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Prisoners' voting rights

Summary

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Summary

In 2005 the European Court of Human Rights (ECtHR) ruled that the UK was in breach of Article 3 of Protocol No 1 of the European Convention on Human Rights in relation to prisoner voting rights. The issue remained unresolved until 2018.

In December 2017 the UK Government came up with proposals that the Council of Europe said were sufficient to signify compliance with the 2005 ruling. The Council finally closed the case in September 2018.

This briefing explains the current prisoner voter rules, discusses the 2005 ECtHR ruling and the political debate it sparked about prisoner voter rights. It also gives details of the provisions to allow some prisoners to vote in local and devolved elections in Scotland.

For more detail on events before 2015, see the Library briefing paper Prisoners' voting rights (2005 to May 2015).

The current rules

Section 3, Representation of the People Act 1983, as amended, prevents convicted individuals detained in prison and mental health hospitals from registering to vote in UK Parliament and English, Welsh and Northern Irish local elections.

The wording of section 3 of the 1983 Act excludes unconvicted prisoners and those serving their sentence in the community from the ban. This means the following prisoners can vote:

- those held on remand awaiting trial/ sentencing
- civil prisoners– normally those in prison for failure to pay fines or debts or contempt
- offenders on home detention curfew or released on temporary licence.

The franchise for local elections in Scotland and Wales is devolved.

The Scottish Parliament legislated in this area in 2020. Scottish prisoners ordinarily resident in Scotland serving a sentence less than 12-months are now eligible to vote in Scottish Parliament, local and national park elections.

The Senedd Cymru/ Welsh Parliament has not yet reformed prisoner voting rights for devolved elections in Wales, but has said it will continue to consider it as a longer-term priority.

The challenge

In 2001 the ban was challenged by three convicted prisoners. The domestic courts rejected the challenge and one of the prisoners, John Hirst, then took his case to the ECtHR.

On 6 October 2005, in the case of *Hirst v United Kingdom (No 2)*, the ECtHR ruled that the UK's ban on all serving prisoners from voting contravenes Article 3 of Protocol No 1 of the European Convention on Human Rights (ECHR), which provides that signatory states should "hold free elections … under conditions which will ensure the free expression of the opinion of the people".

The central element to the ECtHR ruling was that the UK's blanket ban on prisoner voting was indiscriminate and disproportionate.

The debate

The *Hirst (No 2)* judgment set off a political debate. This debate has largely focused on the constitutional issues raised by the judgment, in particular: the UK's relationship with the ECtHR; reform of the Human Rights Act 1998; and the importance of parliamentary sovereignty.

Hirst (No 2) is regarded by some as an example of the ECtHR overstepping its proper role and encroaching upon Parliament's legislative authority. The judgment has also been criticised by some as an example of the misuse of human rights, in the sense that the ECtHR's interpretation of Article 3 of Protocol No 1 went beyond the drafters' intentions.

The 2005 Labour Government considered the ban on prisoners voting was appropriate but was conscious of the need to meet its obligations under international law to rectify the contravention of Article 3. In the 2005 Parliament, the Labour Government issued two consultations, one in 2006 and one in 2009. It did not bring forward final proposals before the 2010 General Election.

In 2012, the Coalition Government of 2010-15 published a draft Bill which gave three options for the right to vote in UK Westminster Parliamentary and European Parliament elections: the status quo – an outright ban; a ban for prisoners sentenced to 4 years or more; or a ban for prisoners sentenced to more than 6 months.

In 2013, a Joint Committee scrutinising the Bill recommended that all prisoners serving sentences of 12 months or less should be entitled to vote in all UK parliamentary, local and European elections. The Government did not formally respond, and these proposals were not taken forward.

The Conservative Government's Queen's Speech in May 2015 did not refer to any plans to change the existing legislative position, and David Cameron subsequently implied that the blanket ban on prisoners' voting rights would not be changed while he remained Prime Minister.

In December 2015, Michael Gove indicated that the Government would, in 2016, produce a substantive response to the 2013 report by the Joint Committee on the draft Voting Eligibility (Prisoners) Bill, after the publication of the consultation on reform of the Human Rights Act 1998. Neither a response to the Committee nor a consultation on the Human Rights Act 1998 was published.

The solution

Following further calls from the Council of Europe's Committee of Ministers to resolve the impasse, the then Secretary of State for Justice, David Lidington, published proposals in November 2017. These proposals were more limited in scope than those included in previous proposals. The main change proposed was to make administrative changes which allowed prisoners released on temporary licence to vote. In December 2017 the Council of Europe welcomed the proposals, agreeing to them as an acceptable compromise that would address the issues raised by *Hirst (No 2)*.

The Government intended to implement the proposed changes by the end of 2018. It agreed to report back to the Council of Europe's Committee of Ministers by September 2018. The Council of Europe confirmed that the case was closed at its meeting of September 2018.

1 Current rules

Most prisoners in the UK are not eligible to vote. Everyone detained in a UK prison or mental health hospital as a result of a conviction is banned from voting in UK Parliamentary elections.[1] This ban also extends to voting in local government elections in England and Northern Ireland.[2]

Not all people in prison are being detained because of a conviction. The following prisoners are therefore eligible to vote in UK Parliamentary elections and local elections in England and Northern Ireland:

- those held on remand (those awaiting trial or sentencing),
- those held for contempt of court,
- those held for a default term for non-payment of a fine.[3]

Some people convicted of an offence and serving a sentence are not in prison. Offenders on home detention curfew (HDC) or released on temporary licence (ROTL) are eligible to vote when they are in the community.[4] These offenders are not eligible when they are in prison.

The franchise for Scottish Parliament, Senedd Cymru/ Welsh Parliament and local elections in Scotland and Wales is devolved.

The situation for Welsh prisoners is the same for Senedd and local elections in Wales as it is for UK Parliamentary elections. The Welsh Government is considering proposals which would allow Welsh offenders serving a sentence of less than four years to vote in Senedd and Welsh local elections.[5]

In Scotland the situation is different. Offenders normally resident in Scotland serving less than 12-months are eligible to vote in Scottish Parliament, local government and national park elections.[6]

The Ministry of Justice has published guidance on prisoner voting rights in England and Wales in its restrictions on prisoner voting policy framework (issued August 2020). The Electoral Commission has published information which supports eligible prisoners in Scotland to vote in the 2022 Scottish Parliament and council elections.

1 subsection 3(1), Representation of the People Act 1983
2 Ibid
3 Ministry of Justice, Restrictions on prisoner voting policy framework, August 2020, Annex B
4 Ibid
5 Section 6 of this briefing discusses the debate in Wales.
6 subsection 3(1A), Representation of the People Act 1983

2 Origins of the ban

Those sentenced to prison have typically been disenfranchised in the UK. Before the Representation of the People Act 1918 the franchise was limited to men who met property qualifications. Until 1870 those convicted of a felony were required to forfeit their property to the Crown and therefore became ineligible to vote. Those convicted of lesser offences did not have to forfeit their property and may have been eligible to vote. However, in practice all prisoners were barred from voting because they were not released to go to the polls.[7]

The Forfeiture Act 1870 abolished the practice of confiscating property from those convicted of serious offences. As this would enfranchise some felons, the 1870 Act also specifically prohibited those sentenced to more than 12 months from voting.[8] As before, in practice all prisoners were disenfranchised because they were not released to vote on polling day.

