



BRIEFING PAPER

Number 07461, 19 November 2020

Prisoners' voting rights: developments since May 2015

By Neil Johnston

Inside:

1. Legal incapacity to vote
2. Background
3. Decision of the Council of Europe's Committee of Ministers, September 2015
4. *Delvigne* and the EU's Charter of Fundamental Rights, October 2015
5. Michael Gove's evidence to the House of Lords Constitution Committee, December 2015
6. Interim Resolution of the Council of Europe's Committee of Ministers, December 2015
7. Dominic Raab's evidence to the House of Lords Select Committee on the European Union, February 2016
8. UK Government proposals and Council of Europe response, November 2017
9. Scotland and Wales



Contents

Summary	3
1. Legal incapacity to vote	7
2. Background	8
2.1 The development of the ban	8
2.2 The Hirst litigation	9
2.3 Subsequent ECtHR judgments	10
2.4 Prisoner voting in UK courts since <i>Hirst (No 2)</i>	11
2.5 The responses of the UK Government and Parliament	12
3. Decision of the Council of Europe’s Committee of Ministers, September 2015	15
4. <i>Delvigne</i> and the EU’s Charter of Fundamental Rights, October 2015	16
4.1 <i>Delvigne</i>	16
4.2 Reaction	16
Proportionality	17
<i>Delvigne & Chester</i>	18
5. Michael Gove’s evidence to the House of Lords Constitution Committee, December 2015	21
6. Interim Resolution of the Council of Europe’s Committee of Ministers, December 2015	23
7. Dominic Raab’s evidence to the House of Lords Select Committee on the European Union, February 2016	24
8. UK Government proposals and Council of Europe response, November 2017	25
Closing of the Hirst group of cases	26
9. Scotland and Wales	28
9.1 Scotland	28
Scottish Government consultation	29
Legislation	31
Shetland by-election Order	32
9.2 Wales	33
Welsh Government consultation	33
Assembly Commission consultation	34
Equality, Local Government and Communities Committee inquiry	36
Legislation	37

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 for over a decade.

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.

Post-Brexit, the UK remains a member of the Council of Europe and remains a signatory to the European Convention on Human Rights.

This briefing gives a summary of events before May 2015 and examines the debate since May 2015. It also gives details of the provisions to allow some prisoners to vote in local and devolved elections in Scotland and Wales.

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

The ban

The disenfranchisement of prisoners in Great Britain dates back to the *Forfeiture Act 1870* and was linked to the notion of 'civic death'. The 1870 Act denied offenders their rights of citizenship.

The current provisions are set out in Section 3 of the *Representation of the People Act 1983*, as amended, and prevent convicted prisoners serving a custodial sentence from registering to vote. The *Representation of the People Act 2000* allowed prisoners on remand to register to vote.

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 current ban on all serving prisoners from voting, as defined by the 1983 Act, 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 responses

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 October 2015, in the case of *Thierry Delvigne v Commune de Lesparre-Médoc and Préfet de la Gironde*, the Court of Justice of the European Union (CJEU) ruled that a French law, which deprived certain convicted prisoners of the vote, was not an unlawful breach of the right of EU citizens to vote in elections for the EU Parliament, as protected by the Charter of Fundamental Rights of the European Union.

The CJEU's judgment also explained that the French law in question was lawful because it was proportionate, which in these circumstances meant that the law took into account "the nature and gravity of the criminal offence committed and the duration of the penalty".

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* 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,

5 Prisoners' voting rights

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 allow prisoners 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 criticisms 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.

Scotland and Wales

Although the dispute between the UK Government and the ECtHR appears to have been resolved, responsibility for local and devolved elections in Scotland and Wales is now devolved.

In March 2019, the Scottish Government completed a consultation on prisoner voting and how it can ensure compliance with ECtHR judgements. The Scottish Government opposed lifting the ban entirely and favoured allowing prisoners serving shorter sentences, 12 months or shorter, to be allowed to vote. The consultation sought views on what the appropriate length of sentence should be.

The Scottish Government introduced legislation in the Scottish Parliament to extend voting rights to some prisoners. The Bill was passed in February 2020 and extends voting rights to prisoners serving sentences of 12 months or less at Scottish Parliamentary and local elections.

The Welsh Government consulted on the issue of prisoner voting in summer 2017 as part of a wider consultation on local election reform. The Welsh Government's *Local Government and Elections (Wales) Bill* was introduced into the National Assembly on 18 November 2019. One of its key changes will be to lower the voting age for local government elections in Wales to 16. The Bill as introduced made no mention of prisoner voting. The Welsh Government had intended to amend the Bill to allow prisoners sentenced to less than four years to register to vote in time for scheduled council election in 2022. The intended amendments were dropped, with the Welsh Government saying its focus on the coronavirus pandemic meant it could not devote time to drafting amendments.

The National Assembly for Wales Commission also consulted on prisoner voting. Following the consultation, the Llywydd wrote to the Assembly's Equality, Local Government and Communities Committee asking if it would conduct an inquiry into prisoner voting. The Committee agreed and subsequently reported in June 2019. It could not find consensus on a prison sentence threshold, but it recommended that prisoners serving sentences of less than four years should be entitled to register to vote in Assembly elections. Legislation to lower the voting age and to rename the Assembly the Senedd Cymru/Welsh

Parliament, passed in November 2019, did not address the issue of prisoner voting.

