights: their liberty, their freedom of association and their right to vote.'⁸⁴

Jack Straw agreed and pointed out that on each occasion when the issue had been considered in Parliament since 1970 the present position had been confirmed by a cross-party consensus.⁸⁵ Mr Straw argued that the issue of prisoners' voting rights was 'by no stretch of the imagination a breach of fundamental human rights' but was a 'matter of penal

⁸⁰ *ibid*

⁸¹ *ibid*

⁸² <http://www.publications.parliament.uk/pa/cm/cmfbusi/a01.htm>

⁸³ [HC Deb 10 February 2011 c493](#)

⁸⁴ [HC Deb 10 February 2011 c494](#)

⁸⁵ [HC Deb 10 February 2011 c499](#)

policy, which the minority of judges at Strasbourg – and very senior they were too - said should be left to the UK Parliament.⁸⁶ He added that ‘through the decision in the Hirst case and some similar decisions, the Strasbourg Court is setting itself up as a supreme court for Europe with an ever-widening remit.’⁸⁷ Mr Straw also said that two consultations held by the Labour Government about the issue had been inconclusive and that unless a way had been found that ‘could satisfy the Strasbourg Court, this House and the British people, there was no appetite throughout the House, or among our Whips’ for legislative proposals to be brought forward by the Labour government.⁸⁸

Jack Straw and David Davis agreed that the UK should not withdraw from the European Convention on Human Rights but Mr Straw urged the European Court and the Council of Europe to rein in ‘their unnecessary excursions into member states’ policy.’⁸⁹ Later in the debate the then Attorney-General, Dominic Grieve, said that negotiations had taken place on the difficulties facing the European Court and that the countries which made up the Council of Europe had expressed the view that the European court was not functioning properly.⁹⁰ Claire Perry (Conservative), who had spoken about the issue at the Council of Europe said that there was a real concern that the European court was encroaching into areas that were not part of its mandate.⁹¹

The majority of Members who spoke in the debate supported the motion. Some suggested that the issue was not about whether prisoners should have the right to vote but about the right of the House of Commons to legislate on the subject and that the European Court was seeking to extend its powers. Gary Streeter (Conservative) argued that the European Court had undermined the authority of the House of Commons and that it was time for the Convention to be amended ‘to take this important but increasingly abused convention back to its original purpose, namely, to underpin basic human rights.’⁹²

Dominic Grieve, said the Government would reflect on the views expressed by the House and bring forward proposals in the light of the debate.⁹³ However, Mr Grieve reminded the House of the United Kingdom’s obligations under international law:

We are dealing with an international treaty. That international treaty was signed by the United Kingdom Government under the royal prerogative and was laid before both Houses of Parliament for their consideration. The rule that has been long established in this country is that once a treaty has been ratified by the United Kingdom Government through that process, the Government and their Ministers consider themselves to be bound by its terms.⁹⁴

Mr Grieve described the dilemma faced by the Government: ‘how can we find a way to persuade the Court to respect the views that the legislature may express without having to withdraw from the Convention or the Council of Europe entirely, which...would not come without cost or consequence for this country.’⁹⁵

⁸⁶ HC Deb 10 February 2011 c502

⁸⁷ HC Deb 10 February 2011 c502

⁸⁸ HC Deb 10 February 2011 c503

⁸⁹ HC Deb 10 February 2011 c504

⁹⁰ HC Deb 10 February 2011 c517

⁹¹ HC Deb 10 February 2011 c553

⁹² HC Deb 10 February 2011 c507

⁹³ HC Deb 10 February 2011 c510

⁹⁴ *ibid*

⁹⁵ HC Deb 10 February 2011 c512

Chris Bryant (Shadow Minister for Justice) said the Labour Party supported the European Court of Human Rights but 'as a critical friend.'⁹⁶ He argued that 'for the UK to leave the court would be fatally to undermine its authority. It would be to abandon much of Europe to precisely the same disregard of human rights as was evident when the Court was founded', instead the UK 'could seek to reform the Court, steering it away from trying to be a form of supra-national supreme court and quasi-legislature.'⁹⁷ Mr Bryant asked the Attorney-General about the compensation that might be awarded to prisoners. Dominic Grieve replied:

All I will say on the issue of compensation is that it is very difficult to know how much compensation might or might not have to be paid. Let us suppose that there were two elections in which the entirety of the sentenced population in the prison system were deprived of the right to vote and they were all to bring a claim. On the basis of there being about 73,000 people in the prison system in that category and on the basis that about £1,000 to £1,500 of compensation and costs might have to be paid, the hon. Gentleman will be able to start to work out what sort of total cost might be involved. Of course, lots of prisoners might decide not to bring a claim, so I must accept that all the Government can do is provide a reasonable guide of the potential for the matter to be very costly.⁹⁸

Denis MacShane (Labour) spoke in support of the European Convention on Human Rights and pointed out that in other European countries prisoners can vote according to their sentence: '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.'⁹⁹ However, Naomi Long (Alliance) said she would prefer 'any changes made to UK law that introduce limited voting rights for prisoners to be based on length of sentence rather than let to the discretion of the individual judges and courts'. She continued:

A preferable option, bearing in mind the rehabilitation argument, may be to limit the right of voting to prisoners serving sentences of one year or less, and to reintroduce the right to vote in the final year of a longer sentence as part of a wider programme of reintegration and rehabilitation. That may be seen as a more considered and more positive response.¹⁰⁰

Later in the debate Anna Soubry (Conservative) argued that it would not be appropriate for judges to decide whether someone should lose or retain the right to vote.¹⁰¹ Tony Baldry (Conservative) however, saw no reason

why a judge should not inform the defendant when sentencing that, in addition to their term of imprisonment and as a consequence of their conduct, they would, as part of their punishment, be disfranchised in regional, national and European elections for a specific period of time. As with every other aspect of sentencing, one would expect the Lord Chief Justice, senior judges and the Supreme Court to issue sentencing guidelines. Crown Court judges and magistrates are given sentencing guidelines on every other aspect of sentencing, so I see no reason why it should not be possible to devise effective sentencing guidelines on disfranchisement that start from the general premise

⁹⁶ HC Deb 10 February 2011 c520

⁹⁷ HC Deb 10 February 2011 c523

⁹⁸ HC Deb 10 February 2011 c526

⁹⁹ HC Deb 10 February 2011 c508

¹⁰⁰ HC Deb 10 February 2011 c533

¹⁰¹ HC Deb 10 February 2011 c569

that those who go to prison will lose the vote while they are in prison.¹⁰²

Nick Boles (Conservative) said that his view that prisoners should not be allowed the right to vote had shifted during the debate mainly because of the comments of Claire Perry (Conservative) who described a meeting with prisoners in her constituency where she had suggested that the right to vote could perhaps be something 'that could be a part of ... rehabilitation – potentially something that is awarded within six months of release.'¹⁰³ Mr Boles said that he still believed that all convicted prisoners should lose the right to vote but that he was now 'open to persuasion on the possibility of restoration of the vote in the last six months of a sentence.'¹⁰⁴ Gordon Henderson (Conservative) also agreed that there was an argument for allowing prisoners to vote once they were transferred to an open prison as part of their release back into society:

Such an approach would have a number of advantages. First, it would obey the European Court of Human Rights' ruling by giving the vote to the majority of prisoners at some stage in their sentence. Secondly, it would allow the vote to those convicted of relatively minor offences and sent to open prison. Thirdly, it would address the arguments of those who claim that giving the vote to prisoners would encourage them to become useful members of society-which it does. Fourthly, it would deny the vote to those convicted of the most heinous crimes until they had served most of their sentence and were about to be released back into the community, when they would get the vote anyway.