The Representation of the People Act 1948 allowed electors "no longer resident at their qualifying address" to vote via a postal vote for the first time.[9] This meant prisoners not disenfranchised by the 1870 Act could vote via postal ballot if they were still registered at their home address. A Times article reported that among the postal votes cast in the 1950 General Election "were a number from prisons in Cardiff, Lincoln, Preston and Manchester."[10]

The Criminal Law Act 1967 abolished the distinction between felony and misdemeanour in English criminal law. As a result, all references to felons in the 1870 Act were removed. This meant that there was no specific statutory provision that prevented prisoners (apart from those convicted of treason) from voting. However, administrative restrictions meant that only prisoners still on the electoral register at their home address could access postal votes.

The Representation of the People Act 1969 reinstated a specific ban on prisoners voting. Under the 1969 Act, convicted persons were legally incapable of voting whilst being held in prison.[11] The ban was a recommendation of the Speaker's Conference that reported in 1968.[12]

7 Draft Voting Eligibility (Prisoners) Bill Joint Committee report, HL 103/ HC 924, 18 December 2013, paras 9 & 10

8 Section 2, Forfeiture Act 1870

9 Paragraph 8(1)(e), Representation of the People Act 1948

10 Steady flow of voters, The Times, 24 February 1950

11 Section 4, Representation of the People Act 1969

12 Conference on electoral law. Final report. Letter dated 9th February, 1968 from Mr. Speaker to the prime minister, Cmnd. 3550, February 1968 [available to Commons users via the Library's subscription to UK Parliamentary Papers. See: Parliament and Government databases.]

The 1969 Act provision was replaced in the Representation of the People Act 1983 as part of a consolidation of electoral law. The 1983 Act also provided that a prison could not be regarded as a place of residence for registration purposes. This meant that unconvicted prisoners were also unable to vote because they could not meet the registration requirements.

In 1999 the Home Office 'Working Party on Electoral Procedures' said the disenfranchisement of unconvicted prisoners was an accidental effect of the registration rules. The Working Party said there was no argument of principle to deprive unconvicted prisoners of the franchise. It 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'.[13] This recommendation was legislated for by the Representation of the People Act 2000.[14]

[13] Home Office, Working Party on Electoral Procedures 1999, para 2.3.12

[14] Part I, section 5, Representation of the People Act 2000

3 Is the ban on prisoners voting lawful?

Article 3 of Protocol No. 1 of the European Convention on Human Rights (ECHR) says signatory governments will…

> …hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

Between 2005 and 2018 the European Court of Human Rights (ECtHR) held that UK prisoner voter rules were incompatible with Article 3 of Protocol No. 1. The court sided with several prisoners in a series of human rights judgements beginning with *Hirst v UK (No. 2)* [2005].

Hirst v UK (No. 2) has since been frequently cited as an example of ECtHR overreach by those who wish to reform the Human Rights Act 1998, including successive Conservative Governments since 2015.[15] The Library has discussed Conservative proposals for Human Rights Act reform in a separate briefing.

The UK Government made non legislative changes to prisoner voting in 2018 which satisfied the Committee of Ministers which subsequently closed *Hirst v UK (No 2)*. The changes had the effect of allowing offenders released on temporary licence (ROTL) to vote. These offenders weren't explicitly banned from voting, but prison rules had prevented them from doing so before the changes.

3.1 The Hirst litigation

In 2001, three convicted prisoners, including John Hirst, a prisoner serving a life sentence for manslaughter, challenged an Electoral Registration Officer's decision not to allow them to register to vote.[16]

The High Court dismissed their applications. The judgment emphasised, in rejecting the claims, that deciding the extent to which, if at all, prisoners should be enfranchised was a matter for Parliament, rather than the courts, to determine.

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15 See: Ministry of Justice, Human Rights Act Reform: A Modern Bill of Rights – consultation, 12 July 2022, para 101

16 *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*

John Hirst then took his case to the European Court of Human Rights (ECtHR). In its judgment, *Hirst v UK (No. 2)* [2005] ECHR 681, the Grand Chamber of the European Court of Human Rights (ECtHR) held, by a majority of 12 to 5, that there had been a violation of Article 3 of Protocol No.1 of the ECHR.

The majority judgment sets out that Article 3 of Protocol No 1, despite not being phrased as a right, does guarantee individual rights, including the right to vote.[17] This right is not absolute, and each contracting state has a wide margin of discretion to decide the nature of the limits imposed.[18] Nevertheless, the majority emphasised that it was the ECtHR's responsibility to determine whether the requirements of Article 3 of Protocol No 1 have been complied with.[19] The majority explained that measures limiting the right must pursue a legitimate aim in a proportionate manner.[20]

On the central question of the proportionality of prisoner voter rules in the UK, the majority judgment highlighted two points.

Firstly, they emphasised the blanket nature of the ban, which applies to prisoners irrespective of the seriousness of the offence or the length of the sentence. It further noted that, when sentencing, the criminal courts in England and Wales make no reference to disenfranchisement and:

> it is not apparent, beyond the fact that a court considered it appropriate to impose a sentence of imprisonment, that there is any direct link between the facts of any individual case and the removal of the right to vote.[21]

Secondly, they pointed out that Parliament had not considered the human rights implications of the ban imposed by the 1983 Act:

> ...it cannot be said that there was any substantive debate by members of the legislature on the continued justification in 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.[22]

The 1983 Act was a consolidation Bill and so there was no debate in the House.

The majority's conclusion was that the "general, automatic and indiscriminate" nature of the restriction on the right meant that the UK's ban on prisoners' voting rights fell outside of the margin of appreciation and was disproportionate.[23]

17 *Hirst v UK (No. 2)* [2005] ECHR 681, para 57
18 Ibid para 61
19 Ibid, para 62
20 Ibid, para 73.
21 Ibid, para 77.
22 Ibid, para 79.
23 Ibid, para 82.

3.2 Subsequent cases

Since *Hirst (No 2)*, the issue of the voting rights of prisoners has come before various courts in several cases.

ECtHR

In November 2010, the ECtHR found a violation of Article 3 Protocol No 1 in the case of *Greens and MT v UK*,[24] which concerned two prisoners in HM Prison Peterhead who had been unable to register to vote. This resulted in the ECtHR setting a six-month deadline for the UK Government to introduce legislative proposals to remedy the violation.