1. Legal incapacity to vote

The legal incapacity to vote arises when someone is convicted and is detained in as a result of the conviction. The provision is contained in [Section 3](#) of the *Representation of the People Act 1983*, as amended.

For UK Parliamentary elections, Welsh Parliament/Senedd Cymru elections and local elections in England, Wales and Northern Ireland, the legal incapacity to vote arises for:

- convicted prisoners who have been found guilty of an offence (excluding contempt of court) and are detained in prison (or are unlawfully at large); and
- convicted offenders who are detained in a mental health hospital as a result of their conviction (or are unlawfully at large).

Not all prisoners are subject to a legal incapacity to vote. The following prisoners can vote:

- prisoners on remand;
- prisoners committed to prison for contempt of court;
- prisoners committed to prison for default in paying fines;
- prisoners released on temporary licence; and
- prisoners released on home detention curfew.

The devolved Parliaments in Scotland and Wales are responsible for setting the local government franchise in those countries.

In Scotland the legal incapacity to vote for prisoners has been amended for the local government franchise, used for local government and Scottish Parliament elections.

Part 3 of the *Scottish Elections (Franchise and Representation) Act 2020* amends the 1983 Act. It allows those serving a sentence of 12 months or less to register to vote for Scottish Parliament, local government, and national park elections. These provisions came into force on 2 April 2020.

In Wales, the Senedd Cymru is currently considering proposals to allow convicted offenders serving a sentence of less than four years to register to vote for local elections in Wales.

Section 9 gives more details on the developments in Scotland and Wales.

2. Background

Summary

The origins of the political controversy on the voting rights of prisoners lie in the Grand Chamber of the European Court of Human Rights' (ECtHR) decision in *Hirst (No 2)*,¹ which was delivered on 6 October 2005. The UK was found to be in breach of Article 3 of Protocol No 1 of the European Convention on Human Rights (ECHR).

The ECHR is an international treaty the UK signed in 1950. States that signed up committed to upholding certain fundamental rights, such as the right to life, the right to a fair trial, and the right to freedom of expression and its provisions are enforced by the ECtHR. The Council of Europe, which drafted the Convention, is separate from the European Union. The Library insight, *How might Brexit affect human rights in the UK?*, briefly outlines human rights law in the UK.

In the decade following that judgment there have been several important developments. These are set out in considerable detail in the Library's standard note: [Prisoners' voting rights \(2005-May 2015\)](#). This section provides a brief overview of the main events in this period.

2.1 The development of the ban

The current ban on prisoners voting in UK Parliamentary and non-devolved elections is contained in Section 3 of the *Representation of the People Act 1983*, as amended.

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 1918* introduced new registration requirements introduced for all electors, and 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.

People in custody were specified as not falling within the interpretation of "resident" at those places for the purposes of the new electoral registration requirements.²

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. This followed on from a recommendation of the Speaker's Conference that reported in 1968.

In Chapter 2 of its report, 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

¹ *Hirst v UK (No. 2)* [2005] ECHR 681

² Library's standard note: [Prisoners' voting rights \(2005-May 2015\)](#), p6

the postal votes to be returned in Manchester were a number from prisons in Cardiff, Lincoln, Preston and Manchester.”³

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’.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.

2.2 The Hirst litigation

In 2001, three convicted prisoners, including John Hirst, a prisoner serving a life sentence for manslaughter at Rye Hill Prison in Warwickshire, challenged an Electoral Registration Officer’s decision not to allow them to register to vote.⁶

The High Court dismissed their applications, which in the case of two of them was for judicial review, and in the case of Mr Hirst (*Hirst v HM Attorney General*), was for a declaration, under Section 4 of the *Human Rights Act 1998*, that the ban on prisoner voting imposed by Section 3 of the *Representation of the People Act 1983* was incompatible with Article 3 of Protocol No. 1 of the European Convention on Human Rights (ECHR). 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.

John Hirst then took his case to the ECtHR via the right of individual petition under Article 34 of the ECHR. 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

³ 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.

⁴ *Working Party on Electoral Procedures 1999*, para 2.3.12

⁵ Part I, section 5

⁶ *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

been a violation of Article 3 of Protocol No. 1 of the ECHR. The text of Article 3 states:

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

The reasoning of the majority's judgment has proved to be the source of considerable controversy. The 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.⁷ This right is not absolute, and each contracting state has a wide margin of discretion to decide the nature of the limits imposed.⁸ 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.⁹ The majority explained that measures limiting the right must pursue a legitimate aim in a proportionate manner.¹⁰

On the central question of the proportionality of the restrictions imposed by Section 3 of the *Representation of the People Act 1983*, 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.¹¹

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.¹²

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.¹³

2.3 Subsequent ECtHR judgments

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

⁷ *Hirst v UK (No. 2)* [2005] ECHR 681 para 57

⁸ *Ibid* para 61

⁹ *Ibid* para 62

¹⁰ *Ibid* para 73.

¹¹ *Ibid* para 77.

¹² *Ibid* para 79.

¹³ *Ibid* para 82.

