

Evidence to Equalities and Human Rights Committee on prisoner voting

The Electoral Commission welcomes the opportunity to provide the Committee with written evidence on the issues which would need to be considered in the event that prisoners are enfranchised.

The Commission believes it is for Parliament to decide on the franchise for our elections and we take no view on whether prisoners should be entitled to vote or not. Therefore, we have limited our evidence to highlighting the practical implications which will need to be considered in the event that prisoners are enfranchised. Should Parliament develop specific proposals for prisoners' voting then we would welcome the opportunity to provide detailed comment on those proposals.

As the Committee will be aware, prisoners on remand are already entitled to register and vote and therefore our comments relate only to sentenced prisoners.

Registration of prisoners

Establishing entitlement to register

In the event that some prisoners are given the right to vote, it will be likely that not all prisoners will meet the eligibility criteria and there will therefore need to be a process for establishing whether a prisoner is eligible to register or not. For example, Parliament may choose to enfranchise only those prisoners serving sentences of less than a determined length or to retain the voting ban for prisoners serving sentences in relation to specified offences (e.g. electoral fraud). It is also likely that some prisoners would also not meet the nationality requirements for registering to vote if they are not a British citizen, a qualifying Commonwealth citizen or a citizen of a European Union state.

In order to establish eligibility it might be helpful to develop a specific application to register form for prisoners which would replicate the application to register process for anonymous electors. The prison governor or other prison staff could be required to attest the application stating that the prisoner is, for example, 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 and inspectorate should ensure that prison staff do not unduly delay the application.

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.

Address at which prisoners are registered

In the event that prisoners are entitled to register to vote, consideration will need to be given to the address at which they are registered. Residence is one of the main criteria for eligibility to register; however, we do not believe it would be appropriate for prisoners to register to vote at the prison address.

Given that prisoners are only present at the prison address as a result of their sentence, an alternative option would be for prisoners to register in respect of a previous or intended address.

Entry on the electoral register

In the event that the Scottish Parliament chooses to enfranchise prisoners for the elections under the competence of the Scottish Parliament (i.e. Scottish Parliament elections and Scottish local government elections) but they are not enfranchised for other elections under the competence of the UK Parliament (i.e. UK Parliament elections and European Parliament elections) then consideration will need to be given to how their voting entitlement is clarified on the electoral register. It may be the case that a new marker is created to distinguish a new type of voter as 'prisoner voter', however, consideration will need to be given to any human rights implications from this identification. Consideration should also be given to including prisoner voters on the register in the same manner as overseas electors under the heading of 'other electors' and not showing the qualifying address.

Promoting registration

In the event that some or all prisoners are enfranchised then the Scottish Prison Service will need to ensure 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. The Commission worked with the Scottish Prison Service ahead of the Scottish independence referendum to provide factsheets and posters for remand prisoners which explained how they may register and vote. We would be happy to explore with the Scottish Prison Service the practical steps they could take to support prisoners to realise their right to vote and advise on the kinds of materials that might be used by the prison service to raise awareness.

In addition, a process should be established by which to record the number of prisoners registered to vote in order to enable an assessment of any system to facilitate their registration. Electoral Registration Officers could be required to supply this information or prison governors could be required to record the number of eligible electors in their prison and the number of attestations signed.

Methods of voting

In the event that prisoners are registered in respect to the prison address then it might be feasible for polling stations to be set up within the prison grounds. In this case the Scottish Prison Service would need to work with Returning Officers to carry out a risk assessment for this option and to identify any practical implications for this option.

In the event that prisoners register at a past or intended address then it would not be feasible to set up a polling station at the prison given the number of potential wards or constituencies that the completed ballots would need to be returned to ahead of the count. In this case prisoners will only be entitled to an absent vote.

Postal voting

It is likely that some prisoners with low literacy levels may need assistance in completing any applications to vote by post and the Scottish Prison Service will need to consider how to provide this support. There is a relatively short window between the issue of postal ballot packs by Returning Officers and the deadline for returning the completed postal ballot in time for it to be counted. Given this, the Scottish Prison Service would need to consider whether their arrangements for the processing of prisoners' mail would enable prisoners to receive and return their postal ballots within the necessary timeframe.

In the event that prisoners are able to cast their vote by post it will be important to ensure that the right to a secret ballot is guaranteed for all prisoners. We would recommend that in this case there should be a legal requirement for prisons to supply a location for ballot papers to be completed in secret. Consideration would need to be given to how prisoners' post is handled to ensure that the privacy of the vote is not compromised.

Proxy voting

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.

Access to campaign arguments

In the event that prisoners are enfranchised for some elections then consideration will need to be given to how prisoners access information about the policies of candidates, parties and other campaigners.

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