I do not want prisoners to have the vote under any circumstances, but I understand the problem that the Government face and I ask them, if they feel forced to give any prisoner the vote, to consider what I believe would be a reasonable compromise.¹⁰⁵

Members who spoke against the motion included Jeremy Corbyn (Labour) who reminded the House that prisoners have had the right to vote in South Africa since the end of apartheid; he urged the House 'to think carefully about the matter and not to walk away from an important step forward in international law and human rights.'¹⁰⁶ Tom Brake (Liberal Democrat) also spoke in favour of allowing more prisoners the right to vote; he asked what was to be gained by inflicting civil death on prisoners and said that 'prison serves to protect and punish, but also to rehabilitate.'¹⁰⁷ Kate Green (Labour) called for the ban on a prisoner's right to vote to be rescinded¹⁰⁸ and Sir Peter Bottomley (Conservative) said that he could not think of a single objective which was met by withdrawing the right to be registered and to vote; '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.'¹⁰⁹

Dominic Raab (Conservative) wound up the debate and urged the House to send a clear message back to the European Court by supporting the motion:

I therefore want to put this question to the House: how perverse would a Strasbourg ruling have to be before we, as British lawmakers, stood up for the

¹⁰² HC Deb 10 February 2011 c550

¹⁰³ HC Deb 10 February 2011 c553

¹⁰⁴ HC Deb 10 February 2011 c562

¹⁰⁵ HC Deb 10 February 2011 c573

¹⁰⁶ HC Deb 10 February 2011 c539

¹⁰⁷ HC Deb 10 February 2011 c544

¹⁰⁸ HC Deb 10 February 2011 c545

¹⁰⁹ HC Deb 10 February 2011 c564

national interest and our prerogatives as democratic lawmakers? If not now, on prisoner voting, when? I make this prediction: if we do not hold the line here, today, there will be worse to come-far worse-in the years ahead.

What happens if we agree to the motion? Strasbourg could rule against us and we could face compensation awards. However, the architects of the convention introduced a vital safeguard: Strasbourg cannot enforce its own judgments. The worst that can happen is that we remain on a very long list of unenforced judgments to be reviewed by the Committee of Ministers - there are about 800 such judgments at the moment. There is no risk of a fine and no power to enforce compensation, and absolutely no chance of being kicked out of the Council of Europe.

[...]

It is time that we drew a line in the sand and sent this very clear message back: this House will decide whether prisoners get the vote, and this House makes the laws of the land, because this House is accountable to the British people. I commend the motion to the House.¹¹⁰

The motion was agreed on division by 234 to 22.

On 11 February 2011, Christos Pourgourides, Chair of the Committee on Legal Affairs and Human Rights of the Council of Europe Parliamentary Assembly, made the following statement:

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.¹¹¹

18 Greens and MT judgment

Robert Greens and M.T. were both serving a prison sentence at HM Prison Peterhead at the time their applications were lodged with the European Court in 2008. The two prisoners had sought to be registered as voters but their applications were refused by the Electoral Registration Officer. Greens and M.T. complained that the refusal to enrol them on the electoral register for domestic and European elections was in violation of Article 3 of Protocol No. 1. The European Court concluded that there had been a violation of Article 3 for both applicants:

The Court found that the violation in today's judgment [23 November 2010] was due to the United Kingdom's failure to execute the Court's Grand Chamber judgment in *Hirst v. the United Kingdom* No. 2 (no. 74025/01), delivered on 6 October 2005, in which it had also found a violation of Article 3 of Protocol No.

¹¹⁰ HC Deb 10 February 2011 c583-4

¹¹¹ [PACE Legal Affairs Committee head reacts to UK vote on prisoner voting](#), 11 February 2011

1.

Applying its pilot judgment procedure, the Court has given the United Kingdom Government six months from the date when Greens and M.T. becomes final to introduce legislative proposals to bring the disputed law/s in line with the Convention. The Government is further required to enact the relevant legislation within any time frame decided by the Committee of Ministers, the executive arm of the Council of Europe, which supervises the execution of the Court's judgments.

The Court has also decided that it will not examine any comparable cases pending new legislation and proposes to strike out all such registered cases once legislation has been introduced.¹¹²

On 22 February 2011 Robert Greens applied for the case to be referred to the Grand Chamber of the European Court of Human Rights in a bid to get the UK government to change the law more quickly so that prisoners will be able to vote in the Scottish, Welsh and Northern Ireland elections and local elections in England on 5 May 2011.¹¹³

The Government also announced on 1 March 2011, in an answer to a Parliamentary Question, that it had referred the Greens and MT judgement to the Grand Chamber of the European Court of Human Rights, in effect appealing the Court's decision:

Mr Marsden: To ask the Deputy Prime Minister if he will publish the legal advice he has received on compliance with rulings of the European Court of Human Rights on prisoner voting.

Mr Harper: The Government do not disclose their legal advice. Disclosure of legal advice could prejudice the Government's ability to defend their legal interests.

The Government have requested that the court's judgment in the "Greens and MT" case be referred to the Grand Chamber of the European Court of Human Rights (ECtHR)-the highest tier of the ECtHR. If the Grand Chamber agrees to the referral, they will look again at the judgment and issue their opinion.

The basis of the Government's referral request is that we believe that the court should look again at the principles in "Hirst" which outlaws a blanket ban on prisoners voting, particularly given the recent debate in the House of Commons. The referral request also points out the need for clarity in the ECtHR's case law in this area.¹¹⁴

Parliamentary Questions on 28 March 2011 asked about the documents sent to the Council of Europe by the Government which related to the referral of the Greens and MT judgment to the Grand Chamber of the European Court:

Priti Patel: To ask the Deputy Prime Minister what decisions were reached at the 1108th meeting of the Council of Europe's Committee of Ministers relating the UK and prisoner voting; if he will publish all documents sent to the Council of Europe from the Government in relation to this matter; who represented the UK Government at this meeting; when he expects the UK's position on prisoner votes next to be discussed by the Committee of Ministers; and if he will make a

¹¹² [ECHR press notice 23 November 2010](#)

¹¹³ [BBC Online](#), "Prisoner Robert Greens in European Court voting bid", 22 February 2011

¹¹⁴ [HC Deb 1 March 2011 c428W](#)

statement.

Mr Harper: The Committee of Ministers publishes on their website the decisions reached at each of their meetings and copies of any documents submitted by member states' governments. The relevant decision and documents for the 1108th meeting can be found at:

<https://wcd.coe.int/wcd/ViewDoc.jsp?id=1718797&Site%20=CM&BackColorInternet=C3C3C3&BackColor%20Intranet=EDB021&%20BackColorLogged=F5D383>

The Government are represented at meetings of the Committee of Ministers by the United Kingdom Delegation to the Council of Europe.

The Committee of Ministers decided to resume consideration of prisoner voting rights in the UK once the Government's request to refer the recent judgment of the European Court of Human Rights in the "Greens and MT" case to the Grand Chamber of the Court has been considered.

Priti Patel: To ask the Deputy Prime Minister whether he has notified the Council of Europe of the outcome of Division No. 199 on 10 February 2011, *Official Report*, columns 584-6; and if he will make a statement. [48394]

Mr Harper: The Government notified the Council of Europe's Committee of Ministers of the outcome of the recent backbench debate on prisoner voting rights in an Information Note provided ahead of the 1108th meeting. The Information Note is available on the Committee of Ministers' [website](#).¹¹⁵

On 11 April 2011 the Grand Chamber of the European Court of Human Rights rejected the Government's request for an appeal hearing relating to the case of *Greens and M.T. v. UK*. The six month deadline for the UK government to introduce legislative proposals was triggered on 11 April 2011 when the Court's judgment of 23 November 2010 became final. A press release issued on 12 April 2011 by the Court also noted that the UK Government

...is further required to enact the relevant legislation within any time frame decided by the Committee of Ministers, the executive arm of the Council of Europe, which supervises the execution of the Court's judgments.¹¹⁶

19 Extension of the ECHR six month deadline to introduce legislation

On 6 September 2011 the Government announced in a written ministerial statement that the European Court of Human Rights had agreed to an extension of the six month deadline by which the UK Government has to introduce legislation to lift the blanket ban on all serving prisoners from voting. The extension to this deadline had been requested to take account of the referral of *Scoppola v Italy (No 3)* (a case similar to that of *Greens and MT*) to the Grand Chamber which will not be heard until 2 November 2011. The Government was notified on 31 August 2011 that the Court has granted an extension of six months from the date of the *Scoppola* judgment. The full text of the written ministerial statement is given below:

In November 2010, the European Court of Human Rights in the case of *Greens and MT v UK* found that the UK's ban on prisoners voting was in breach of Article 3 of the First Protocol of the European Convention on Human Rights (the right to free and fair elections). In the judgment the Court prescribed a

¹¹⁵ [HC Deb 28 March 2011 c13W](#)

¹¹⁶ European Court of Human Rights, Press Release 328, 12 April 2011

timetable for the introduction of legislative proposals to amend the blanket ban, namely a period of six months from when the judgment became final (which was 11 April 2011). The Government has since been considering the appropriate course of action in order to respond to the *Greens and MT* judgment.