In November 2010, the ECtHR found a violation of Article 3 Protocol No 1 in the case of *Greens and MT v UK*,¹⁴ 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)*.¹⁵ 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*,¹⁶ 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 ECHR 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 1.¹⁷ The ECtHR, as in all previous cases on this question, rejected the applicants' claim for compensation and costs.

2.4 Prisoner voting in UK courts since *Hirst (No 2)*

In 2007, Scotland's Registration Appeal Court, in the case of *Smith v Scott*,¹⁸ followed *Hirst (No 2)* and issued a declaration of incompatibility under Section 4 of the *Human Rights Act 1998*, in relation to Section 3 of the 1983 Act.

On 16 October 2013 the UK Supreme Court dismissed the appeals of *George McGeoch and Peter Chester*,¹⁹ 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 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.²⁰ The Court held that Article 3 of Protocol No 1 of the ECHR applies only to elections to the

¹⁴ *Greens and MT v United Kingdom* (2010) 53 EHRR 710

¹⁵ *Scoppola v Italy (No 3)* (2012) 56 EHRR 663

¹⁶ *Firth and Others v. the UK* [2014] EHRR 874

¹⁷ *McHugh and Others v UK* [2015] Application no. 51987/08 [2007] SC 345

¹⁹ *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

²⁰ *Moohan and Another v Lord Advocate* [2014] UKSC 67

legislature, a position which is supported by a clear line of ECtHR case law.

2.5 The responses of the UK Government and Parliament

In the aftermath of the *Hirst (No 2)* judgment, the 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.²¹ The Government stated its view that convicted prisoners should not be able to vote whilst in prison. However, it acknowledged that the ECtHR's judgement 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.²² However, the Labour Government did not introduce any legislative proposals to Parliament on the subject.

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.²³ 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.

²¹ *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

²² *Voting rights of convicted prisoners detained within the United Kingdom: second stage consultation*. Consultation Paper CP6/09, Ministry of Justice, 8 April 2009, p15

²³ [HC Deb 20 December 2010 c151WS](#)

13 Prisoners' voting rights

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 is a breach of international law.²⁴

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.²⁵

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”.²⁶

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.

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.²⁷

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

²⁴ Political and Constitutional Reform Committee, ‘Voting by convicted prisoners’, fifth report 2010-12 HC 776, para 22

²⁵ HC Deb 10 February 2011, c493-586

²⁶ HC Deb 24 October 2014, col 922

²⁷ Draft Voting Eligibility (Prisoners) Bill Joint Committee report, HL 103/ HC 924, 18 December 2013 p.67

active consideration within Government” and he would keep the Committee updated on developments.

The draft Bill’s proposals were not taken forward.

The Conservative Party’s 2015 General Election manifesto contained a commitment to reform human rights rules and to scrap the Human Rights Act and to introduce a British Bill of Rights, stating:

This will break the formal link between British courts and the European Court of Human Rights, and make our own Supreme Court the ultimate arbiter of human rights matters in the UK.²⁸

²⁸ Conservative Party Manifesto 2015, p60

3. Decision of the Council of Europe's Committee of Ministers, September 2015

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:

1. 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;
2. 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*);
3. 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;
4. 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;
5. 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.²⁹

²⁹ Decision of the Committee of Ministers, 1236th meeting – 24 September 2015.

4. *Delvigne* and the EU's Charter of Fundamental Rights, October 2015

On 6 October 2015, the Court of Justice of the European Union (CJEU) published its judgment in the case of *Thierry Delvigne v Commune de Lesparre-Médoc and Préfet de la Gironde*. The case concerned whether a French law limiting the voting rights of certain convicted criminals was compatible with the EU Charter of Fundamental Rights.

4.1 *Delvigne*

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 on the basis of 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.

The Court explained that the French law met the conditions of proportionality "in so far as it takes into account the nature and gravity of the criminal offence committed and the duration of the penalty".³⁰ The French law allowed the removal of voting rights only from those convicted of a custodial sentence of between five years and life imprisonment.

4.2 Reaction

The CJEU's judgment led to media headlines that the Court had ruled that it "is lawful for countries such as Britain to impose a voting ban on prisoners convicted of serious crimes".³¹

While it is correct that the judgment indicated that it is lawful under Article 39 (2) of the CFR for a Member State to impose limits on the voting rights of prisoners, the substance of the judgment, particularly

³⁰ Case C-650/13 *Thierry Delvigne v Commune de Lesparre-Médoc, Préfet de la Gironde* [2015] para 49

³¹ A Travis, 'Voting ban on prisoners convicted of serious crimes is lawful, EU court rules', *The Guardian* 6 October 2015

the application of the proportionality test, led some to doubt whether the UK's "blanket ban" would be compatible with the CFR.

Proportionality

In 2015, in evidence to the House of Lords Select Committee on the European Union Justice Sub-Committee, Dr Tobias Lock explained:

The next European elections are far away, but if someone brought a case in the run-up to them because they have been refused registration for the election, they would have a case, I think. Of course, it depends on whether the Court of Justice agreed that the ban is disproportionate as with *Hirst*, but there are some suggestions that it might.³²

Fraser Simpson, writing for the UK Human Rights Blog, highlights the implications of *Delvigne* for a potential challenge to the UK legislation:

In comparison with the indefinite nature of the ban in *Delvigne*, the UK restrictions on voting only apply whilst an individual is incarcerated. Accordingly, the restriction on the right to vote in the UK could be said to have an inherent link with the nature of the offence and the length of the sentence imposed. This may result in the restriction placed on individuals serving long sentences to be declared proportionate.