This deadline was extended to take into account the case of *Scoppola v Italy (No 3)*.[25] The ECtHR produced its judgment in that case on 22 May 2012. The ECtHR confirmed the position adopted in *Hirst (No 2)*, but accepted the UK Government's argument, who intervened, that contracting states should have a wide margin of appreciation to decide how to regulate restrictions on prisoners' voting rights.

On 12 August 2014, in the case of *Firth and Others v. the UK*,[26] the ECtHR passed judgment on the first batch of ten "clone cases" following on from *Greens & MT*. The ECtHR held that there was a violation of Article 3 of Protocol 1 to the EHCR in each of the ten cases.

On 10 February 2015, the ECtHR held in *McHugh and Others v UK* that 1,015 prisoners had been subject to a violation of Article 3 of Protocol No 1.[27] The ECtHR, as in all previous cases on this question, rejected the applicants' claim for compensation and costs.

UK courts

In 2007, Scotland's Registration Appeal Court, in the case of *Smith v Scott*,[28] followed *Hirst (No 2)* and issued a declaration of incompatibility under Section 4 of the Human Rights Act 1998, in relation to the prisoner voting ban.

On 17 December 2014, the Supreme Court rejected an appeal brought by two Scottish prisoners that sought to challenge the provision of the Scottish Independence Referendum (Franchise) Act 2013 that disenfranchised them on a number of grounds.[29] The Court held that Article 3 of Protocol No 1 of the

24 *Greens and MT v United Kingdom* (2010) 53 EHRR 710
25 *Scoppola v Italy (No 3)* (2012) 56 EHRR 663
26 *Firth and Others v. the UK* [2014] EHRR 874
27 *McHugh and Others v UK* [2015] Application no. 51987/08
28 [2007] SC 345
29 *Moohan and Another v Lord Advocate* [2014] UKSC 67

ECHR applies only to elections to the legislature, a position which is supported by a clear line of ECtHR case law.

European Union law cases

Whilst the UK was a member of the European Union there was a question as to whether its law on prisoner voting rights was compatible with European Union law. Article 39 (2) of the European Union's Charter of Fundamental Rights states that "Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot".

On 16 October 2013 the UK Supreme Court dismissed the appeals of George McGeoch and Peter Chester,[30] 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 maintained the position determined in Strasbourg that the UK's blanket ban was contrary to the ECHR; although it refused to make a further "declaration of incompatibility" under Section 4 of the Human Rights Act 1998.

On 6 October 2015, the Court of Justice of the European Union (CJEU), which holds jurisdiction over EU law across the EU, published its judgment in the case of Thierry Delvigne v Commune de Lesparre-Médoc and Préfet de la Gironde.

Mr Delvigne was convicted of murder and given a 12-year prison sentence by a French court in 1988. According to the relevant French law, the imposition of such a sentence meant that he also lost the right to vote for an indefinite period. In 2012, he was not allowed to register to vote for elections to the European Parliament. He appealed that decision to a French court based on its incompatibility with the European Union's Charter of Fundamental Rights (CFR), and the court duly referred the issue of the proper interpretation of the CFR to the CJEU under Article 267 of the Treaty for the Functioning of the European Union.

In *Delvigne*, the CJEU ruled that Article 39 (2) of the CFR, which states that "Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot", constitutes a right of Union citizens to vote in elections to the European Parliament. The CJEU then considered whether the French law's restrictions on that right met the conditions set out in Article 52 (1), which requires that limitations are proportionate.

CJEU's ruling came to markedly different conclusions from the Supreme Court in *Chester*. The substance of the *Delvigne* judgment, particularly the application of the proportionality test, led some to doubt whether the UK's "blanket ban" would be compatible with the CFR.

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30 *R (on the application of Chester) (Appellant) v Secretary of State for Justice (Respondent); McGeoch (AP) (Appellant) v The Lord President of the Council and another (Respondents) (Scotland)* [2013] UKSC 63

No case was subsequently bought to the CJEU on UK voting rights whilst the UK was still a member of the European Union. UK law was therefore never tested in this way.

3.3 Interventions by the Council of Europe

On 24 September 2015, the Council of Europe's Committee of Ministers published a decision, which called upon the UK Government to introduce a Bill to Parliament to respond to *Hirst (No 2)*, as well as *Greens and MT*, Firth and *McHugh*. The decision stated that the Committee of Ministers:

> Expressed their appreciation for the presence of the Minister for Human Rights and the assurances presented of the United Kingdom's support for the European Convention on Human Rights;
>
> Reiterated their serious concern about the on-going delay in the introduction of a Bill to Parliament (as recommended by the Parliamentary Committee in December 2013) leading to repetitive violations of the Convention (Firth and Others and McHugh and Others);
>
> Expressed profound regret that, despite their repeated calls, the blanket ban on the right of convicted prisoners in custody to vote remains in place and reiterated that concrete information is yet to be presented to the Committee on how the United Kingdom intends to abide by the judgment;
>
> Reiterated, notwithstanding the Delvigne case, their call upon the United Kingdom authorities to introduce a Bill to Parliament as recommended by the Parliamentary Committee without further delay, and to inform them as soon as this has been done;
>
> Decided to resume consideration of these cases at their 1243rd meeting (December 2015) (DH) and, in the event that no Bill has been introduced to Parliament in the meantime, instructed the Secretariat to prepare a draft interim resolution to be distributed with the revised draft order of business.[31]

On 9 December 2015, the Council of Europe's Committee of Ministers adopted Interim Resolution CM/ResDH (2015) 251. The text of the resolution again called upon the UK to respond to the ECtHR's judgments:

> Expressed profound concern that the blanket ban on the right of convicted prisoners in custody to vote remains in place;
>
> Reaffirmed that, as for all Contracting Parties, the United Kingdom has an obligation under Article 46 of the Convention to abide by judgments of the Court;
>
> Invited the Secretary General to raise the issue of implementation of these judgments in his contacts with the United Kingdom authorities, calling on them

[31] Decision of the Committee of Ministers, 1236th meeting – 24 September 2015.

> to take the measures necessary to amend the blanket ban on prisoner voting and encouraged the authorities of the member States to do the same;
>
> Called upon the United Kingdom authorities to follow up their commitment to continuing high-level dialogue on this issue leading to the presentation of concrete information on how the United Kingdom intends to abide by the judgment;
>
> Noted the United Kingdom's commitment to report regularly on the steps taken and achieved in this respect, and decides to resume consideration of these cases in the light of those reports and in any event at the latest at their 1273rd meeting (December 2016) (DH).[32]

3.4 Closing *Hirst v UK (No 2)*

In December 2016, the UK Government gave a public commitment to the Committee of Ministers of the Council of Europe that it would bring forward proposals to address the concerns raised by the *Hirst (No 2)* judgment.