In July, the Grand Chamber of the European Court of Human Rights accepted a referral in the case of *Scoppola (No.3) v Italy*. A hearing before the Grand Chamber has been scheduled for 2 November. The legal issues which arise in *Scoppola* under Article 3 of the ECHR are analogous to those which arose in *Hirst v UK* and *Greens and MT*.

Given the close relationship between the cases, the Government has sought leave to intervene in the proceedings before the Grand Chamber in *Scoppola*. The Government also requested an extension to the deadline set in *Greens and MT* to enable it to take account of the Grand Chamber's judgment. The Government was notified on 31 August that the Court has granted an extension of six months from the date of the *Scoppola* judgment, and on 5 September that the Government will have the opportunity to express our views on the principles in the *Scoppola* case.

The Government welcomes the decision of the Court and believes it is right to consider *Scoppola* and the wider legal context before setting out the next steps on prisoner voting.¹¹⁷

20 The consequences of the Grand Chamber judgment in the case of *Scoppola v Italy (No 3)*

As mentioned above, the Grand Chamber's judgment in the case of *Scoppola v Italy (No 3)* was announced on 22 May 2012. The Court found that there had been no violation of Article 3 of Protocol No. 1 (right to free elections) to the European Convention on Human Rights and that Franco Scoppola's disenfranchisement was not disproportionate. The press notice gave further details:

The legal provisions in Italy defining the circumstances in which individuals could be deprived of the right to vote showed the legislature's concern to adjust the application of the measure to the particular circumstances of the case in hand, taking into account such factors as the gravity of the offence committed and the conduct of the offender. It was applied only in connection with certain offences against the State or the judicial system, or with offences which the courts considered to warrant a sentence of at least three years' imprisonment.

Mr Scoppola had been found guilty of serious offences and sentenced to life imprisonment, a sentence subsequently commuted to 30 years. 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 of Protocol No. 1. As a result, the Court pointed out, a large number of convicted prisoners in Italy were not deprived of the right to vote in parliamentary elections.

Furthermore, three years after having finished serving his sentence, it was possible for a convicted person who had displayed good conduct to apply for rehabilitation and to recover the right to vote. The application for rehabilitation

¹¹⁷ HC Deb 6 September 2011 c13WS

could even be lodged sooner where early release was granted in connection with a re-education scheme.

The Court accordingly found that there had been no violation of Article 3 of Protocol No. 1, as the margin of appreciation afforded to the Italian Government in this sphere had not been overstepped.¹¹⁸

The Court confirmed the judgment in the case of *Hirst (no 2) v the United Kingdom* which held that a general and automatic disenfranchisement of all serving prisoners was incompatible with Article 3 of Protocol No 1 of the European Convention on Human Rights. However the Court accepted the United Kingdom's argument that member States should have a wide discretion (or 'margin of appreciation') as to how they regulate a ban on prisoners voting "both as regards the types of offence that should result in the loss of the vote and as to whether disenfranchisement should be ordered by a judge in an individual case or should result from general application of a law".¹¹⁹

The delivery of the judgement in the case of *Scoppola v Italy (No 3)* meant that the UK Government had six months from the date of the judgment, 22 May 2012, to bring forward legislative proposals to amend the law on prisoners' voting rights.

21 The House of Lords Reform Bill 2012-13

The *House of Lords Reform Bill 2012-13* was presented on 27 June 2012. The Deputy Prime Minister, Nick Clegg, was unable to state that the Bill was compatible with the European Convention on Human Rights. His statement on the front page of the Bill is given below:

I am unable to make a statement of compatibility under section 19(1)(a) of the Human Rights Act 1998 in respect of the House of Lords Reform Bill. This is only because of clause 6, which applies to House of Lords elections the laws on entitlement to vote at House of Commons elections, including the rules which prevent prisoners serving sentences from voting. The Government nevertheless wishes the House to proceed with the Bill.

The Bill made provision for the franchise for House of Lords elections to be identical to that for elections for the House of Commons. Under the Commons franchise, overseas voters and qualifying Commonwealth and Irish citizens who are resident in the UK may vote, but not other EU citizens. Paragraph 279 of the Explanatory Notes to the Bill gave further details of the Bill's provisions concerning the franchise for House of Lords elections.¹²⁰

A number of commentators wrote about the implications of the Government's inability to make a statement of compatibility under section 19(1)(a) for the *House of Lords Reform Bill*. Adam Wagner, writing on the UK Human Rights Blog, noted that

It is important to note that it is open to Parliament to ignore the fact that the Bill does not comply with the UK's ECHR obligations and pass the Bill anyway. It has already voted (albeit in a non-binding vote) that prisoners should remain disenfranchised, so this option seems perfectly possible.

¹¹⁸ *Convicted prisoner's disenfranchisement was not disproportionate*, European Court of Human Rights press release, 22 May 2012

¹¹⁹ *Court says that it is up to member States to decide how to regulate the ban on prisoners voting*, European Court of Human rights press release, 22 May 2012

¹²⁰ *House of Lords Reform Bill 2012-13*, [Explanatory Notes](#)

Should Parliament choose this route, it would be open for the courts to make a non-binding 'Declaration of Incompatibility' under the Human Rights Act, but they would not have the power to strike the Act down.¹²¹

Wagner cited two other examples of a Bill being incompatible with the ECHR; these were the *Local Government Bill [HL] 1999-2000* and the *Communications Bill 2002-03*, both of which received Royal Assent.¹²²

In the event, this Bill was not taken forward for other reasons.

22 Recent developments

22.1 Prime Minister's Questions 24 October 2012

At Prime Minister's Questions on 24 October 2012, David Cameron responded to a question from Derek Twigg about prisoners' voting:

Derek Twigg (Halton) (Lab): May I refer the Prime Minister to the *Hansard* record from 23 May 2012? The right hon. Member for Belfast North (Mr Dodds) asked him the following:

"Will the Prime Minister give an undertaking that he will not succumb to the diktat from the European Court of Human Rights in relation to prisoners voting".

His reply was:

"The short answer to that is yes."— [*Official Report*, 23 May 2012; Vol. 545, c. 1127.]

Will he confirm that that is still his position? I hope that it is. Will he tell us how he is going to get around breaking European law?

The Prime Minister: I can absolutely give the hon. Gentleman that assurance. The House of Commons has voted against prisoners having the vote. I do not want prisoners to have the vote, and they should not get the vote—I am very clear about that. If it helps to have another vote in Parliament on another resolution to make it absolutely clear and help put the legal position beyond doubt, I am happy to do that. But no one should be in any doubt: prisoners are not getting the vote under this Government.

The *Guardian* reported on 28 October 2012 that John Hirst, who had brought the original case, had asked his lawyers to start proceedings for compensation following the Prime Minister's comments.¹²³

22.2 Attorney General's appearance before the Justice Committee and speech to the BPP Law School

The then Attorney General, Dominic Grieve, appeared before the Justice Committee on 24 October 2012 and was asked about the *Scoppola* judgment. Mr Grieve said that

the issue is whether the United Kingdom wishes to be in breach of its

¹²¹ *UK Human Rights Blog*, "[Lords Reform Bill incompatible with human rights law, says Deputy Prime Minister](#)", 28 June 2012

¹²² For further information see Library Research Paper [00/47](#) on the *Local Government Bill [HL] 1999-2000*, p33 and the [Explanatory Notes](#) relating to clause 314 of the *Communications Bill 2002-03* when it was brought from the House of Commons to the House of Lords.

¹²³ Prisoners to launch legal action on voting rights, *Guardian*, 28 October 2012

international obligations and what that does reputationally for the UK. As I have stressed, ultimately this is not a matter where there is not parliamentary sovereignty; there plainly is. Parliament gives and can take away; Governments can leave the Council of Europe if they choose to do so. All I am saying is that it is quite clear, and is accepted by the Government, that in so far as the Scopola judgment is concerned it imposes an international legal obligation on us.¹²⁴

The following day, on 25 October 2012, the then Attorney General made a speech to the BPP Law School on Parliament and the judiciary.¹²⁵ Mr Grieve spoke about the Human Rights Act and the incorporation of the ECHR into the UK's statute law. He made reference to the issue of prisoners' voting:

In early 2012 the Strasbourg Court further considered the matter in the case of Scoppola. It affirmed the requirement on the UK to take action to correct the breach of Article 3 in the existing blanket ban on prisoner voting without being prescriptive as to what detailed changes should be made. The Government is currently considering how to address that issue.