But in the case of an individual serving a short sentence for a minor crime it would be unlikely that such a restriction would be proportionate. The blanket nature of the UK system – which was not replicated in *Delvigne* due to the French ban only being imposed on those who had committed "serious offences" – is an important differentiating factor. Additionally, the inability of such an individual to challenge such a restriction, which was available under French law, would again point towards the ban being disproportionate.³³

The opinion delivered by the Advocate General of the CJEU in *Delvigne*, highlighted the main factors relating to the proportionality of restrictions on Article 39:

Article 39 of the Charter of Fundamental Rights of the European Union does not preclude national legislation such as that at issue in the case in the main proceedings, provided always that it does not prescribe general, indefinite and automatic deprivation of the right to vote, without a sufficiently accessible possibility of review, the latter particularly being a matter which it is for the national court to establish.³⁴

The emphasis on these factors indicates that the question of the proportionality of the UK's restrictions on the right to vote under the CFR is likely to turn on the factors identified by the majority in *Hirst (No 2)*, namely the 'blanket nature' of the UK's restrictions on the voting rights of prisoners.

³² The Select Committee on the European Union Justice Sub-Committee, *Potential Impact on EU Law of Repealing Human Rights Act*, Evidence Session No. 1 p.3

³³ F Simpson, 'CJEU ruling on prisoner voting – open door for successful UK challenge?', UK Human Rights Blog, 9 October 2015

³⁴ Case C-650/13 *Thierry Delvigne v Commune de Lesparre-Médoc, Préfet de la Gironde* [2015], Opinion of AG Cruz Villalón para 124

Delvigne & Chester

The CJEU's judgment in *Delvigne* came to markedly different conclusions from the Supreme Court in *Chester* on the implications of the CFR for the UK's legislative restrictions on the right of prisoners to vote in European elections.

In *Chester*, Lord Mance explained that EU law, including the CFR, did not create a right to vote paralleling that recognised by the ECtHR.³⁵ The CJEU's judgment in *Delvigne* found that Article 39 (2) of the CFR does set conditions, which should be understood as including a right of Union citizens to vote in elections to the European Parliament, that Member States should follow when they legislate for elections to the European Parliament.³⁶ Martin Howe QC, in evidence to the House of Lords Select Committee on the European Union Justice Sub-Committee, made the following critical observations:

I was completely unsurprised by the decision of the Luxembourg court in the *Delvigne* case in effectively expanding the scope of this provision of the charter from its intended application, which is to do with the rights of citizens of other member states, into the internal relations of citizens of France with the French state and the electoral system. I think it is very poor legal reasoning—I do not want to expand on this—because under Article 39(1) of the charter, “Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State”, and even the Luxembourg court was unable to say that that paragraph applied. But it then said that an individual right to vote arises under Article 39(2), which says that, “Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot”—a paragraph that has absolutely no reference to the rights of individuals to vote. So I am afraid that I think this is another example of our being subject to a system where we have international courts by which we are bound by treaty obligations and which get it wrong, and they get it wrong in a systematic way by seeking to expand their jurisdiction.³⁷

Professor Jo Shaw, Salvesen Chair of European Institutions at the University of Edinburgh, defended the CJEU's approach and explained that Article 39 (2) of the CFR, introduced by the Treaty of Lisbon, takes over the existing provisions of EU law, such as Article 14 (3) of the Treaty on European Union (TEU). This set out some of the conditions, such as universal suffrage, for elections to the European Parliament.³⁸ As such, national measures providing for the conditions for elections to the European Parliament are implementing EU law, and in accordance with Article 51 of the CFR, this gives the CJEU jurisdiction to consider

³⁵ *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 para 4

³⁶ *Ibid* para 44

³⁷ [The Select Committee on the European Union Justice Sub-Committee, Potential Impact on EU Law of Repealing Human Rights Act, Evidence Session No. 2 p.4](#)

³⁸ J Salvesen, 'Prisoner voting: now a matter of EU law', *EU Law Analysis*, 15 October 2015

the CFR compatibility of such measures. The Attorney General of the CJEU, in his opinion on the case, offered the following on the matter:

...a national law like that at issue in this case, which governs, directly or by reference to other provisions, elections to the European Parliament, is a law adopted 'to implement' EU law, regardless of the fact that it is not 'entirely determined' by EU law...³⁹

Professor Michael Dougan, Jean Monnet Chair in EU Law at the University of Liverpool, also argued that the CJEU was right to consider national measures providing conditions for elections to the European Parliament as within the scope of EU law, pointing to the earlier CJEU cases of *Eman v Sevinger*⁴⁰ and *Spain v UK*,⁴¹ and to the EU legislation which provides conditions for the franchise.⁴²