Following the General Election of 2017, David Lidington became the Secretary of State for Justice. On 2 November 2017, he made a statement to the House of Commons. He outlined an approach submitted to the Committee of Ministers to address the objections raised in *Hirst*, making two specific practical, but non-legislative, proposals.[33]

The first was to explicitly notify prisoners that on conviction they would lose the right to vote by amending the standard warrant of committal to prison to ensure that prisoners are notified of their disenfranchisement.

The second was to clarify Prison Service guidance for prisoners released on temporary licence and prisoners released on home detention curfew, allowing a limited number of convicted prisoners the vote.

The Secretary of State told the House:

> We have decided to propose administrative changes to address the points raised in the 2005 judgment, while maintaining the bar on convicted prisoners in custody from voting. First, we will work with the judiciary to make it clear to criminals when they are sentenced that while they are in prison they will lose the right to vote. That directly addresses a specific concern of the Hirst judgment that there was not sufficient clarity in confirming to offenders that they cannot vote in prison.
>
> Secondly, we will amend guidance to address an anomaly in the current system, where offenders who are released back in the community on licence using an electronic tag under the home detention curfew scheme can vote, but those in the community on temporary licence cannot vote. Release on

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32 Interim Resolution CM/ResDH(2015)251 adopted by the Committee of Ministers on 9 December 2015 at the 1243rd meeting of the Ministers' Deputies

33 Communication from the United Kingdom concerning the case of HIRST (No. 2) v. the United Kingdom Application No. 74025/01), 2 November 2017

> temporary licence is a tool typically used to allow offenders to commute to employment in the community and so prepare themselves for their return to society. Reinstating the civic right of voting at this point is consistent with that approach. Release on temporary licence is absolutely not an automatic entitlement and every case is subject to rigorous risk assessment. The measures I am announcing today do not involve any changes to the criteria for temporary release, and no offenders will be granted release in order to vote.[34]

He estimated that the changes would affect up to 100 offenders on temporary licence at any one time.

The Council of Europe Committee Ministers accepted the proposals submitted by the UK Government were sufficient, if implemented, to signify compliance with the 2005 judgement.

> Overall, they consider that these measures are an effective package to ensure compliance with the Hirst group of judgments and invite the Committee of Ministers to endorse these proposals so that they can be implemented after the present meeting. They note that this will also require close co-operation with the devolved administrations of the United Kingdom who are responsible for aspects of elections and prisons, in particular to reflect the differences in law and practice in Scotland and Northern Ireland.[35]

The UK Government committed to update the Council of Europe on progress on 1 September 2018.[36]

In July 2018, the Government confirmed in an answer to a Parliamentary question that guidance had recently been issued to prison governors in England and Wales to inform them of this policy change. This was accompanied by a leaflet for prisoners informing them of their voting rights.[37]

The Council of Europe confirmed that the case was closed in September 2018. It reported at its September meeting that:

> In summary, the implementation of these measures means that:
>
> - prisoners on remand can vote;
> - prisoners committed to prison for contempt of court can vote;
> - prisoners committed to prison for default in paying fines can vote;
> - eligible prisoners released on temporary licence can vote;
> - prisoners released on home detention curfew can vote; and
> - prisoners are notified of their disenfranchisement at the time of sentence.

34 HC Deb 02 November 2017 Vol 630 c1007

35 Council of Europe, Committee of Ministers 1302nd meeting, **5-7 December 2017**.

36 HC Deb 21 December 2017, c1276

37 PQ 157787, 4 July 2018

> The United Kingdom has therefore implemented all the proposals approved by the Committee of Ministers in December 2017, and the Hirst group of cases can now be closed.[38]

Reaction

In a blog published in November 2018, Andreas von Staden of the University Hamburg, who has written about compliance strategies and the ECtHR, wrote about the UK's agreed solution in terms of its minimalist compliance.[39] He argues that the solution "fail[s] to respond adequately to the judgments".

In a UK Constitutional Law Association blog posted in January 2019, Elizabeth Adams also argued that the compromise may be insufficient to prevent further cases that may again question the UK's compliance with the ECHR.[40]

Both argue that the compromise did not lead to legislative change to the principal law, the Representation of the People Act 1983, that they envisaged resulting from the ECtHR's ruling in the *Hirst (No2) case.* The judgment commented that the provisions in the 1983 Act were a 'blunt instrument' that "stripped of their Convention right to vote a significant category of people and it did so in a way which was indiscriminate".[41]

Adams argues that the changes to provisions for those prisoners on temporary licence were not subject to Parliamentary scrutiny and that the compromise has not led to the legislative amendment envisaged by the ECtHR.

Von Staden cites the Court's 2010 judgement against the United Kingdom in another prisoner voting case. The Court found that, because of a continued failure of the UK to comply with the *Hirst (No2)* ruling, there had again been an ECHR violation. Von Staden highlights the Court's view that "legislative amendment is required in order to render the electoral law compatible with the requirements of the Convention" and that "the respondent State must introduce legislative proposals to amend section 3 of the 1983 Act … with a view to the enactment of an electoral law to achieve compliance with the Court's judgment in Hirst".[42]

38 Council of Europe, Committee of Ministers 1324th meeting, 7 September 2018

39 Andreas von Staden, Minimalist Compliance in the UK Prisoner Voting Rights Cases, November 2018

40 E. Adams, Prisoners' Voting Rights: Case Closed?, U.K. Const. L. Blog, 30th Jan. 2019)

41 *Hirst v UK (No. 2)* [2005] ECHR 681 quoted in Library briefing, Prisoners' voting rights (2005 to May 2015)

42 Andreas von Staden, Minimalist Compliance in the UK Prisoner Voting Rights Cases, November 2018 quoting 2010 ECtHR judgement Greens and M.T. v. the United Kingdom, paras. 110, 112 & 115

4 Past proposals for reform in England

4.1 Labour Government consultation

In the aftermath of the *Hirst (No 2)* judgment, the then Labour Government held a consultation on prisoner voting.

The first stage of the consultation was published in December 2006 by the Department for Constitutional Affairs.[43] The Government stated its view that convicted prisoners should not be able to vote whilst in prison. However, it acknowledged that the ECtHR's judgment did require the Government to take action and to facilitate debate about the enfranchisement of prisoners.

The first stage of consultation was to ascertain views on the arguments for and against allowing convicted prisoners to vote. In the foreword to the document, Lord Falconer of Thoroton, then Secretary of State for Constitutional Affairs and Lord Chancellor, wrote:

> I am aware that this is a contentious issue. The Government is firm in its 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. Nonetheless we recognise that we must take steps to respond to the Grand Chamber's judgment.

The Ministry of Justice published a second stage consultation paper on 9 April 2009, which indicated that that a limited enfranchisement of some prisoners should take place, but that the final decision should be with Parliament.[44] However, the Labour Government did not introduce any legislative proposals.