But 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.

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 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. But it does seem to me to be right and appropriate that the way the ECHR is applied at British and European level, and the way in which its principles are incorporated into the law of the United Kingdom should involve procedures which ensure that proper account is taken of democratic decisions by national parliaments.

22.3 Letter to the *Times* on 2 November 2012

On 2 November 2012 the *Times* published a letter about prisoners' voting rights from eleven legal academics and judges, including the former Conservative Lord Chancellor, Lord Mackay of Clashfern, and the former Lord Chief Justice, Lord Woolf of Barnes. The authors of the letter suggested 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

¹²⁴ The work of the Attorney General, [oral evidence](#) to the Justice Committee, 24 October 2012

¹²⁵ [Attorney General's speech to the BPP Law School on Parliament and the judiciary](#), 25 October 2012

Minister appears set upon a course which is clearly unlawful.¹²⁶

In an article about the letter, the *Times* noted that the Attorney General believed ‘that there is wide latitude to relax the ban minimally and comply with the Strasbourg ruling’ and that ‘officials are studying the options for a draft Bill, which will include prisoners losing their right to vote but then being required to carry out a civil responsibility course to get them back.’¹²⁷

22.4 Publication of a draft Bill on 22 November 2012

On 22 November 2012 the Lord Chancellor, Chris Grayling, made a statement to the House of Commons and announced the publication of a draft Bill, the *Voting Eligibility (Prisoners) Draft Bill* for pre-legislative scrutiny which sets out three options:

- A ban for prisoners sentenced to 4 years or more.
- A ban for prisoners sentenced to more than 6 months.
- A ban for all convicted prisoners – a restatement of the existing ban.¹²⁸

The draft Bill will be considered by a joint Committee of both Houses.

22.5 Decision of the Council of Europe’s Committee of Ministers December 2012

The Council of Europe’s Committee of Ministers considered the UK’s decision to establish a joint committee of both Houses to examine the draft Bill at its meeting on 4-6 December 2012. The Committee welcomed the announcement made by the Lord Chancellor and Secretary of State for Justice but noted that the third option in the draft Bill, which would retain the blanket ban on voting by prisoners, ‘cannot be considered compatible with the European Convention on Human Rights.’ The Committee’s decision is set out in full below:

1. recalled that in the judgment *Hirst No. 2* and the Greens and M.T. pilot judgment the European Court found violations of Article 3 of Protocol 1 due to the blanket ban on voting imposed automatically on the applicants due to their status as convicted offenders detained in prison;
2. recalled further that the United Kingdom authorities had until 23 November 2012 to introduce legislative proposals to amend the electoral law imposing a blanket restriction on voting rights of convicted prisoners in prison;
3. noted with great interest that the United Kingdom authorities introduced legislative proposals to Parliament on 22 November 2012 to amend the electoral law imposing a blanket restriction on voting rights of convicted prisoners in prison, which include a range of options for a Parliamentary Committee to consider;
4. welcomed and strongly supported the announcement made by the Lord Chancellor and Secretary of State for Justice when presenting the legislative proposals to Parliament that “the Government is under an international legal obligation to implement the [European] Court’s judgment” and “the accepted practice is that the United Kingdom observes its international obligations”;
5. considered that the final version of the legislation that will be proposed to Parliament should be in conformity with the fundamental principles recalled in

¹²⁶ Votes for prisoners, letter to the *Times*, 2 November 2012

¹²⁷ Warning to Cameron on prisoner votes, *Times*, 2 November 2012

¹²⁸ [The Voting Eligibility \(Prisoners\) Draft Bill](#), Cm 8499, November 2012

this announcement;

6. in this respect endorsed the view expressed in the Explanatory Report to the draft bill presenting the legislative proposals, that the third option aimed at retaining the blanket restriction criticised by the European Court cannot be considered compatible with the European Convention on Human Rights;

7. recalled that §115 of 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;

8. decided to resume consideration of the case at the latest at its 1179th meeting (September 2013) (DH) in the light of the above¹²⁹

22.6 *McGeoch and Chester cases*

As noted above, George McGeoch and Peter Chester (both prisoners serving life sentences for murder) brought cases in 2010 challenging the blanket ban on voting by prisoners. Appeals by both McGeoch and Chester were heard by the Supreme Court in June 2013.

The Supreme Court considered whether McGeoch could claim a right under European Union law to vote in local elections and European Parliamentary elections and in the case of Peter Chester the Court considered whether the ban on voting in UK Parliamentary and European Parliamentary elections was incompatible with Article 3 of Protocol 1 of the ECHR and/or whether the blanket ban was incompatible with EU law.¹³⁰

The Supreme Court gave its [judgment](#) on 16 October 2013 and unanimously dismissed both appeals.¹³¹ The Court ruled that ‘with regard to EU law, this does not provide an individual right to vote paralleling that recognised by the ECtHR in its case-law’.¹³²

However, the Supreme Court also maintained the position determined in Strasbourg that the UK’s blanket ban was contrary to the ECHR rights to vote (although it refusing to make a further ‘declaration of incompatibility’ with the *Human Rights Act 1998*, considering that it was unnecessary in the circumstances).¹³³

22.7 *McLean and Cole v United Kingdom*

This case concerned applications lodged by two prisoners, Joseph McLean and Kevin Cole, who complained that they had been prevented from voting in the European Parliamentary elections in 2009; the UK general election in 2010; elections to the Scottish Parliament in 2011; the AV referendum in 2011; various local government elections and in future elections because of the blanket ban. The European Court of Human Rights declared the complaints to be inadmissible ‘because the applications were filed too late or prematurely or because

¹²⁹ [Decision of the Committee of Ministers](#), 4-6 December 2012

¹³⁰ For further details see the Supreme Court website: [McGeoch case](#) and [Chester case](#)

¹³¹ Supreme Court [press release](#), 16 October 2013

¹³² See also: Ruvy Ziegler, ‘[The missing right to vote: The UK Supreme Court’s judgment in Chester and McGeoch](#)’ UK Const. L. Blog (24th October 2013)

¹³³ See also: Adam Wagner, ‘[This Supreme Court Prisoner Voting Decision really is a victory for common sense](#)’, UK Human Rights Blog, 16 October 2013

they were about elections not covered by the European Convention.¹³⁴

The court noted that although the most recent election took place in May 2011 the application had been lodged more than six months later; this meant the application was inadmissible because of failure to comply with the six month time limit for lodging a case. The complaints about local elections and the AV referendum were also inadmissible because these were not considered to be elections to the 'legislature' within the meaning of Article 3 of Protocol 1.¹³⁵

The Court also concluded that there was nothing to be gained from examining applications concerning future elections at this time "in light of recent developments at domestic level and the active supervision of the Committee of Ministers of the steps taken by the [UK] Government to implement the Court's two previous rulings on the matter." The Court added that if amending legislation was not brought into force prior to any future elections, it would be open to the applicants to lodge a new application.¹³⁶

22.8 *Firth and others v. United Kingdom*

The case of *Firth and others v. United Kingdom*¹³⁷ concerned ten prisoners who, as an automatic consequence of their convictions and detention pursuant to sentences of imprisonment, were unable to vote in elections to the European Parliament on 4 June 2009. The Court concluded that there had been a violation of Article 3 of Protocol No. 1 because the case was identical to another prisoner voting case (*Greens and M.T. v. United Kingdom*). The Court had regard to the recent steps taken in the United Kingdom with the publication of a draft bill and the report of the Parliamentary Joint Committee appointed to examine the bill (see below). Given that the legislation remained un-amended, the Court concluded that there had been a violation.

In spite of the finding of a violation, the Court rejected the applicants' claim for compensation and legal costs.¹³⁸ It referred to its remarks in *Greens and M.T.* (at paragraph 120 of that judgment) where it had indicated that it would be unlikely to award costs in future follow up cases. It explained that the present applicants, in lodging their applications, had only been required to cite Article 3 of Protocol 1, allege that they were detained pursuant to a sentence of imprisonment of the date of the election on question and confirm that they had been otherwise eligible to vote in that election. It found that the lodging of such an application was straightforward and did not require legal assistance. It therefore concluded that the legal costs claimed had not been reasonably and necessarily incurred.

