



# Consultation on prisoner voting: Analysis of responses



**PUBLIC SERVICES AND GOVERNMENT**

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# Executive Summary

This summary presents key findings from the Scottish Government's consultation on prisoner voting. The consultation opened on 14 December 2018 and closed on 8 March 2019. The consultation paper is available at <https://consult.gov.scot/elections/prisoner-voting/>.

In total, 268 responses were received. Three duplicate responses were removed prior to analysis, leaving 265 responses to be included in the analysis. Of these, 35 were from groups or organisations and 230 from members of the public.

The consultation paper sets out four possible options for change around prisoner voting:

- Option 1: to link enfranchisement to the length of a prisoner's custodial sentence.
- Option 2: to make disenfranchisement an additional sentencing option, to be applied at the discretion of the sentencing judge.
- Option 3: to link disenfranchisement to the type of crime committed.
- Option 4: to link a prisoner's regaining the right to vote to the length of time remaining on their custodial sentence.

The consultation paper did not include options to maintain a blanket ban on prisoner voting nor to enfranchise all prisoners, setting out the Scottish Government's reasoning that the former "is not consistent with the ECHR"; and the latter "... is neither appropriate, nor necessary to ensure compliance with the ECHR".

Respondents were free to express their support for the four options and other positions alongside their views. All views submitted in response to the consultation are presented in this analysis report.

## **Linking prisoner's right to vote to the length of their sentence**

The Scottish Government's favoured option is to link enfranchisement to the length of a prisoner's custodial sentence (Option 1). The first two questions in the consultation asked whether respondents thought prisoners' right to vote should be linked to the length of their sentence and, if not, what their preferred approach would be to extending prisoner voting rights.

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 (Option 1). 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).

Those who argued that nobody who is serving a prison sentence should have the right to vote often suggested that, if someone has committed a crime that is sufficiently serious to warrant a prison sentence, they have forfeited their right to have their say.

Those who thought that all prisoners should be able to vote sometimes referred to the importance of respecting the human rights of prisoners or commented that many prisoners are vulnerable members of society. There was a view that allowing prisoners to vote should help their rehabilitation by making them feel less marginalised and more a part of the community.

### **Appropriate length of sentence**

The Scottish Government's favoured option is to extend the right to vote only to prisoners who have been sentenced to a shorter period of imprisonment.

Question 3 of the consultation paper asked those respondents who did think prisoner voting should be linked to sentence length what length of sentence would be appropriate: 6 months or less, 12 months or less, or another duration. Question 4 asked those who favoured 'another duration' to specify their preferred term length for the threshold.

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'. More of those who favoured 'another duration' suggested longer lengths of sentence for the threshold than shorter; with the most frequent suggestions being four years or less or two years or less.

### **Practicalities of prisoner voting**

Respondents were asked whether they had any comments on the practicalities of prisoner voting. Around 1 in 3 respondents who commented on this issue proposed that a postal or proxy voting approach would be a good way forward. These respondents sometimes argued that this would help with retaining a connection to a local community, avoid distorting results in areas around prisons, or would be more practical than setting up polling stations in prisons. However, around 1 in 8 respondents did suggest they would like to see polling stations within prisons.

The importance of security or secrecy around the voting process was raised by around 1 in 6 respondents, with several suggesting a potential risk of intimidation or coercion, or that this must be avoided.

Issues associated with access to electoral information for prisoners were highlighted by around 1 in 6 respondents. Specific suggestions included that political parties could issue written campaign materials to prisoners in the same way as other to constituents, and that candidates might even engage in hustings within prisons. The need for some prisoners to be provided with practical support was also suggested, for example if they experience mental health problems or have literacy issues.

A small number of respondents, particularly Electoral Body or Group respondents, raised points concerning establishing an entitlement to vote and the registration process, and highlighted elements of the current system that would need to be modified if applied to prisoners.

# 1. Introduction

- 1.1 This report presents analysis of responses to the Scottish Government's consultation on prisoner voting. The consultation opened on 14 December 2018 and closed on 8 March 2019. The consultation paper is available at <https://consult.gov.scot/elections/prisoner-voting/>.

## Background and context

- 1.2 There has been a longstanding ban on convicted prisoners voting in all elections in the UK. The Representation of the People Act 1983 established the current legal basis for the ban and Section 3 of the Act sets out that any convicted person is "legally incapable" of voting at any election while detained in pursuance of their sentence or while unlawfully at large when required to be so detained.
- 1.3 The European Court of Human Rights (ECtHR) found in 2005 that the UK's blanket ban on convicted prisoners voting in elections is in breach of Article 3 of Protocol 1 of the European Convention on Human Rights (ECHR). The Scotland Act 2016 devolved responsibility for the franchise for Scottish Parliament elections. The Scottish Parliament now has the competence to legislate on all matters relating to the Scottish Parliament and Local Government franchise, and therefore the responsibility for ensuring compliance with the ECHR in relation to these matters.