4.2 Debate during the Coalition Government

On 20 December 2010, the Coalition Government announced 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.[45]

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43 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 CP29/06, Department for Constitutional Affairs, 14 December 2006

44 Voting rights of convicted prisoners detained within the United Kingdom: second stage consultation. Consultation Paper CP6/09, Ministry of Justice, 8 April 2009, p15

45 HC Deb 20 December 2010 c151WS

The Government was clear that this was to meet its legal obligations as a result of the *Hirst (No 2)* ruling but continue the ban on the most serious offenders. The Government statement explained the reasoning behind the four-year limit:

> 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.

On 8 February 2011, the Political and Constitutional Reform Committee published a report on the subject that concluded that although the current ban on prisoner voting may be "morally justifiable", it was a breach of international law.[46]

On 10 February 2011, a Backbench Business debate took place on a motion which stated in response to *Hirst (No 2)*:

> 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 prisoner is able to vote except those imprisoned for contempt, default or on remand.[47]

The motion was agreed on division by 234 to 22.

On 24 October 2012, in response to a question at Prime Minister's Questions, the Prime Minister said: "prisoners are not getting the vote under this Government".[48]

On 22 November 2012, Chris Grayling, then Lord Chancellor, announced the publication of the draft Voting Eligibility (Prisoners) Bill. The Bill set 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.

46 Political and Constitutional Reform Committee, 'Voting by convicted prisoners', fifth report 2010-12 HC 776, para 22

47 HC Deb 10 February 2011, c493-586

48 HC Deb 24 October 2014, col 922

The Joint Select Committee tasked with pre-legislative scrutiny of the draft Bill published its report on 18 December 2013. The report contained the following recommendations:

- That all prisoners serving sentences of 12 months or less should be entitled to vote in all UK parliamentary, local and European elections;
- 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.[49]

The Lord Chancellor and Justice Secretary, Chris Grayling, made a brief response to acknowledge the Committee's report (by way of a letter) on 25 February 2014. He told the Committee that the "matter is under active consideration within Government" and he would keep the Committee updated on developments.

The draft Bill's proposals were not taken forward.

[49] Draft Voting Eligibility (Prisoners) Bill Joint Committee report, HL 103/ HC 924, 18 December 2013 p.67

5 Scotland

In May 2018, the Scottish Parliament's Equalities and Human Rights Committee published a report on prisoner voting in Scotland. The inquiry was prompted at the request of Patrick Harvie MSP following the devolution of powers over Scottish local and Scottish Parliament elections.

The inquiry considered the principle and the practicalities of prisoners being able to vote. As the Committee started its inquiry, the Scottish Government was due to consult on electoral reforms in Scotland.[50] The Committee wrote to the Scottish Government to ask whether prisoner voting would form part of that consultation. The Scottish Government confirmed that prisoner voting would not form part of the consultation:

> Given the Committee's on-going consideration of the matter the consultation will not cover prisoner voting.[51]

The Committee's final report recommended that the Scottish Government legislate to remove the ban on prisoner voting in its entirety. However, the two Conservative MSPs on the Committee dissented from this recommendation.

When asked about report at First Minister's Questions, Nicola Sturgeon, said that the issue would need to be considered by the Scottish Parliament, but that she was not in favour of allowing all prisoners to vote.

> I have noted the Equalities and Human Rights Committee report, which was published earlier this week. I have been clear that now that the power is devolved, the Scottish Parliament will need to consider how to ensure compliance with the ruling of the European Court of Human Rights. I am not of the view that that should lead to the enfranchising of all prisoners.
>
> ...
>
> I have been very clear that I do not support enfranchising all prisoners, but there is a debate to be had before Parliament takes a decision on that.[52]

Any change to the franchise for local and Scottish Parliamentary elections fall under the new "super-majority rules". These provisions were included in the Scotland Act 2016 alongside the provisions to devolve the power to legislate

50 Scottish Government, Consultation Paper on Electoral Reform, December 2017

51 Scottish Parliament Equalities and Human Rights Committee, Prisoner Voting in Scotland, SP Paper 315, p2

52 SP OR 17 May 2018, c25-6

for electoral law on local and Scottish Parliamentary elections and apply to "protected subject-matter".

The "super-majority" rules state that a provision relating to protected subject-matter will not be passed unless the number of members voting in favour of it at the final stage is at least two-thirds of the total number of seats for members of the Parliament.

In addition, there are provisions in the devolution settlement that allow Acts of the Scottish Parliament and Scottish Government action to be struck down if they breach the European Convention on Human Rights. As a result, any new Scottish electoral law could be challenged and declared unlawful in the Scottish courts if it does not comply with the Convention.[53]

5.1 Scottish Government consultation

On 14 December 2018 the Scottish Government launched a consultation on prisoner voting for Scottish Parliament and local government elections. The consultation ran until 8 March 2019. It sought views on the Scottish Government proposals to ensure compliance with the ECHR. It reiterated the Scottish Government's view that it is "neither appropriate, nor necessary to ensure compliance with the ECHR, to extend the right to vote to all prisoners".[54]

The consultation stated that the Scottish Government's preferred option is based on length of sentence and sought views on what threshold of sentence should be considered:

> Although sentencing judges take various factors into account, the length of the sentence imposed is, generally speaking, a reflection of the seriousness of the case – having regard to all the circumstances, including the nature of the offence, the circumstances in which it was committed, and the offender's previous criminal record. Accordingly, this approach strikes an appropriate balance between removing the right to vote only where the circumstances are serious enough to justify such a longer sentence.[55]

The consultation asked whether the cut-off point should be a sentence of 12 months, six months or some other threshold. The consultation noted that fixing the threshold at 12 months or less would be consistent with the distinction within the Scottish criminal justice system between the sentencing powers of courts of summary jurisdiction and courts of solemn jurisdiction.[56]

The consultation also highlighted other potential options. The second option considered was whether courts should be empowered to impose the loss of the right to vote as a part of sentencing. However, the document noted this

53 SPICe briefing, Prisoner voting in Scotland – a short summary, December 2017, p10
54 Scottish Government, Consultation on Prisoner Voting, 14 December 2018, p10
55 Ibid, p11
56 Ibid, p12

approach has been criticised by the Scottish judiciary. Lord Carloway, the Lord President of the Court of Session, said when submitting evidence to the inquiry by the Scottish Parliament's Equalities and Human Rights Committee, "I have consulted the senior judiciary (the High court judges). All are opposed to such a course of action." Lord Carloway stressed that, after "due democratic consultation", the key principles of the prisoner voting issue should be decided by Scottish Parliament and not be left to be developed on a case-by-case basis by individual judges.[57]

Option three related to disenfranchisement based on the type, or severity, of crime committed. The Scottish Government note that the seriousness of a crime is a key factor in determining the length of sentence.[58]

Option four would be dependent on length of sentence remaining. A prisoner would lose the right to vote upon being sentenced to time in prison. They would then regain the right to vote upon reaching a point where they had a defined amount of their sentence remaining.