22.9 *McHugh and others v. United Kingdom*

The case of *McHugh and others v United Kingdom*¹³⁹ related to a large number of 'legacy cases'. The 1,015 were all prevented from voting in one or more elections in 2009, 2010 or 2011. The European Court of Human Rights gave judgment in February 2015. The Court concluded that there had been a violation of Article 3 of Protocol No. 1 because the case was

¹³⁴ [Prisoners' right to vote factsheet](#), European Court of Human Rights, December 2013

¹³⁵ Two prisoners' complaints concerning blanket ban on their right to vote inadmissible, European Court of Human Rights [press release](#), 28 June 2013

¹³⁶ *ibid*

¹³⁷ [Firth and Others v. United Kingdom](#), Application nos. 47784/09, 12 August 2014

¹³⁸ Press reporting immediately following the judgment focused on the Court's decision not to award compensation, see, e.g.: *BBC Online*, "[No European Court damages for prisoners denied vote](#)", 12 August 2014 and *Daily Telegraph*, "[Prisoners lose bid for compensation over voting](#)", 12 August 2014

¹³⁹ Application no. 51987/08 and 1,014 others

identical to other prisoner voting cases in which a breach of the right to vote had been found and the relevant legislation had not yet been amended. However, as with the case of *Firth and others*, It rejected the applicants' claim for compensation and legal costs.

23 Joint Select Committee on the draft Bill

On publication of the *Voting Eligibility (Prisoners) Draft Bill* on 22 November 2012 the Lord Chancellor, Chris Grayling, announced that the Leaders of both Houses had written to the Liaison Committees to propose that a joint select committee should be established to conduct pre-legislative scrutiny of the draft Bill.¹⁴⁰ The House of Lords started the process of establishing a joint Select Committee in January and sent a message to the Commons.¹⁴¹ The Government tabled a motion in the House of Commons on 1 March 2013 to agree with the message from the House of Lords that a joint Select Committee should be appointed and to nominate the Members of the House of Commons to serve on the Committee. An amendment to the motion was subsequently tabled which proposed that the membership of the Committee should be decided by the Committee of Selection following elections within the parties. The tabling of the amendment necessitated a debate on the motion which took place on 16 April 2013.¹⁴²

The Leader of the House of Commons, Andrew Lansley, stated that "joint pre-legislative committees needed to be carefully balanced to ensure that they properly reflect all shades of interest and opinion across both Houses of Parliament...with the best will in the world, a process of election is unlikely to achieve that balance."¹⁴³ Christopher Chope (Conservative), who moved the amendment, did not accept this and argued

I am not suggesting we should change the standing orders and deal with all Joint Committees on the same basis. I am suggesting that this particular subject is unique...because at present we find ourselves before an international court being told we have to change our law when this elected House of Commons has made it clear that we do not wish to change the law. This is not some run-of-the mill situation, therefore.

It is a unique situation, and it strikes me that it would have been much better for the Executive to have kept their hands well out of it.

[...].

I do not accept the principle put forward by my right hon. Friend the Leader of the House that it will be impossible to have a properly balanced Joint Committee if it is elected. I suggest quite the reverse: if a Committee is elected, its members are accountable to the people who elected them.¹⁴⁴

Angela Eagle, speaking for the Opposition, supported the motion and agreed with the Government that the membership of the Committee should be decided in the usual way by the Committee of Selection.¹⁴⁵ The amendment was negated and the motion agreed without a division.

¹⁴⁰ [HC Deb 22 November 2012 c746](#)

¹⁴¹ [HL Deb 15 January 2013 c596](#)

¹⁴² [HC Deb 16 April 2013 c294](#)

¹⁴³ [HC Deb 16 April 2013 c295](#)

¹⁴⁴ [HC Deb 16 April 2013 c299](#)

¹⁴⁵ [HC Deb 16 April 2013 c297](#)

23.1 Membership

The members of the Joint Select Committee from the House of Commons were:

Crispin Blunt (Conservative)

Steve Brine (Conservative)

Lorely Burt (Liberal Democrat)

Nick Gibb (Conservative)

Sir Alan Meale (Labour)

Derek Twigg (Labour)

On 14 May 2013 the House of Lords agreed a motion to appoint six members to the joint committee.¹⁴⁶ The members (who included the former President of the Supreme Court) were:

Lord Dholakia (Liberal Democrat)

Baroness Gibson of Market Rasen (Labour)

Baroness Noakes (Conservative)

Lord Norton of Louth (Conservative)

Lord Peston (Labour)

Lord Phillips of Worth Matravers (Non-affiliated)

The motion also stated that the Joint Select Committee was to report on the draft Bill by 31 October 2013. Subsequent motions in both Houses on 10 October 2013 changed this date to 18 December 2013.¹⁴⁷

The Joint Select Committee held its first evidence session on 19 June 2013. The Committee's web pages give details of the evidence sessions.¹⁴⁸

23.2 Report

The Joint Select Committee published its report on 18 December 2013.¹⁴⁹ The Committee recommended that the Government should comply with the ECtHR's judgment in the *Hirst* case by enacting legislation that would give *some* convicted prisoners voting rights. The Committee recommended that a Bill should be brought forward at the start of the 2014-15 session of Parliament to give legislative effect to the Committee's conclusions:

- That all prisoners serving sentences of 12 months or less should be entitled to vote in all UK parliamentary, local and European elections;

¹⁴⁶ [HL Deb 14 May 2013 c271](#)

¹⁴⁷ [HL Deb 10 October 2013 c182](#) and [HC Deb 9 October 2013 c269](#)

¹⁴⁸ [Draft Voting Eligibility \(Prisoners\) Bill Joint Committee](#)

¹⁴⁹ [Draft Voting Eligibility \(Prisoners\) Bill Joint Committee report](#), HL 103/ HC 924, 18 December 2013. See also: [BBC Online](#), "Prisoners serving less than a year 'should get the vote'", 18 December 2013; [The Times](#), "MPs outraged at Bill to lift vote ban on inmates", 18 December 2013; [UK Human Rights Blog](#), "No rational basis for denying all prisoners the vote, concludes joint Parliamentary Committee", 18 December 2013

- That such prisoners should be registered to vote in the constituency where they were registered prior to sentencing; and that, where there is no identified prior residence, they should be able to register by means of a declaration of local connection;
- That prisoners should be entitled to apply, 6 months before their scheduled release date, to be registered to vote in the constituency into which they are due to be released.¹⁵⁰

The Joint Committee noted that the European Court of Human Rights had not provided the UK with specific guidance as to what was considered necessary for compliance with Article 3 of Protocol 1 of the ECHR, but that a refusal to implement the ECtHR's judgment "would not only undermine the international standing of the UK; it would also give succour to those states in the Council of Europe who have a poor record of protecting human rights and who may draw on such an action as setting a precedent that they may wish to follow."¹⁵¹ The Committee considered that the case for depriving prisoners of the vote as part of their punishment was weak but that the case for reinstating prisoner voting rights to contribute towards rehabilitation was not in itself a strong enough argument to justify a change in the law.¹⁵²

The draft Bill had proposed two thresholds for linking the loss of voting rights to sentence length; 6 months and 4 years. The Committee reported that despite receiving a great deal of evidence on the advantages and disadvantages of these, 'no conclusive logical case had been made for either of them.'¹⁵³ An alternative threshold of 12 months was proposed to the Committee by Robert Walter MP:

216....In defence of this proposal Mr Walter noted that, as we have shown in Chapter 2 of this Report, the Forfeiture Act 1870 tied the loss of voting rights to imprisonment for a felony leading to a sentence of more than 12 months. The result of this Act, and subsequent legislation, was that at the time the UK signed the ECHR prisoners sentenced to terms of imprisonment of 12 months or less were able to and did vote in elections. Mr Walter accordingly proposed that "we should go for a return to the situation that persisted at the time we signed the Convention." Mr Walter also noted that 12 months was the maximum sentence length that can be imposed by a magistrates' court, in respect of multiple offences. This linkage would, in Mr Walter's view, be "easily understandable, both by our colleagues and the British public." It would mean that no prisoner would lose the right to vote unless sentenced by a judge sitting in the Crown Court.