On the question of the proper interpretation of Article 39(2), the Attorney General, like the CJEU, interprets the words "shall be elected by direct universal suffrage" as granting all citizens of the European Union a qualified right to vote in elections to the European Parliament.⁴³ On the contrasting approaches between the Supreme Court and the CJEU, Professor Michael Dougan offered the following analysis:

As a matter of legal interpretation you can take two views on that provision. You can adopt the view of the UK Supreme Court in *Chester* and say, "This may well be a statement of what the franchise should be but it does not create any individual rights. It may create obligations for the member state but it does not create rights for the individual". The alternative interpretation is to say that by imposing obligations on the member state as regards universal suffrage, you inherently and conversely create certain rights for the individual, which come out of it.⁴⁴

Dougan goes to defend the approach of the CJEU:

Was it right to choose that interpretation? Strictly speaking, yes, because it is its prerogative to make that choice. It is a reasonable interpretation, even if we do not necessarily like it. But we could go even further and say that the European Court of Justice did not have much choice here. Given that the ECHR is meant to be the minimum standard by which EU law is judged and EU law has to meet the standards set out in the ECHR, the Strasbourg court had already said in *Hirst* that there is a right to vote and you have to respect that right to vote. It would have been very difficult for the European Court of Justice in *Delvigne* to not recognise the right to vote under EU law as well.⁴⁵

³⁹ Case C-650/13 *Thierry Delvigne v Commune de Lesparre-Médoc, Préfet de la Gironde* [2015], *Opinion of AG Cruz Villalón* para 107

⁴⁰ Case 300/04 *Eman and Sevinger v College van Burgemeester en Wethouders van den Haag* [2006] ECR I-8055

⁴¹ Case C-145/04 *Spain v United Kingdom* [2006] ECR I-7917

⁴² [The Select Committee on the European Union Justice Sub-Committee, Potential Impact on EU Law of Repealing Human Rights Act, Evidence Session No. 6 p.9](#)

⁴³ Case C-650/13 *Thierry Delvigne v Commune de Lesparre-Médoc, Préfet de la Gironde* [2015], *Opinion of AG Cruz Villalón* para 110

⁴⁴ [The Select Committee on the European Union Justice Sub-Committee, Potential Impact on EU Law of Repealing Human Rights Act, Evidence Session No. 6 p. 9](#)

⁴⁵ *Ibid* p. 10

The recognition of the right to vote under EU law raises the question of how the UK courts would deal with the potential incompatibility of UK law.

In *Chester*, Lord Mance explained that even in the event that Section 3 of the 1983 Act were found to be incompatible with EU law, the best successful claimants could hope for was a “generally phrased declaration that the legislative provisions governing eligibility to vote in European Parliamentary and municipal elections in the United Kingdom were inconsistent with European Community or Union law”.⁴⁶ Lord Mance explained that they would not be willing to disapply the provision, as this would allow all prisoners the vote, nor would he be willing to devise an alternative scheme. That, he emphasised, would be a matter for Parliament.⁴⁷ This is significant as the CFR can, unlike the HRA 1998, result in the disapplication of incompatible provisions (through section 2(1) of the *European Communities Act 1972*), as was demonstrated in the 2015 Court of Appeal case of [SudanBenkharbouche & Anor v Embassy of the Republic of Sudan](#).⁴⁸

In evidence to the Lords EU Justice Sub-Committee, Professor Michael Dougan analysed the possible implications of Lord Mance’s approach to disapplication:

...the usual position is that supremacy and disapplication should take effect, even if it would create a regulatory vacuum, and even if it would lead to the undue benefit of certain individuals who probably would have been governed by the same sorts of rules anyway, even if these particular national rules were not set aside.

Dougan points out that the CJEU has ruled in the *Winner-Wetten*⁴⁹ case that the primacy of EU can be suspended temporarily by a national court, but only in limited circumstances, such as the need to protect the legitimate expectations of a third party that is reliant on the legislation.⁵⁰ Dougan indicates that he thought it is unlikely that prisoner voting would fulfil the CJEU’s criteria.⁵¹

⁴⁶ *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 para 72.

⁴⁷ *Ibid.*

⁴⁸ *SudanBenkharbouche & Anor v Embassy of the Republic of Sudan* [2015] EWCA Civ 33.

⁴⁹ Case C-409/06 *Winner Wetten GmbH v Bürgermeisterin der Stadt Bergheim* [2010] ECR I-08015

⁵⁰ [The Select Committee on the European Union Justice Sub-Committee, Potential Impact on EU Law of Repealing Human Rights Act, Evidence Session No. 6 p. 11-12.](#)

⁵¹ *Ibid* p.12

5. Michael Gove's evidence to the House of Lords Constitution Committee, December 2015

On 2 December 2015, Michael Gove, the then Lord Chancellor and Secretary of State for Justice, gave evidence to the House of Lords Constitution Committee. In relation to any potential legislative response to *Hirst (no2)* and *Greens and MT*, Gove highlighted the conflict of the principle of respecting the judgements of the ECtHR and the sovereignty of Parliament to decide the issue of prisoner voting:

I would argue that whatever I, as a government Minister, or the whole of the Government, were to do, our Parliament would not accept a change to the law to grant prisoners the vote. In that sense, you have a clash between two principles: on the one hand, our desire to respect the judgment of the European Court of Human Rights but, on the other hand, our desire to recognise that, ultimately, as we touched on earlier, parliamentary sovereignty is the essence of our democracy. In having to choose between the two—it is always difficult and I would rather not—I err on the side of saying that we must respect the democratic principles of parliamentary sovereignty. I would argue that it is not letting the side down if Parliament decides that it does not wish to implement it in this way.⁵²

Gove also said that he hoped to produce a substantive response to the report of the [Joint Committee on the Draft Voting Eligibility \(Prisoners\) Bill](#) after the Government had published the consultation document on the reform of the *Human Rights Act 1998* in 2016.⁵³ On *Delvigne*, Gove commented:

The European Court of Justice heard another case, as I am sure you know, about prisoner voting—the *Delvigne* case—and it came to a set of conclusions which, while they do not contradict the *Hirst* judgment, are different. Funnily enough, when I met the new President of the European Court of Justice in Luxembourg, Baron Koen Lenaerts, he was at pains to say that they had made that judgment in a different way and that they were conscious of feelings in a number of states that these sorts of questions about the franchise should be subject to a greater margin of appreciation than might have been the case in the past. It is a fluid matter.⁵⁴

A substantive response was not produced and consultation on the *Human Rights Act* and the Conservative Government's proposals to reform it are on hold. In March 2017, an answer to a Parliamentary question indicated that reform of the *Human Rights Act* would be revisited after Brexit:

We will consider further the Bill of Rights once we know the arrangements for our EU exit and consult fully on our proposals

⁵² House of Lords Select Committee on the Constitution, [Oral Evidence Session with the Rt Hon. Michael Gove MP, Lord Chancellor and Secretary of State for Justice](#), Evidence Session No. 1, p. 17-18

⁵³ *Ibid.*

⁵⁴ *Ibid.*

with all organisations and individuals with an interest in human rights reform in the full knowledge of the new constitutional landscape that EU exit will create.⁵⁵

A similar commitment was contained in the Conservative Party manifesto for the 2017 General Election.⁵⁶ Moves to repeal the Human Rights Act have historically been resisted by the other major parties in the UK Parliament. The Labour Party, Liberal Democrats and the Scottish National Party all went into the 2017 General Election on a platform to retain the current human rights framework.

⁵⁵ [PQ 65197 \[Human Rights Act 1998\]](#)

⁵⁶ Conservative Party Manifesto 2017, p37

6. Interim Resolution of the Council of Europe's Committee of Ministers, December 2015

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 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).^{57]}

⁵⁷ [Interim Resolution CM/ResDH\(2015\)251](#) adopted by the Committee of Ministers on 9 December 2015 at the 1243rd meeting of the Ministers' Deputies

7. Dominic Raab's evidence to the House of Lords Select Committee on the European Union, February 2016

On 2 February 2016, Dominic Raab, Parliamentary Under-Secretary of State for Justice, gave [evidence](#) to the House of Lords Select Committee on the European Union's Justice Sub-Committee. Mr Raab was asked whether the CJEU's judgment in *Delvigne* would mean that the UK's prohibition on prisoner voting would have to be amended prior to the next elections to the European Parliament. Mr Raab gave the following explanation as to why he did not think that it would be necessary to change the law:

First of all, I think that, as a matter of principle, the right, or the assertion of the right, to prisoner voting is not within the convention or the protocol. It was a creature of the living instrument doctrine articulated and developed by the Strasbourg court. Our position has been, as a constitutional issue as much as a criminal justice issue, that on this issue, and frankly on legislative matters more generally in relation to human rights, it is for Parliament to decide whether to ease the ban. We have maintained that position very clearly domestically within the UK courts. I went over to the Committee of Ministers of the Council of Europe in September to explain why the domestic climate, including the views of Parliament, make it unlikely—or unrealistic—that the ban will be lifted in the foreseeable future. We want to have that debate about the right boundaries for protecting our constitutional democratic prerogatives while respecting our international obligations. We will keep engaging constructively with the Committee of Ministers, but I do not sense an appetite on either side for a tectonic clash over this, so I do not think that this it will be necessary.⁵⁸

On *Delvigne*, Mr Raab indicated that he did not think there was any imminent risk of litigation. He explained there were “all sorts of rather esoteric facts applied in that case that are different from the situation in the UK”.⁵⁹ At the same time he noted that it was right to acknowledge that the issue of prisoner voting, as a matter of EU law, is not legally certain.⁶⁰

⁵⁸ HL Select Committee on the European Union Justice Sub-Committee, [The Potential Impact on EU Law of Repealing Human Rights Act](#), Evidence Session No.8, p. 11-12

⁵⁹ Ibid.

⁶⁰ Ibid.

8. UK Government proposals and Council of Europe response, November 2017

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.⁶¹

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 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.⁶²

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

⁶¹ [Communication from the United Kingdom concerning the case of HIRST \(No. 2\) v. the United Kingdom Application No. 74025/01](#), 2 November 2017

⁶² HC Deb 02 November 2017 Vol 630 c1007

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.⁶³

The UK Government committed to update the Council of Europe on progress on 1 September 2018.⁶⁴

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.⁶⁵

Closing of the Hirst group of cases

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

15. In summary, the implementation of these measures means that:

- a. prisoners on remand can vote;
- b. prisoners committed to prison for contempt of court can vote;
- c. prisoners committed to prison for default in paying fines can vote;
- d. eligible prisoners released on temporary licence can vote;
- e. prisoners released on home detention curfew can vote; and
- f. prisoners are notified of their disenfranchisement at the time of sentence.