## Profile of respondents

- 1.4 In total, 268 responses were received. Of these, three duplicate responses were removed prior to analysis, leaving 265 responses to be included in the analysis<sup>1</sup>. Of these, 35 were from groups or organisations and 230 from members of the public. The majority of responses were received through the Scottish Government's Citizen Space consultation hub. Others were received via email or in hard copy.
- 1.5 Respondents were asked to identify whether they were responding as an individual or on behalf of a group or organisation. Organisational respondents were then allocated to one of eight categories by the analysis team. A breakdown of the number of responses received by respondent type is set out in Table 1 below and a full list of organisational respondents can be found in Annex 1.

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<sup>1</sup> Three individuals submitted two responses. In each case, the response submitted at the later date has been included within the analysis.

**Table 1: Respondents by type**

Type of respondent	Number
Organisations:	
Community Justice Partnership	5
Electoral Body or Group	4
Legal or Justice Sector Body	3
Local Authority	5
Other	4
Public or Representative Body	3
Religious Body or Group	3
Third Sector Organisation	8
<b>Organisations</b>	<b>35</b>
<b>Individuals</b>	<b>230</b>
<b>All respondents</b>	<b>265</b>

- 1.5 As with any public consultation exercise, it should be noted that those responding generally have a particular interest in the subject area and the views they express cannot be seen as representative of wider public opinion.
- 1.6 The responses from the 238 respondents who agreed to their response being published (all organisations and 203 individual respondents), can be found on the Scottish Government's website at: [https://consult.gov.scot/elections/prisoner-voting/consultation/published\\_select\\_respondent](https://consult.gov.scot/elections/prisoner-voting/consultation/published_select_respondent).

## Analysis and reporting

- 1.7 This report presents the analysis of the responses to both quantitative (closed) and qualitative (open) questions. Analysis of comments made at the open questions focuses on identifying main themes, as well as setting out the full range of views.
- 1.8 A small number of respondents did not make their submission on the consultation questionnaire but submitted their comments in a statement-style format. This content was analysed qualitatively under the most directly relevant consultation question.
- 1.9 Where a closed question was asked, the results are presented by respondent type.
- 1.10 A count of comments made is provided at each open question. This count may include comments which have been moved from another question and from the final question (Question 6) in particular.
- 1.11 The remainder of this report presents a question-by-question analysis and reflects the diversity of issues raised by respondents. When a significant

proportion of those answering an open question (1 in 10 respondents or more of comments made at that question) raised the same point an indication of scale has been given. It should be noted, however, that this reflects how many respondents raised the issue, rather than suggesting any overall balance of opinion.

- 1.12 A small number of respondents, including from the Electoral Body or Group, Legal or Justice Sector Body and Third Sector Organisation respondent groups, made extensive and detailed comments. These comments often concerned either the legal arguments surrounding prisoner voting or the practicalities which need to be considered. An overview of these responses is included within the analysis and all responses are available in full to the relevant Scottish Government Policy Team. As noted above, all organisation responses can be accessed from the Scottish Government's website.



## 2 Linking prisoner's right to vote to the length of their sentence

2.1 The consultation paper sets out four possible options for change around prisoner voting:

- **Option 1:** to link enfranchisement to the length of a prisoner's custodial sentence.
- **Option 2:** to make disenfranchisement an additional sentencing option, to be applied at the discretion of the sentencing judge.
- **Option 3:** to link disenfranchisement to the type of crime committed.
- **Option 4:** to link a prisoner's regaining the right to vote to the length of time remaining on their custodial sentence.

2.2 The Scottish Government's favoured option is to extend the right to vote only to prisoners who have been sentenced to a shorter period of imprisonment (Option 1). The consultation paper suggests that the length of the sentence imposed is, generally speaking, a reflection of the seriousness of the case and that Option 1 would strike an appropriate balance between removing the right to vote only where the circumstances are serious enough to justify such a longer sentence and wider objectives of the rehabilitation and reintegration of prisoners in order to reduce reoffending.

**Question 1: Do you think that prisoners' right to vote in Scottish Parliament and Local Government elections should be linked to the length of their sentence?**

2.3 Responses to Question 1 by respondent type are set out in Table 2 below.

**Table 2: Question 1 - Responses by respondent type**

Type of respondent	Yes	No	Not answered	Total
Community Justice Partnership	1	4		5
Electoral Body or Group			4	4
Legal or Justice Sector Body	1		2	3
Local Authority	4		1	5
Other		3	1	4
Public or Representative Body	1	1	1	3
Religious Body or Group	1	2		3
Third Sector Organisation		7	1	8
Total organisations	8	17	10	35
<b>% of organisations answering</b>	<b>32%</b>	<b>68%</b>		
Individuals	63	165	2	230
<b>% of individuals answering</b>	<b>28%</b>	<b>72%</b>		
<b>All respondents</b>	71	182	12	265
<b>% of all respondents</b>	<b>27%</b>	<b>69%</b>	<b>5%*</b>	
<b>% of all those answering</b>	<b>28%</b>	<b>72%</b>		

\* Figures do not sum to 100% due to rounding

- 2.4 Around 3 in 10 (28%) of the respondents to the consultation thought that prisoners' right to vote should be linked to the length of their sentence (option 1).
- 2.5 A majority of respondents, 72% of those answering the question, did not think that prisoners' right to vote should be linked to the length of their sentence. As covered below, further comments suggest that those who did not think that prisoners' right to vote should be linked to the length of their sentence included both those who thought no prisoners should have the right to vote and those who thought that all prisoners should have the right to vote.