217. Another argument may be advanced in support of a 12-month threshold: at present, under section 1 of the Representation of the People Act 1981, any person sentenced to a term of imprisonment of more than one year shall be disqualified, while detained, shall be disqualified from sitting in or being elected or nominated to the House of Commons. It could be argued that, if a prisoner who has been sentenced to a term of less than 1 year is entitled to sit as a Member of Parliament, or to stand for election, that prisoner should also be able to vote in a parliamentary election (including for himself, if standing as a

¹⁵⁰ Ibid, p67

¹⁵¹ Ibid, p65

¹⁵² Ibid, p65

¹⁵³ Ibid, para 213

candidate). Thus a 12-month threshold would help in bringing consistency across relevant statutory provisions.¹⁵⁴

The Committee found the arguments for a 12 month threshold more persuasive than those advanced for either a 6 month or a 4 year threshold.¹⁵⁵ After consideration of the effect on the rehabilitation of prisoners of a reinstatement of voting rights the Committee also recommended that prisoners should be entitled to apply to be registered to vote in the constituency into which they are due to be released 6 months before their scheduled release date.¹⁵⁶

23.3 The Government's response

The Lord Chancellor and Justice Secretary, Chris Grayling, made a brief [response](#) to the Committee's report (by way of a letter) on 25 February 2014. The letter said that:

the report makes a number of new observations and adds recommendations to the debate which require thorough consideration. I am committed to ensuring that those issues are fully thought through and wanted to assure you that the matter is under active consideration within Government.

The Government has not responded substantively and did not bring forward a Bill with the 2014 Queen's Speech.¹⁵⁷ In response to a Parliamentary Question by Lord Norton of Louth on 1 July 2014, Baroness Northover responded: "this is not a straightforward issue and the Government is looking carefully at the Committee's conclusions, which included new options for implementation."

In October 2013 the 2,281 cases outstanding against the UK (now referred to as *Firth and others v United Kingdom*) were reactivated were heard by the European Court of Human Rights.¹⁵⁸ Some of these cases were dealt with by the Court in August 2014 (see section 23.8 above) whilst judgment was delivered in others in February 2015 (see section 23.9 above). Although the Court found violations in all of these cases, it did not award costs or legal expenses to the applicants.

24 General Election 2015

In a Command Paper to the Joint Committee on Human Rights entitled [Responding to Human Rights Judgments 2013-14](#) (Cm 8962), which was published in December 2014, the Government indicated that prisoners would not be granted the vote prior to the General Election of 2015. The Command Paper said:

After the ECtHR set a deadline for the introduction of legislative proposals to Parliament in the *Greens & MT* case, this Government published draft legislation in November 2012, which included options to enfranchise those sentenced to less than four years, those sentenced to less than 6 months, and an option to continue the ban. The Government set up a Joint Parliamentary Committee to carry out pre-legislative scrutiny on the draft Bill.

¹⁵⁴ Ibid, paras 216 -217

¹⁵⁵ Ibid, para 227

¹⁵⁶ Ibid, p63

¹⁵⁷ For commentary on recent developments, see: e.g. E. Bates, *Analysing the Prisoner Voting Saga and the British Challenge to Strasbourg*, (2014) Human Rights Law Review, 1-38; C. Prescott, [Conference Report: Prisoner Voting and the Constitution 18th June 2014](#), *Faculty of Laws, UCL*, UK Const. L. Blog (9th July 2013).

¹⁵⁸ Ibid, para 58

The Joint Committee published its report in December 2013, with a majority recommending that legislation be brought forward in the final session of this Parliament to enfranchise those sentenced to 12 months or less and those in the 6 months before they are scheduled to be released. The Government is considering the report but will not be able to legislate for prisoner voting in this Parliament. In September 2014, the Committee of Ministers decided to defer further discussion of the issue until September 2015.

On 12 August 2014, in the case of *Firth and Others v. the UK* the ECHR passed judgment on the first batch of ten “clone cases” following on from Greens & MT. These cases related to prisoners unable to vote in the 2009 European Parliamentary elections. The ECtHR held that there was a violation of Article 3 of Protocol 1 to the EHCR in each of the ten cases, but did not award any damages or costs to the applicants, who sought referral of the judgment to the Grand Chamber.

More than half of the original Greens & MT “clone cases” have been declared inadmissible or struck out by the ECtHR. On 22 September 2014, the remaining 1,015 “clone cases” were communicated to the UK. These cases relate to prisoners unable to vote in one or more of the 2009 European Parliamentary elections, the 2010 Parliamentary elections and the 2011 elections to the Scottish Parliament, the Welsh Assembly or the Northern Irish Assembly. The Government is currently awaiting the ECtHR’s judgment on these cases.

Appendix: Prisoners' voting rights in Council of Europe countries

European Prisoner Disenfranchisement Regimes

NOTE: This table has been compiled from information gathered by the Foreign and Commonwealth Office in January and May 2011 and from research conducted by lawyers at the Ministry of Justice in 2010. The information is accurate to the best of our knowledge, but language barriers and the scarcity of literature in this area mean we cannot guarantee its complete accuracy.

Updated July 2012.

([Dep 2012-1305](#))

<u>Country</u>	<u>Full or Partial Prisoner Voting Rights</u>	<u>Legal or <i>de facto</i> Ban on Prisoners Voting</u>
Albania	All Albanian prisoners can vote, irrespective of crime or sentence. There have been no legal challenges for disenfranchisement and the policy has not been changed recently.	
Andorra		In practice, prisoners cannot vote, although they are not specifically banned from doing so. The very small prison population is mainly composed of foreign nationals, who could not vote anyway. There have been no recent legal challenges either before the ECtHR or domestically.
Armenia		Prisoners do not have any voting rights in Armenia. There have been no recent legal challenges either before the ECtHR or domestically.
Austria	Austrian Federal Elections Law excludes all persons from the right to vote who have been sentenced by an Austrian court as a result of one or more premeditated criminal acts to imprisonment for a period of more than one year. This exclusion ends six months after the end of the jail term and after any preventative measures related to this imprisonment are carried out or conclude.	

	<p>However, Austria lost a case before the European Court of Human Rights in April 2010 because this exclusion is too vaguely formulated. Austria contested this but its appeal was turned down by the court in November 2010. As a result, Austria is reworking its law on this point. No information on when an amendment is expected to be adopted.</p>	
Azerbaijan	<p>All prisoners have voting rights in Azerbaijan. There have been no recent legal challenges either before the ECtHR or domestically and no changes made to the policy in recent years.</p>	
Belgium	<p>Judicial discretion to disenfranchise offenders sentenced to life-imprisonment or those sentenced to terms exceeding 10 years, either permanently, or for a period between 20 and 30 years.</p> <p>Judicial discretion to disenfranchise offenders sentenced to imprisonment for a period between five and ten years, either permanently or for a period between 10 and 20 years.</p> <p>Judicial discretion to disenfranchise an offender who has committed a misdemeanour for a period between five and ten years. Need not have been sentenced to custody to be disenfranchised</p>	
Bosnia and Herzegovina	<p>All prisoners have voting rights in Bosnia and Herzegovina except those persons sentenced or indicted by the International Criminal Tribunal for the former Yugoslavia (ICTY), Court of Bosnia and Herzegovina, Court of Federation of BiH, Court of Republika Srpska or Court of Brcko for the violation of the humanitarian law or failed to comply with an order to appear before all above mentioned Courts for whom disenfranchisement lasts the duration of the sentence. Therefore, the scheme operates by reference to offence type.</p> <p>There have been no recent legal challenges either before the ECtHR or domestically and no changes made to the policy in recent years.</p>	

Bulgaria		The right to vote in Bulgaria is lost as soon as a person is sentenced to a term of imprisonment. There have been no challenges to the legal framework for disenfranchisement before the European Court of Human Rights.
Croatia	With regard to voting in Croatian prisons, all prisoners are allowed to vote and there are no penalties for not voting. As far as I know there have not been any recent challenges to the legal framework for disenfranchisement, and no changes have been made to the policy in recent years.	
Cyprus	The default position in Cyprus is that prisoners do have voting rights. However this right is sometimes removed from them as part of their sentence.	
Czech Republic	All prisoners have the right to vote in the Czech Republic. There have been no challenges to the legal framework and no changes have been recently made in this area.	
Denmark	All prisoners have the right to vote in Denmark. There have been no challenges to the legal framework and no changes have been recently made in this area.	
Estonia		In Estonia, convicted and sentenced prisoners do not have the right to vote. There have been no challenges to the legal framework and no changes have been recently made in this area.
Finland	All prisoners have the right to vote in Finland. There have been no challenges to the legal framework and no changes have been recently made in this area.	
France	Disenfranchisement is not automatic on custodial sentence: will be applied as an additional penalty by the Court, even where disenfranchisement is a mandatory consequence of a specified offence. However, a judge has the discretion to disapply such a penalty. Offenders sentenced to imprisonment for felonies may be disenfranchised for up to 10 years.	