16. 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.⁶⁶

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.⁶⁷ 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

⁶³ Council of Europe, [Committee of Ministers 1302nd meeting](#), 5-7 December 2017.

⁶⁴ [HC Deb 21 December 2017, c1276](#)

⁶⁵ [PQ 157787, 4 July 2018](#)

⁶⁶ Council of Europe, [Committee of Ministers 1324th meeting](#), 7 September 2018

⁶⁷ Andreas von Staden, [Minimalist Compliance in the UK Prisoner Voting Rights Cases](#), November 2018

to prevent further cases that may again question the UK's compliance with ECHR.⁶⁸

Both argue that the compromise did not lead to legislative change to the principal law, the *Representation of the People Act 1983* (RPA), that they envisaged resulting from the ECtHR's ruling in the *Hirst (No2)* case. The judgment commented that the provisions in the RPA 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".⁶⁹

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*".⁷⁰

⁶⁸ E. Adams, *Prisoners' Voting Rights: Case Closed?*, U.K. Const. L. Blog, 30th Jan. 2019)

⁶⁹ *Hirst v UK (No. 2)* [2005] ECHR 681 quoted in Library briefing, *Prisoners' voting rights (2005 to May 2015)*

⁷⁰ 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

9. Scotland and Wales

The responsibility for local government elections and for elections to the Scottish Parliament and National Assembly for Wales are devolved, including the franchise for those elections.

The issue of prisoner voting for devolved elections is now being considered in both countries. Any changes to prisoner voting for UK Parliamentary elections remains reserved to the UK Parliament.

The Scottish Government rejected a proposal by the Scottish Parliament's Equalities and Human Rights Committee that the ban on prisoners voting should be removed in its entirety. The Government consulted on the proposed extension of the franchise and its preferred option was that prisoners sentenced to a term of 12 months or less should be able to vote.

The *Scottish Elections (Franchise and Representation) Act 2020* passed in February 2020. From 2 April 2020 convicted prisoners serving a prison sentence of 12 months or less may register to vote in local and Scottish Parliamentary elections but will only be permitted to vote by applying for a postal or proxy vote.

Currently, convicted prisoners in Wales are still prohibited from registering to vote.

The Welsh Government has consulted and the responses on the principle of prisoners being allowed to vote was mixed. It had intended to legislate to allow prisoners serving sentences of less than four years to register to vote for local elections in Wales. It had planned to do this by amending the *Local Government and Elections (Wales) Bill* at Stage 2. However, the Welsh Government said its focus on the coronavirus pandemic had meant it was unable to bring forward proposals in 2020. The Bill was passed, lowering the voting age for local elections in Wales, but without altering the prisoner voting ban.

The then National Assembly for Wales Commission invited the Assembly's Equality, Local Government and Communities Committee to consider holding an inquiry into prisoner voting. The report was published in June 2019 and the Committee recommended prisoners serving sentences of 4 years or less should be eligible to register to vote. The report indicated this could affect about 1,800 prisoners. The *Senedd and Elections (Wales) Act 2019* lowered the voting age to 16 for Senedd elections but did not alter the ban on prisoner voting.

9.1 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.⁷¹ The

⁷¹ Scottish Government, *Consultation Paper on Electoral Reform*, December 2017

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.⁷²

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.⁷³

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 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.⁷⁴

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

⁷² Scottish Parliament Equalities and Human Rights Committee, *Prisoner Voting in Scotland*, SP Paper 315, p2

⁷³ SP OR 17 May 2018, c25-6

⁷⁴ SPICe briefing, *Prisoner voting in Scotland – a short summary*, December 2017, p10

that it is “neither appropriate, nor necessary to ensure compliance with the ECHR, to extend the right to vote to all prisoners”.⁷⁵

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.⁷⁶

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.⁷⁷

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 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.⁷⁸

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.⁷⁹

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

⁷⁵ Scottish Government, *Consultation on Prisoner Voting*, 14 December 2018, p10

⁷⁶ Ibid, p11

⁷⁷ Ibid, p12

⁷⁸ Ibid, p13

⁷⁹ Ibid, p13

release arrangements would mean that this approach would be difficult to implement.⁸⁰

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.⁸¹

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).⁸²

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

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 allow 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

⁸⁰ Ibid, p14

⁸¹ Ibid, p14-5

⁸² Scottish Government, *Prisoner voting consultation: analysis of responses*, Executive Summary

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.⁸³

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 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.⁸⁴

The Bill was passed with the required supermajority, by 92 votes to 27.⁸⁵

Shetland by-election Order

Section 12 of the *Convention Rights (Compliance) (Scotland) Act 2001* allows Scottish Ministers to make a remedial order where necessary or expedient to ensure compatibility with the European Convention on Human Rights (ECHR).