The Scottish Government noted that giving the vote to those still serving a sentence for a serious crime could cause distress to the victims of crime. It also noted that the complex nature of sentencing and prisoner release arrangements would mean that this approach would be difficult to implement.[59]

The consultation also asked for opinions on the practicalities of prisoners voting. The Scottish Government's proposal is to allow eligible prisoners to vote by vote or by proxy by a declaration of local connection to a previous address or local authority, rather than the prison address. This is the method currently used for remand prisoners and would avoid the potential for large numbers of prisoners, registered at a prison, to dominate the electorate of a ward or constituency.[60]

Responses to the consultation were published in June 2019. There was no clear consensus:

> Respondents to the consultation were split fairly evenly across three main positions. Around 3 in 10 thought that prisoners' right to vote should be linked to the length of their sentence…Of the remaining respondents, those who went on to comment generally preferred one of two approaches: allowing no prisoners to vote (around 1 in 3 of all respondents); or extending the franchise to all prisoners (around 3 in 10 of all respondents).[61]

Of those that expressed a preference on the Scottish Government's preferred option, basing the right to vote on length of sentence, two in ten favoured a

57 Scottish Government, Consultation on Prisoner Voting, 14 December 2018, p13
58 Ibid, p13
59 Ibid, p14
60 Ibid, p14-5
61 Scottish Government, Prisoner voting consultation: analysis of responses, Executive Summary

threshold of 6 months or less, a third favoured a threshold of 12 months or less, and almost half favoured 'another duration'.

5.2 Legislation

The Scottish Elections (Franchise and Representation) Bill was introduced in the Scottish Parliament by the Deputy First Minister and Cabinet Secretary for Education and Skills, John Swinney MSP, on 20 June 2019. It covered a range of issues associated with Scottish Parliament and local government elections in Scotland, including prisoner voting.

The Bill was passed on 20 February 2020. The provisions on prisoner voting, in Part 3 of the Scottish Elections (Franchise and Representation) Act 2020, came into force the day after Royal Assent.

Part 3 of the Act as passed extends the franchise in Scottish Parliament and local government elections to some convicted prisoners. From 2 April 2020, provision in the Act allows those serving a sentence of 12 months or less to register to vote for Scottish Parliament, local government, and national park elections.

The Act has provisions relating to those sentenced to consecutive or concurrent terms of imprisonment which, when taken together, exceed 12 months. The explanatory notes to the Bill explained:

> For example, a person sentenced (at the same time) to a six month sentence and a seven month sentence, to be served concurrently, would be regarded for the purposes of this section as serving a total term of seven months and would therefore be [able to register to vote]. A prisoner sentenced to two sentences of seven months that are to run consecutively would not be able to vote whilst in prison, as for the purposes of the section they would be considered to be serving a single term of 14 months.[62]

Prisoners will only be allowed to vote by post or proxy: no provision will be made for polling stations in prisons. Prisoners cannot act as a proxy for another voter.

In most circumstances a prisoner will be registered at the address at which they would normally be residing had they not been detained. The Act makes provision for the address to be deemed their residence even though they will be absent for the period of their sentence. The practical effect is that a prisoner is effectively granted an absent vote at the home address at which they were resident had they not been detained.

In some circumstances, where the prisoner had no fixed abode prior to sentencing, or has been prevented from returning to the previous home

[62] Revised Explanatory notes, Scottish Elections (Franchise and Representation) Bill (SP Bill 51A) as amended at Stage 2

address in Scotland by an order of any court, the Act makes provision to register a notional residence by a declaration of local connection. This is similar to the existing provisions that allow homeless people to register to vote. For prisoners, this may be an address where they were resident before detention. If the prisoner cannot provide any residential address with a previous connection, including if they are prevented from returning to an address by court order, they may then provide the address of the penal institution.

Prisoners with an address outside Scotland, or who would not be resident in Scotland but for their detention, cannot register. This is to ensure that only a prisoner with a connection to Scotland can specify the prison as the "required" address for the purpose of making a declaration of local connection.

The enfranchisement of prisoners in Scotland will be subject to ministerial review. This will be to review the length of sentence specified in the Act and is to be completed and laid before the Scottish Parliament by May 2023. This requirement was introduced at Stage 3 of the Bill.[63]

The Bill was passed with the required supermajority, by 92 votes to 27.[64]

Changes were subsequently made by secondary legislation to allow for official polling cards to be sent to eligible prisoners at their address in prison,[65] and to clarify the rules around emergency proxy votes for eligible prisoners.[66]

5.3 Review of the new provisions

The ministerial review of the changes was conducted as required.[67] The Scottish Government published its report on 4 May 2023.[68] The review, as noted above, was to consider whether the length of sentence set out in the Act was appropriate.

The Scottish Government concluded that it would not revisit the 12-month threshold and that there was not sufficient data available to assess the impact of any potential change to the sentence threshold.[69]

The report set out measures taken to facilitate prisoner voting rights. These included Electoral Commission guidance for prison staff, a data sharing

63 Amendment 32 as amended by amendment 32A, Official Report, 20 February 2020
64 Official Report, 20 February 2020
65 The Scottish Local Government Elections Amendment Order 2021
66 The Representation of the People (Absent Voting at Local Government Elections) (Scotland) Amendment Regulations 2021
67 Section 6 of the Scottish Elections (Franchise and Representation) Act 2020
68 Scottish Government, Prisoner voting in Scottish devolved elections: report, 4 May 2023
69 As above

agreement between the Scottish Prison Service and electoral registration officers, and initiatives through the prison education service. The Scottish Government noted levels of engagement with voting amongst the eligible prisoner population remain low. For example, 38 eligible prisoners registered to vote for the Scottish Parliament election in 2021, and around 8% of eligible prisoners were registered to vote in Scottish local elections in 2022.[70] It said it intended to review processes surrounding prisoner voting registration and awareness raising.

The Scottish Government also published the results of a voluntary survey of prisoners serving sentences of 12 months or less on prisoner voting.[71] The survey noted the results were not necessarily reflective of the entire eligible population of prisoners, but found 9% had voted in the 2022 local government election in Scotland.

Respondents were asked about their previous voting history, with 56% never having voted at local elections and 62% never having voted in Scottish Parliament elections.

Levels of awareness were low, two thirds did not know they could register to vote, three quarters saying they did not have enough information to be able to register to vote while in prison, and 61% saying they had not received a letter inviting to register to vote in the 2022 Local Government election.

The report concluded:

> Areas for improvement included better information on how to register and who was eligible to vote, as well as information regarding political parties, candidates and their policy positions.[72]

70 As above

71 Scottish Government, Scottish Prisoner Voting Survey 2022

72 As above, section 5.2

6 Wales

The responsibility for the franchise for devolved elections in Wales was devolved following the passing of the Wales Act 2017 in the UK Parliament. It devolved powers to legislate for local and Assembly elections on a similar model to that of Scotland. The Assembly is responsible for the franchise for its own elections and the Welsh Government is responsible for the franchise for local elections in Wales.