	<p>Offenders sentenced to imprisonment for misdemeanours may be disenfranchised for up to 5 years.</p> <p>Numerous specified offences attract disenfranchisement mandatorily: these are generally serious, and not limited to dishonesty offences (see FLAGE A).</p> <p>Prisoners who been disenfranchised by the Court are unable to vote whilst imprisoned.</p> <p>Time does not begin to count on the ancillary disenfranchising sentence until release.</p>	
Georgia		<p>In Georgia, none of those convicted and who are serving their sentence has the right to vote.</p> <p>Georgia's legal framework for disenfranchisement was challenged in its domestic courts in 2007 by the Georgian Young Lawyers Association (GYLA). They submitted an appeal to the Constitutional Court of Georgia on behalf of Shalva Ramishvili, on the grounds that this rule is unconstitutional. The Court refused the appeal.</p> <p>The file was subsequently sent to the ECHR, with GYLA citing the case of Hirst v UK (violation of Article 3, Protocol 1 of the European Convention of Human Rights). Georgia is a party to the Protocol.</p>
Germany	<p>Prisoners that have committed crimes targeting the 'integrity of the state' or the 'constitutional protected democratic order', such as political insurgents, lose their right to vote and this loss of voting right continues until the full sentence has been served. Therefore, disenfranchisement depends on the type of offence. There have been no challenges to the legal framework and no changes have been recently made in this area.</p>	
Greece	<p>Certain categories of convicted and sentenced prisoners lose their right to vote as part of their forfeiture of 'political rights' more generally. Those sentenced to life imprisonment lose their right to vote permanently.</p>	

<p>Hungary</p>		<p>No prisoners can vote in Hungary.</p> <p>To Note: This position was challenged and judgment was delivered in May 2010. The European Court of Human Rights ruled in the Alajos Kiss v Hungary case that the absolute ban violated the right to free elections of Article 3 of Protocol 1 ECHR. However, Mr Kiss is a person with mental health problems put under partial guardianship. Since the ECHR issued its ruling, a number of legal experts and lawyers have urged the Hungarian Government to amend the relevant part of the Constitution but this is unlikely. This case is being supervised by the Committee of Ministers.</p>
<p>Iceland</p>	<p>All prisoners have the right to vote in Iceland unless they have been convicted of a felony. Typically a felony is considered to be a more serious crime than a misdemeanour. No person is considered to possess full civil rights who has been convicted by a court of law for committing an act that is considered heinous by public opinion unless that person has been granted a restoration of his or her civil rights.</p> <p>Loss of civil rights if the defendant in a criminal case had reached the age of 18 when the offence was committed and the resulting sentence is at least four years prison without probation or a sentence of preventive detention for defendants who are committed to psychiatric care.</p>	
<p>Ireland</p>	<p>The right for prisoners to vote was introduced in Ireland by way of the Electoral (Amendment) Act 2006. It followed a Private Members' Bill that was introduced into the Dáil (parliament) in 2005 by a Fine Gael TD. Opposition parties and bodies such as the Irish Penal Reform Trust had lobbied hard for a change in legislation in light of the European Court of Human Rights' 2004 Hirst vs. UK ruling.</p> <p>The issue of the constitutional rights of prisoners being affected by their imprisonment had been the subject of several previous Supreme Court cases. Until 2006, the Irish Government had previously chosen not (not) to provide prisoners with the right to</p>	

	<p>vote. It argued that no legislation in Ireland prohibited or excluded prisoners from voting but relied on an interpretation of the Irish Supreme Court's ruling that the State had no constitutional obligation to facilitate prisoners' exercise of the right to vote. The Supreme Court had also ruled in 2001 that it was a consequence of lawful custody that certain rights of the prisoner (such as the right to vote) were curtailed, lawfully.</p> <p>At the time the Electoral Amendment Act was passed in 2006, there were slightly over 3,000 prisoners in Irish jails (the figure is now estimated to stand at around 4,500). The Act can be found at: http://www.oireachtas.ie/documents/bills28/acts/2006/a3306.pdf</p> <p>All prisoners in Ireland are eligible to vote by post in elections once they place themselves on the electoral register. The postal vote is registered in the constituency in which the prisoner would otherwise have been resident. Prisoners, however, have no right to be given physical access to a ballot box by temporary release or any other way.</p>	
Italy	<p>No judicial discretion whether to disenfranchise: occurs by operation of law, where provided for in statute.</p> <p>Disenfranchisement may be temporary (between one and five years) or permanent. Life-sentences and custodial sentences of more than five years attract permanent disenfranchisement.</p> <p>Habitual or 'professional' offenders are disenfranchised permanently.</p> <p>Custodial sentences between three and five years attract disenfranchisement for five years.</p> <p>Certain specified offences attract disenfranchisement, all related to dishonesty (see FLAG B).</p>	
Latvia	<p>In Latvia all prisoners have voting rights (regardless of sentence) in all elections apart from local elections. A prisoner is entitled to</p>	

	<p>vote in European Parliament elections, Latvian General Elections, and National Referendums.</p> <p>This has not always been the case. Prior to the European Court of Human Rights ruling in <i>Hirst v. the United Kingdom</i>, Latvian prisoners did not have voting rights. In 2008 Latvia introduced new legislation opening the vote to all prisoners.</p>	
Liechtenstein		Currently (July 2012) all prisoners are banned from voting. However, a draft bill has been introduced to Parliament which would allow all prisoners sentenced to less than a year to vote, and to give courts discretion on voting for prisoners sentenced to between one and five years. This will be debated in September.
Lithuania	All prisoners can vote. There have been no recent changes of policy.	
Luxembourg	<p>Convicted and sentenced prisoners keep their right to vote unless a court judgment specifies otherwise.</p> <p>Any prisoner sentenced to more than 10 years imprisonment is automatically barred from voting and all lose their right to vote for life. On the basis of the offence type, a judge can bar from voting any prisoners whose sentence is between 5 and 10 years and this loss of voting rights may last for the duration of the sentence, for 10 to 20 years or for life.</p> <p>There have been no recent challenges to the legal framework by the European Court of Human Rights or the domestic courts and there have been no recent changes to policy.</p>	
Macedonia	<p>All prisoners in Macedonia can vote. They vote (along with those unable to go out for medical reasons) one day before polling day.</p> <p>There have been no recent challenges to the legal framework by the European Court of Human Rights or the domestic courts and there have been no recent changes to policy.</p>	
Malta	In Malta, most prisoners lose their right to vote (for the duration of their sentence) except those serving a sentence of 12 months or less or those serving a sentence as a result of their failure to pay	

	<p>a fine.</p> <p>There have been no recent challenges to the legal framework by the European Court of Human Rights or the domestic courts and there have been no recent changes to policy.</p>	
Moldova	<p>Since June 2010, all prisoners have the right to vote unless the court considers it inappropriate to do so.</p> <p>There have been no recent challenges to the legal framework by the European Court of Human Rights or the domestic courts and there have been no recent changes to policy.</p>	
Monaco	<p>All prisoners can vote in principle, although this right can be revoked in individual cases.</p>	
Montenegro	<p>All prisoners have the right to vote. There have been no challenges to the legal framework and no changes have been recently made in this area.</p>	
Netherlands	<p>Prisoners sentenced to one year or more may have their right to vote removed by a Court if they have committed a crime “affecting the foundations of the state” (e.g. forgery of ballot papers, assault on the Monarch). However, in practice the Courts have not used this power for some time.</p> <p>There is full judicial discretion.</p> <p>There have been no recent challenges to the legal framework by the European Court of Human Rights or the domestic courts and there have been no recent changes to policy.</p>	
Norway	<p>All prisoners have voting rights. There is legislation that allows for these to be removed in cases of treason, electoral fraud or national security; but to the best of our knowledge there have been no cases where prisoners were disenfranchised.</p>	
Poland	<p>Offenders who have:</p> <ul style="list-style-type: none"> ○ committed a crime with intent; and 	

