

Electoral Commission response to the Ministry of Justice consultation *Voting Rights of Convicted Prisoners Detained within the United Kingdom* (second stage)

1. The Electoral Commission (the Commission) welcomes the UK Government's second consultation on prisoners' voting rights.
2. As indicated in our response to the first consultation the Commission believes it is for the UK Parliament to decide who should be enfranchised in order to comply with the European Court's judgement. Therefore, we will limit our response to those questions concerned with how the enfranchisement of prisoners would operate in practice; namely questions four to thirteen.

Our approach to this consultation

3. In responding to this consultation the Commission starts from the position that all enfranchised electors should be treated equally and that any departure from this principle would need strong justification. However, the specific circumstances of convicted prisoners mean that it would be neither practicable nor desirable to completely adhere to this principle - for example, by allowing prisoners to vote at polling stations, which we do not believe would be a practical option.

Responses to consultation questions

Question 4: The Government proposes that each prisoner who is entitled to vote be given the opportunity whilst in prison of making an application for registration through the "rolling registration" route. Do you agree?

4. The Commission agrees with the UK Government's proposal to use a form of rolling registration to register prisoners (option (c)). We believe that, rather than using the standard rolling registration process, prisoners should be required to complete a declaration which may be a modified version of the declaration of local connection or may be similar to the declaration that overseas or Service voters are required to make. The precise nature of this declaration will be dependent on the information that prisoners will be required to provide in order to register (see also responses to questions 5 & 6 below).
5. We support the UK Government's view that prisoners should not be registered at the prison. We also agree that requiring prison governors to complete a canvass of all prisoners (option (a)) would impose a significant and unnecessary administrative burden on them; especially as the information collected would need to be sent to all of the relevant Electoral Registration Officers (EROs) across the country.

6. Given this, we would recommend that an instruction not to include people who are in prison should be added to the prescribed canvass form. This is because convicted prisoners do not have a choice of where they are when they register, nor any prospect of residing somewhere other than in the prison system for a defined period in the future.
7. In addition, allowing prisoners to be recorded on the canvass form at their previous address (option (b)) could result in certain prisoners not being registered - for example, prisoners who lived alone or who no longer have contact with the current residents may not be included on the annual canvass form. Even if the prisoner was known to the current occupants, those occupants may not be aware of the circumstances under which a prisoner can or cannot be registered, and so may not include their name on the canvass form. Also, if electors who were actually in prison were registered as being at a property then it would make it difficult for election materials to be delivered to them.

Question 5: The Government proposes that prisoners should be entitled to register and vote on the basis of their previous or intended address, or through a “declaration of local connection”, rather than at the address of the prison where they are located. Do you agree?

8. The Commission agrees that prisoners should register at a previous address or an intended address and that it would not be appropriate for them to register at the address of the prison.
9. Prisoners on remand must register at an address where they would be living were they not detained or an address at which they had previously resided but may also register at the address of the place in which they are being detained via a declaration of local connection. We envisage that the registration process for convicted prisoners would also differ from that currently used for remand prisoners in that some form of attestation or proof of sentence length would be required. Convicted prisoners would therefore need to be defined as a new category of elector, with an appropriate method of recording their status on the electoral register.
10. Whether this new category is best reflected in law by modifying the legislation relating to declaration of local connection or by creating a new type of declaration similar to that of service voters requires further consideration, and will partly depend on the information that prisoners will be required to provide on their registration application. Either way, we recommend that there should be a single mechanism by which eligible prisoners register to vote. The Commission would be happy to discuss this issue further with the Ministry of Justice (MoJ).
11. It is also important that the rules and principles determining which prisoners may register to vote and where a prisoner may be registered are drafted so as to cover any unusual circumstances - for example, the correct action to take in the case of a UK citizen who has never resided or registered to vote in the UK but is imprisoned there, and in the case of a

qualifying Commonwealth citizen or EU national who has never resided in the UK but is imprisoned there, needs to be covered.

Question 6: The Government proposes that a special registration form for convicted prisoners should be created to help ensure that only those entitled to vote may do so. Should the registration form be attested by a prison officer, and/or accompanied by a copy of the prisoner's detention order?

12. We agree that there should be a special form for prisoners to use to register to vote. The prison governor or other prison staff should be required to attest the application stating that the prisoner is sentenced to less than the prescribed amount of time and so is eligible to be registered to vote. However, it should not be possible for a prisoner to become disenfranchised because of the refusal of prison staff to attest the form. The prison services, inspectorates and ombudsmen across the UK should ensure that prison staff do not unduly delay the application.
13. The level of prison staff who can attest these applications could be prescribed, as it is for certain police ranks in relation to anonymous registration. The prescribed level should be low enough that the registration process is not reliant on too few people but high enough that the attester will be aware of who can and cannot register and would carry sufficient authority. We would welcome views from the MoJ on the correct level of prison officer to achieve this.
14. It would seem unnecessary to require a copy of the prisoner's detention order in addition to an attestation.