6.1 Welsh Government consultation

The Welsh Government consulted on electoral reform for local elections in Wales in 2017.

It did include questions about prisoner voting but the Welsh Government did not include policy proposals at this stage, stating that:

> Extending the franchise to prisoners is a subject that raises a number of issues, such as where a prisoner should be deemed resident for the purposes of voting and whether the franchise should be universally extended to the prison population or linked to specific criteria such as the length or type of sentence. Because of these complexities we are not making firm policy proposals at this stage while legal issues continue to be explored.

However, it asked questions to test public opinion on this subject. Specifically, whether prisoners in Wales be allowed to vote in Welsh local government elections, and if so should that be linked to length of sentence. The question asked whether voting rights should be limited to those sentenced to less than twelve months, four years, or any sentence length. It also asked how prisoners should cast their ballot and at which address they should be registered.[73]

The summary of responses was published in April 2018. Nearly 800 responses were given in total. On the principle of whether prisoners should be allowed to vote at all opinion was split, with 50% agreeing that prisoners should be allowed to register to vote and 48% disagreeing.

On the question of sentence length, responses were mixed:

> The majority of those, 94 respondents, felt that all prisoners should be enfranchised regardless of sentence length. 38 respondents felt that only those

[73] Welsh Government, Consultation Document, Electoral Reform in Local Government in Wales, 18 July 2017

> serving a sentence of 12 months or less should be enfranchised; 19 suggested a sentence of four or fewer years; and 16 respondents suggested prisoners should only be enfranchised where their release date fell within the term of the body they would be electing. 10 respondents suggested that enfranchisement should not be related to sentence length, but rather the nature or severity of the crime committed, with suggestions that those convicted of serious crimes, such as acts of terrorism, murder or sexual offences, should never be enfranchised.[74]

The method of voting favoured by most respondents who expressed an opinion was postal voting (43%). Electronic voting was the second most frequent suggestion (18%), closely followed by mobile polling booths being set up in prisons (17%).

On the question of where a prisoner should be registered, 41%, favoured voting registration based on a prisoner's home address and 30% favoured the prison address. However, some raised concerns about the effect this could have on the electorate in the ward where the prison was located: "Simply registering them in the prison's address would be undesirable - a particularly large prison would result in a de facto prison ward".[75]

The Cabinet Secretary for Local Government and Public Services, Alun Davies, made a statement to the National Assembly on 30 January 2018, on taking the proposals forward.

On prisoner voting Mr Davies said:

> I am also exploring options for extending the rights of prisoners to vote in local government elections if their due release date falls before the end of the term of office of the council being elected. They would be able to vote by post or by proxy on the basis of a connected address in Wales, usually their last address. People who are sent to prison need to feel part of the community when they are released, and the right to vote will form part of this.[76]

6.2 Assembly Commission consultation

In 2017, the then National Assembly for Wales appointed an Expert Panel to advise and report to the Assembly Commission on its own electoral arrangements. The Expert Panel did not consider the issue of prisoner voting. It did note that any legislation brought forward by the Welsh Government in relation to the local government franchise is likely to sever the automatic link with the Assembly franchise.[77]

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74 Welsh Government, Consultation – summary of responses, Electoral Reform in Local Government in Wales, April 2018, p48

75 Ibid, p49-50

76 NAW RoP 30 January 2018, para 171

77 Expert Panel on Assembly Electoral Reform, A Parliament that works for Wales, November 2017, p180

The National Assembly subsequently issued its own consultation on proposals included in the Expert Panel's report, which ran from February to April 2018. It asked people to say whether they agreed or disagreed with the following statement: "The same people should be allowed to vote in National Assembly for Wales elections and in local government elections in Wales." There were 1,570 responses to this question and 62% strongly agreed, with 24% agreeing. The number disagreeing was 3% and strongly disagreeing was also 3%.[78]

It then went on to ask two specific questions on prisoner voting, asking whether people agreed or disagreed with the two following statements:

- Prisoners released on temporary licence or on home detention curfew should be allowed to vote in Assembly elections, in line with the UK Government's intention for UK elections.

- Prisoners whose due release date falls before the end of the term of the Assembly for which they are voting should be allowed to vote in Assembly elections, in line with the Welsh Government's intention for local government elections in Wales.[79]

Following the consultation, the Assembly Commission issued a statement that it had concluded further work was required on the issue of prisoner voting before the Commission would legislate in respect of the Assembly franchise:

> ..there is the question of our human rights obligations under international law in relation to votes for prisoners. The legal, ethical, democratic, practical and human rights issues relating to prisoner voting require thorough political consideration and judgement. We believe that further work is needed in this area to consider further evidence and this requires more time than we have to be able to properly consider it for inclusion in the Commission's legislation. As a legislature, we must take our obligations seriously. As such, the Commission believes that the right approach in the first instance is to invite the Equality, Local Government and Communities Committee to consider holding an inquiry to examine the issue of whether prisoners from Wales should be allowed to vote in elections to the National Assembly.[80]

On 30 January 2019 the Assembly debated a Plaid Cymru motion on prisons and criminal justice. The motion was non-binding, but it included a call for the right to vote in Welsh elections for prisoners. During the debate the Minister, Jane Hutt, reiterated that the Welsh Government supports the principle of the right to vote for prisoners but was awaiting the committee's

78 National Assembly for Wales, Consultation on Creating a Parliament for Wales: Summary of the main findings, July 2018, p24

79 National Assembly for Wales Commission, Creating a Parliament for Wales: Consultation document, p36-7

80 National Assembly for Wales Commission, Written Statement: The Commission's Assembly Reform priorities following the outcome of the public consultation, "Creating a Parliament for Wales".

findings before bringing forward legislation.[81] The motion, as amended, was passed by 36 votes to 14 with 1 abstention.[82]

6.3 Equality, Local Government and Communities Committee inquiry

In October 2018 the National Assembly's Equality, Local Government and Communities Committee agreed its approach to conducting an inquiry into prisoner voting.[83]

The terms of reference for the inquiry to consider were as follows:

- Arguments for and against giving some or all prisoners the right to vote in Welsh elections, and whether distinctions might be drawn between different categories of prisoner on the basis of sentence length, expected date of release, or types of offence;
- Practical issues, such as electoral registration (including address), voting method, prisoner engagement with the political process, the provision of political and citizenship information and education;
- Cross-border issues arising from prisoners from Wales being imprisoned in England and vice versa;
- Whether special considerations apply to young offenders in custody if the franchise is extended to 16 and 17-year-olds generally, and
- Other countries' approaches to prisoner voting.

The Committee published its report in June 2019.[84] The Committee could not come to a unanimous view:

> Members of the Committee hold a range of views on the principle of extending the franchise. We could not come to a consensus view on this, but the majority believe the franchise should be extended to give more Welsh prisoners the right to vote. The majority view is that prisoners serving sentences of less than 4 years should be allowed to vote.[85]

The Welsh Conservative Assembly members on the Committee dissented from this view. Their view was the UK Government's response to the Hirst ruling was sufficient.