	<ul style="list-style-type: none"> ○ been sentenced to imprisonment for a period not less than three years may be disenfranchised <p>Disenfranchisement is a consequence of a sentence applied in addition to the principal custodial sentence, at the judge's discretion.</p> <p>The period of disenfranchisement will continue beyond the custodial sentence, as time does not begin to count on the period of disenfranchisement until release.</p>	
Portugal	<p>Prisoners can vote, unless they have been deprived of their "political rights" as part of their sentence. This deprivation might be imposed on a person convicted of a crime against the state or a crime related to elections or public office. We are not aware of any recent changes to policy or challenges to the legal framework.</p>	
Romania	<p>The following categories of prisoners are allowed to vote:</p> <ul style="list-style-type: none"> • prisoners under preventive arrest • prisoners still awaiting conviction • prisoners sentenced by first instance decision • sentenced prisoners that were not explicitly barred from voting by the Court <p>Prisoners are not allowed to vote if they have been sentenced to a minimum 2 years in prison or are explicitly barred from voting by the Court. Depending on the nature of the criminal offence, the Court can decide whether to limit prisoner voting rights. Disenfranchisement lasts for the duration of the time spent in prison. It does not continue upon release.</p> <p>There have been no recent policy changes or legal challenges.</p>	
Russia		<p>Prisoners do not have any voting rights in Russia. There have been no recent legal challenges either before the ECtHR or domestically.</p>

San Marino		Prisoners cannot vote. There have been no recent challenges.
Serbia	<p>All convicted and sentenced prisoners have the right to vote at all elections (at all levels, from parliamentary to local, even for elections for National Minorities' Councils).</p> <p>There have been no recent changes in the policy.</p>	
Slovakia	<p>Some prisoners have the right to vote. The nature of restrictions is determined with reference to sentence length. Sentence length limits are set by the legislation and the judge can also take into account the circumstances of the case.</p> <p>Disenfranchisement lasts for the whole duration of the sentence and does not continue upon release.</p> <p>There have not been any recent challenges to the legal framework for disenfranchisement before the ECHR or Slovakia's domestic courts.</p>	
Slovenia	<p>All prisoners, regardless of their conviction or length of sentence have the right to vote at all elections.</p> <p>There have been no recent changes to policy.</p>	
Spain	All prisoners have been able to vote since 1996. Before this individual prisoners could be banned from doing so.	
Sweden	In Sweden, all convicted and sentenced prisoners have the right to vote, as long as they fulfil the general requirements that apply for such rights to be afforded. There have been no recent legal challenges or changes made to the policy on this.	
Switzerland	All prisoners have the right to vote. There have been no recent challenges to the legal framework by the European Court of Human Rights or the domestic courts and there have been no recent changes to policy.	
Turkey	Certain categories of prisoners can vote: those with a sentence of less than one year, those on pre-trial detention, and those who	

	have committed minor offences.	
Ukraine	<p>All convicted and sentenced prisoners have the right to vote in the presidential and parliamentary elections.</p> <p>They do not have the right to take part in local elections (in line with the 2010 amendments to the Law of Ukraine on Local Elections) – but this is not because of their sentence/conviction but due to the fact that during the period of their sentence/conviction they are not regarded as members of certain local communities (same restrictions for participation in local elections are also applicable to military servicemen, citizens who temporarily leave and work abroad, etc.)</p> <p>According legal experts and relevant departments of Ukraine’s Ministry of Justice, there have been no recent challenges to the legal framework for disenfranchisement before the European Court of Human Rights or domestic courts.</p>	

Flag A

Offences Specified in the French Penal Code Attracting Mandatory Disenfranchisement

Article number specifying the offences which attract disenfranchisement	Articles containing offences	Description of Offences
213-1	211-1	Genocide and related crimes
213-1	211-2	Other crimes against humanity
215-1	214-1	Crimes involving eugenics and cloning
221-9	221-1 to 221-5-3	Intentional Killing
222-45	222-1 to 222-18-2	Torture and other cruelty; violence unintentionally causing death. Threatening behaviour
222-45	222-22 to 222-33-1	Rape and other sexual crimes

222-45	222-34 to 222-43-1	Drug trafficking offences
223-15-3	223-15-2	Taking advantage of a person subject to a vulnerability such as age, or other characteristic
223-16	223-3 to 223-8	Abandoning a person unable to look after himself; obstructing others from giving assistance; omitting to assist; experimentation on human beings
223-16	223-10 to 223-14	Causing an abortion without a person's consent; inducing suicide
224-9	224-1 to 224-10	Offences involving abduction and unlawful imprisonment; hijacking
225-20	225-4-1 to 225-12-7	Human trafficking; offences involving procuring; offences involving child prostitution; exploitation of another person's begging
226-31	226-1 to 226-32	Offences against privacy (covers a broad range from breaches of professional confidentiality to misuse of genetic information; malicious denunciation
227-29	227-1 to 227-33	Offences against minors and the family: broad range of offences, including desertion of minors; failing to pay maintenance ordered by the court; and endangering minors
311-14	311-1 to 311-16	Theft
312-13	312-1 to 312-15	Extortion; blackmail
313-7	313-1; 313-2; 313-6 and 313-6-1	Fraudulently obtaining property
314-10	314-1; 314-2 et 314-3	Fraudulent breach of trust
321-9	321-1 to 321-12	Receiving criminal property
322-15	322-1 to 322-18	Criminal damage
323-5 (states maximum of 5 years)	323-1 to 323-7	Unauthorised access to automatic data processing systems
324-7	324-1 et 324-2	Money Laundering
414-5	410-1 to 414-9	Crimes undermining the national interests; e.g. espionage; ceding territory to a foreign power; sharing intelligence with a foreign power; sabotage etc
422-3 (up to 15 years for a felony and 10 years for a misdemeanour)	421-1- to 422-7	Terrorist offences
431-2	431-1	Impeding freedom of expression; labour; association; or demonstration
431-7	431-5 and 431-6	Participation in; or incitement of an unlawful assembly of armed persons
431-11	431-10	Participation in a demonstration or public meeting whilst armed
431-18	431-13 to 431-21	Offences related to membership of a combat group
431-26	431-22 to 431-27	Unauthorised entry into an academic institution
431-28	Article 431-28	Entering an academic institution whilst armed

432-17	432-1 to 432-17	Offences committed by civil servants in exercise of their duties: abuse of authority; discrimination; breaches of confidentiality in respect of correspondence; improper demands for tax; corruption; having an interest in an enterprise whilst in public office; offences relating to public procurement; misappropriation of property
433-22	433-1 to 433-25	Offences committed by private persons against government: attempting to corrupt a public servant; threatening a public servant; seeking to undermine the dignity of the office held by a public servant; publicly insulting the national anthem or tricolour flag at a demonstration organised or regulated by the public authorities; violent resistance; obstructing public works; unlawful use of titles; unlawful use of a position; offences against the civil status of a person
434-44	434-4 to 434-9-1; 434-11; 434-13 to 434-15; 434-17 to 434-23; 434-27; 434-29; 434-30; 434-32; 434-33; 434-35; 434-36; 434-40 to 434-43	Offences relating to perverting justice; escape from custody; procuring an escape from custody; offences relating to imprisonment; failure to adhere to a judicial prohibition on certain civil and political rights defined in articles 131-27 to 29;
435-14	435-1 to 435-15	Offences against the public administration of the EU; foreign states; and public international organisations; i.e. corruption
436-4	436-1 to 436-5	Participation in mercenary activity
441-10	441-1 to 441-12	Offences undermining public trust; i.e. forgery
442-11	442-1 to 442-6	Producing counterfeit money
443-6	443-1 to 443-8	Forgery of securities issued by public authorities
444-7	444-1 to 444-9	Forgery of the Government's official marks
445-3	445-1 et 445-2	Passive and active corruption of persons not holding a public function
450-3	450-1	Participation in a criminal association

Flag B**Specified Offences Attracting Loss of Political Rights in the Italian Penal Code**

Article specifying offence entailing loss of electoral rights	Description of offence
31	Abuses of public office
98	Applicable to those aged between 14 and 18 who committed serious crimes (disenfranchisement for up to 5 years)
314	Embezzlement by a public office holder (permanent disenfranchisement)
317	Extortion/bribery type offence by a public office holder (permanent)
371	Perjury in civil cases
373	False expert witness testimony
377	Obstruction of justice
380-382	Advocates/experts acting dishonestly
386	Procuring a person's escape from custody
501	Fraudulently causing public markets to rise or fall