On 1 August 2019, the Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, announced that the Scottish Government would make a Remedial Order to extend the franchise for the by-election of the Scottish Parliament seat of Shetland Islands, held on 29 August 2019. The Scottish Government's position

⁸³ *Revised Explanatory notes, Scottish Elections (Franchise and Representation) Bill (SP Bill 51A) as amended at Stage 2*

⁸⁴ Amendment 32 as amended by amendment 32A, Official Report, 20 February 2020

⁸⁵ Official Report, 20 February 2020

was that the provision made by the Order is "necessary or expedient in consequence of section 3 of the *Representation of the People Act 1983* being incompatible with a Convention right".

The *Representation of the People Act 1983 Remedial (Scotland) Order 2019* provided that a convicted person detained in a penal institution sentenced to a term not exceeding 12 months would be eligible to vote at the Shetland Islands by-election under similar circumstances to those proposed in the *Scottish Elections (Franchise and Representation) Bill*. Any registration under the Order would only remain valid for the purposes of the by-election.

According to the *Glasgow Herald*, fewer than five prisoners were eligible and it is not known if any exercised the right to vote in the by-election.⁸⁶

9.2 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.

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, should 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.⁸⁷

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

⁸⁶ *Glasgow Herald*, Michael Russell: It was 'essential' to give prisoners the vote in Shetland, 10 September 2019

⁸⁷ Welsh Government, Consultation Document, *Electoral Reform in Local Government in Wales*, 18 July 2017

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 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.⁸⁸

The method of voting favoured by most respondents who expressed an opinion was postal voting (43%). Electronic voting was the second most frequent suggestion at 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".⁸⁹

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.⁹⁰

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.⁹¹

⁸⁸ Welsh Government, *Consultation – summary of responses, Electoral Reform in Local Government in Wales*, April 2018, p48

⁸⁹ Ibid, p49-50

⁹⁰ NAW RoP 30 January 2018, para 171

⁹¹ 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%.⁹²

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.⁹³

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.⁹⁴

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 findings before bringing forward legislation.⁹⁵ The motion, as amended, was passed by 36 votes to 14 with 1 abstention.⁹⁶

⁹² National Assembly for Wales, *Consultation on Creating a Parliament for Wales: Summary of the main findings*, July 2018, p24

⁹³ National Assembly for Wales Commission, *Creating a Parliament for Wales: Consultation document*, p36-7

⁹⁴ 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"*.

⁹⁵ National Assembly for Wales, *Record of Proceedings 30 January 2019*, Motion NDM6949

⁹⁶ National Assembly for Wales, *Record of Proceedings 30 January 2019*, Voting time

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](#).⁹⁷

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 2019.⁹⁸ 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.⁹⁹

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.

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.¹⁰⁰

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

⁹⁷ Equality, Local Government and Communities Committee, [Minutes](#), 17 October 2018

⁹⁸ National Assembly for Wales Equality, Local Government and Communities Committee, [Voting rights for prisoners](#), June 2019

⁹⁹ *Ibid*, p16

¹⁰⁰ *Ibid*, p35

and Wales, which considers sentences of four years or more as “longterm”.¹⁰¹

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.¹⁰²

The Committee’s report was debated in the Assembly Siambr on 25 September 2019.¹⁰³

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.

Legislation

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 Cymru 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 makes a number of 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

¹⁰¹ Ibid, p37

¹⁰² Ibid, Recommendations 7&8, p48

¹⁰³ NAW Record of Proceeding, 25 September 2019, 5. [Debate on the Equality, Local Government and Communities Committee report: Voting Rights for Prisoners](#)

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.¹⁰⁴ 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".¹⁰⁵

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 2022.¹⁰⁶

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 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.¹⁰⁷

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 Senedd Cymru/Welsh Parliament.

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 be 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 as a result of the pandemic:

¹⁰⁴ [Correspondence from the Minister for Housing and Local Government regarding prisoner voting amendments – 2 March 2020](#)

¹⁰⁵ Equality, Local Government and Communities Committee, *Local Government and Elections (Wales) Bill Report*, March 2020, p217

¹⁰⁶ Welsh Government, *Prisoner voting plans unveiled*, press release, 8 March 2020

¹⁰⁷ Ibid

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.¹⁰⁸

¹⁰⁸ Letter from the Minister for Housing and Local Government to the Equality, Local Government and Communities Committee, dated 12 May 2020

About the Library

The House of Commons Library research service provides MPs and their staff with the impartial briefing and evidence base they need to do their work in scrutinising Government, proposing legislation, and supporting constituents.

As well as providing MPs with a confidential service we publish open briefing papers, which are available on the Parliament website.

Every effort is made to ensure that the information contained in these publicly available research briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Authors are available to discuss the content of this briefing only with Members and their staff.

If you have any general questions about the work of the House of Commons you can email hcinfo@parliament.uk.

Disclaimer

This information is provided to Members of Parliament in support of their parliamentary duties. It is a general briefing only and should not be relied on as a substitute for specific advice. The House of Commons or the author(s) shall not be liable for any errors or omissions, or for any loss or damage of any kind arising from its use, and may remove, vary or amend any information at any time without prior notice.

The House of Commons accepts no responsibility for any references or links to, or the content of, information maintained by third parties. This information is provided subject to the [conditions of the Open Parliament Licence](#).