81 National Assembly for Wales, Record of Proceedings 30 January 2019, Motion NDM6949
82 National Assembly for Wales, Record of Proceedings 30 January 2019, Voting time
83 Equality, Local Government and Communities Committee, Minutes, 17 October 2018
84 National Assembly for Wales Equality, Local Government and Communities Committee, Voting rights for prisoners, June 2019
85 Ibid, p16

The majority of committee members favoured full enfranchisement. The report noted that public opinion did not appear to currently favour change, but the Committee took the view that this issue was an example where legislators should lead rather than let public opinion lead.[86]

The Committee opted for 4 years as the cut-off, as it struck a balance that excluded those serving sentences for the most serious offences:

> We believe this strikes an appropriate balance by widening the franchise in a way that excludes those sentenced for the most serious crimes. It also acknowledges sentencing policy in England and Wales, which considers sentences of four years or more as "long term".[87]

On registration, the Committee recommended an approach similar to the one being taken in Scotland:

> We recommend that the Welsh Government and National Assembly for Wales Commission introduce legislation for prisoners to register either at their last home address, the address they will be released to or via a declaration of local connection. In doing so they should ensure relevant safeguards are put in place to protect victims and potential victims of crimes.
>
> ...
>
> We recommend that the Welsh Government and National Assembly introduce legislation to enable prisoners who are eligible to vote to do this either via postal or proxy voting. Discussions should take place with the UK Government to ensure that any logistical barriers are minimised.[88]

The Committee's report was debated in the Assembly Siambr on 25 September 2019.[89]

As in Scotland, changes to electoral law for local or Assembly elections in Wales would be subject to a "super-majority" at the Bill's final legislative stage. This means that at least 40 Assembly Members would need to vote in favour of the Bill.

Any provisions on prisoner voting would need to comply with the European Convention on Human Rights because, as with the settlement for Scotland, Welsh legislation could be struck down if found to be in breach by the Supreme Court.

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86 Ibid, p35

87 Ibid, p37

88 Ibid, Recommendations 7&8, p48

89 NAW Record of Proceeding, 25 September 2019, 5. Debate on the Equality, Local Government and Communities Committee report: Voting Rights for Prisoners

6.4 Legislative proposals

The National Assembly recently considered the franchise for its own elections, but the legislation did not consider prisoner voting. The Senedd and Elections (Wales) Act 2019 completed its stages in the Assembly on 27 November 2019. It received Royal Assent on 15 January 2020 and renamed the Assembly the Senedd Cymru/Welsh Parliament from April 2020. It also lowered the voting age to 16 and allowed resident foreign nationals to register to vote in future Senedd elections.

The Welsh Government introduced the Local Government and Elections (Wales) Bill in the Assembly on 18 November 2019 and passed its final stage in the Senedd a year later, on 18 November 2020. It made several changes to local election in Wales, including reducing the voting age to 16. The Bill as published did not address prisoner voting. It had been intended to introduce amendments to deal with prisoner voting, however these were not brought forward and were not in the Bill as passed.

The Minister for Housing and Local Government, Julie James AM, wrote to the chair of the Equality, Local Government and Communities Committee in January 2020 with draft amendments that the Welsh Government intended to table during the passage of the Bill to allow for some prisoners and young offenders to be able to register to vote.[90] These were not included in the Bill as introduced, according to the Minister, as a result of the timing of the Committee's report on prisoner voting. She said, "that that report came out too late for us to be able to introduce it in Stage 1".[91]

In a Welsh Government announcement in March 2020, the Minister said that the measures would result in:

> approximately 1,900 adult prisoners and 20 young people in custody being able to vote at the next ordinary local government elections (across all principal and community councils) to be held in May 2022.[92]

The amendments would have allowed for prisoners and young offenders serving sentences of less than four years to register to vote for local elections in Wales. As in Scotland, there would be no polling stations in prisons and prisoners would only be able to vote by proxy or post. Registration must be in respect of a previous address in Wales, with which they have a connection.

In the Welsh Government proposals, any prisoner prevented from returning to an address they would ordinarily be resident at by virtue of a court order, would not be able to use the prison address. Instead, they would be

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90 Correspondence from the Minister for Housing and Local Government regarding prisoner voting amendments – 2 March 2020

91 Equality, Local Government and Communities Committee, *Local Government and Elections (Wales) Bill Report*, March 2020, p217

92 Welsh Government, Prisoner voting plans unveiled, press release, 8 March 2020

registered in respect of the county or county borough council in Wales where they would have been resident had it not been for a court order.[93]

The Welsh Government's prisoner voting proposals in the Local Government and Elections (Wales) Bill would have meant some prisoners would be able to vote in local elections, but none would in Senedd Cymru/Welsh Parliament elections?.

In evidence to the Equality, Local Government and Communities Committee, the Minister said, "that it is the Welsh Government's intention to legislate to implement such a change for Senedd elections in due course."

Police and Crime Commissioner elections are not devolved and would have been unaffected, with convicted prisoners serving a prison sentence being barred from voting.

Stage 2 of the Bill was delayed by the coronavirus pandemic. In May 2020 the Minister wrote to the Equality, Local Government and Communities Committee saying she would not be progressing with the amendments on prisoner voting. She said this was because of the pandemic:

> I have already indicated the Government will not now introduce amendments relating to prisoner voting at Stage 2. I very much regret being unable to take forward the recommendations of this Committee in relation to prisoner voting, but I accept it is not possible in the current circumstances.
>
> ...
>
> These are complex areas of law and each amendment needs very careful consideration in order to avoid unintended consequences. With Legal Services' resource currently focussed on COVID 19 related legislation sufficient resource is not available to give these matters the detailed and extensive attention they require.[94]

6.5 Electoral reform consultation October 2022

The Welsh Government started its next phase of electoral reform consultation in December 2022.[95] This was to take forward reforms in electoral administration and modernising elections in devolved elections in Wales. This was in part to consider some of the changes for reserved elections implemented by the Elections Act 2022, passed by the UK Parliament, and whether devolved elections should also adopt some of those changes. The

93 Welsh Government, Prisoner voting plans unveiled, press release, 8 March 2020

94 Letter from the Minister for Housing and Local Government to the Equality, Local Government and Communities Committee, dated 12 May 2020

95 Welsh Government, Consultation on the electoral administration and reform White Paper, October 2022

proposal to reform the voting system for Senedd elections and the number of Senedd Members were considered separately.

The October 2022 consultation said this on prisoner voting:

> This remains a priority but implementation requires a more collaborative and constructive relationship with the reserved justice system than currently exists. The UK Government is opposed in principle to prisoner voting which makes further progress challenging so we have decided not to include this in our immediate reform programme but will continue to consider it as a longer term priority.[96]

[96] As above, chapter 2

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