Question 7: Do you have any other comments on the mechanics of the registration process for prisoners?

15. Prisoners will need to be able to find the address of the correct ERO in order to return their form. This would require internet access or access to a database of ERO addresses (we currently supply such a database on a CD to Unit Registration Officers in order to facilitate the registration of service voters).
16. The prison service should take some responsibility for ensuring that all eligible electors have the opportunity to register to vote. An awareness programme should be implemented to highlight among prisoners the process by which they may register and vote. This will involve the allocation of suitable resources to the prison service. We would be happy to explore with the MoJ and the various prison and probation services what such a responsibility might entail in practice and advise on the kinds of materials that might be used by the prison service to raise awareness.
17. In addition, there should be some record of the number of prison voters registered to allow an assessment of the success of the proposed system. EROs could be required to supply this information on the RPF29

form, or prison governors could be required to record the number of eligible electors in their jail and the number of attestations signed.

Question 8: Do you agree with the Government's proposal for the display on the electoral roll of information relating to prisoners registered to vote?

18. We agree with the Government's proposal to record prison electors on the register in the same manner as overseas electors, that is, under the heading of *other electors* and not showing the qualifying address.

Question 9: Do you agree that prisoners should be entitled to register anonymously subject to meeting the same conditions as other individuals applying for the facility?

19. We agree that prisoners should have the same right to anonymous registration as any other voter.

Question 10: Do you think that prisoners should be able to vote

- (i) by post (as suggested); or**
- (ii) by proxy; or**
- (iii) both?**

Please give reasons for your answer.

20. Prisoners should be able to vote by post or by proxy. We see no reason why a prisoner should be treated any differently to any other voter who cannot attend a polling station.
21. The consultation document asserts that "It is probable that not all prisoners will be able to appoint a proxy, and arranging this from prison may not be straightforward. It may be more straightforward for the prisoner to deal with the ERO directly by applying to cast a postal vote, making them less reliant upon a third party." It could equally be argued that low literacy rates among prisoners could mean that not all prisoners will be able to complete their postal ballot, and arranging for help to do this in prison may not be straightforward. It may be more straightforward for the prisoner to appoint a friend or family member as their proxy, making them less reliant upon prison staff.
22. Some overseas and Service voters find that they have issues with using postal voting as there is only a short time for the ballot paper to reach them and be returned in time for polling day. This does not mean that overseas or Service voters should not have the option of requesting a postal vote. Prison voters, like other absent voters, should be able to choose the method of voting that best suits their needs.
23. Continuing to apply the concept of equal treatment of all absent voters, a prisoner should automatically be entitled to a proxy vote, as overseas and

service voters are, without the need for their application to be attested. It is clear that, by nature of being in prison, the voter has a sufficient reason for not being able to attend their polling station.

24. International comparisons are of limited value: while Australia, Canada, Germany, New Zealand and South Africa do allow prisoners serving short sentences to vote, none of these countries allow proxy voting at national elections (for prisoners or non-prisoners). Instead, either postal voting is used, or, in Australia where voting is compulsory, election officials visit the prison to collect ballot papers. However, in France, Belgium and Luxembourg proxy voting is the only method that imprisoned voters can use to cast a ballot. The consistent factor is that where proxy voting is allowed for those unable to attend the polling station, that facility is extended to prisoner voters.

Question 11: Do you have any other comments on the mechanics of the registration process for prisoners?

25. See question 7.

Question 12: Do you believe that prisoners should be entitled to vote at local elections and referenda?

26. We agree that prisoners should be allowed to vote at all elections. Once it has been established that certain prisoners can vote, they should be able to vote in all of the types of election that their nationality and deemed place of residence would allow them to were they not imprisoned.

Question 13: Do you have any other comments and suggestions on the proposals for implementing the Hirst (No 2) judgment?

27. As stated above, any attestation requirement must place a duty on the relevant categories of prison staff to attest the application within prescribed timeframes. Otherwise, it would be theoretically possible for some prisoners to be disenfranchised due to the inaction of prison officials. We would again highlight the importance of the prison service taking some responsibility for ensuring that all eligible electors have the opportunity to register to vote.
28. Also, we would want to be confident that the right to a secret ballot would be guaranteed for prisoners. First, as suggested in the consultation paper, there should be a legal requirement for prisons to supply a location for ballot papers to be completed in secret. Secondly, the consultation also states that when remand prisoners vote by post “the principle of the secret ballot is preserved whilst maintaining the discretion of the prison authorities to open and examine the contents of prisoners’ mail.” We would welcome clarification from the MoJ on how in practical terms this policy preserves the secrecy of the ballot.

Conclusion

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

The Electoral Commission
29 September 2009