**Question 2: If your answer to Question 1 is 'no', what would be your preferred approach to extending prisoners' voting rights?**

- 2.6 A total of 210 respondents made a comment at Question 2<sup>2</sup>. Most of these respondents (181 respondents) had answered 'no' at Question 1, that is, as per the question, they did not think that prisoners' right to vote should be

<sup>2</sup> This includes 22 respondents whose comments at Question 6 are covered in the analysis presented here.

linked to the length of their sentence<sup>3</sup>. These respondents often went on to take one of two broad positions<sup>4</sup>:

- Nobody who is serving a prison sentence should be able to vote. Around 1 in 2 of those who did not think that prisoners' right to vote should be linked to the length of their sentence were of this view. All but one of these respondents (a Religious Body or Group respondent) were individuals.
- All prisoners should have the right to vote. Around 2 in 5 of those who did not think that prisoners' right to vote should be linked to the length of their sentence were of this view. This group of respondents included individual respondents and many of the organisations that had answered 'no' at Question 1.

### **No extension of voting rights**

2.7 The views of those who argued that nobody who is serving a prison sentence should have the right to vote are encapsulated within the comment that:

*Prisoners should not have any right to a vote at all. If an individual commits a crime serious enough to warrant a custodial sentence away from society, they should then forfeit certain rights including the right to vote.*

Individual respondent

2.8 Other issues raised, in each case by one or a small number of individual respondents, included that:

- If we deem that someone should not be within open society, they should not be able to influence decisions on how that society operates.
- As is already the case, only those on remand should be allowed to vote.
- Voting rights should be re-established once parole has been granted.

### **Extension of right to vote to all prisoners**

2.9 Other respondents thought that all prisoners should have the right to vote, and that Scotland should legislate to remove the ban on prisoner voting in its entirety. Many of the comments made are summed up by the respondent who expressed an opinion that:

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<sup>3</sup> Four respondents did not answer Question 1 and went on to make a comment at Question 2. Five respondents answered 'yes' at Question 1 and went on to make a comment at Question 2.

<sup>4</sup> Smaller numbers of respondents held other positions or raised other issues. These are covered in the latter stages of the analysis presented here at Question 2.

*I think all people in custody, regardless of sentence length, should have the right to vote... If Scotland aims to support individuals in custody to lead better lives when they leave prison, then encouraging and supporting people in custody to vote acknowledges that they are still citizens and have the right as a citizen to vote.*

Individual respondent

- 2.10 A number of respondents who thought that all prisoners should have the right to vote went on to make extensive comments<sup>5</sup>. These respondents included Third Sector Organisations, Public or Representative Bodies and individual respondents.
- 2.11 Points made in support of this argument, in each case by one or a small number of respondents, sometimes had a human rights focus:
- The proposed approach is contrary to the advice of the United Nations International Covenant on Civil and Political Rights (ICCPR), Human Rights Committee, which advised that not giving a prisoner the right to vote “amounts to an additional punishment”. Specifically, Article 10 paragraph 3 of the ICCPR states that “The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.” In its 2001 review of the UK, the Human Rights Committee (which monitors the implementation of ICCPR) expressed concern that the general deprivation of the right to vote for convicted prisoners did not meet this requirement.
  - Judgments of the European Court of Human Rights (ECtHR) in terms of Article 3 of Protocol 1 to the European Convention on Human Rights (ECHR) also support a well-established position that an automatic blanket ban on prisoner voting is a disproportionate measure. Given this context, the Scottish Government’s recognition that reform is needed was welcomed.
  - All adults having the vote is a human or civic rights issue. In turn, that universal franchise is a measure of the legitimacy and strength of our democracy.
  - Irrespective of length of sentence, it was noted that the results of elections can influence matters that affect prisoners or their families and local communities.
- 2.12 It was also noted that while the ECHR does leave a state a wide margin to determine the proportionate disenfranchisement of prisoners, it defines the floor rather than the ceiling of human rights protection. Given this, it was suggested that general human rights principles and international human rights standards (for example around maximum suffrage, inclusion, proportionality and against arbitrariness) should be at the heart of decisions

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<sup>5</sup> Some remarks made at Question 6 are presented with the analysis here.

about which approach would be most proportionate and would best protect and promote human rights.

- 2.13 There were also suggestions, primarily from organisational respondents, that the proposals do not, but should, reflect the conclusions of the Scottish Parliament Equalities and Human Rights Committee's report on Prisoner Voting in Scotland<sup>6</sup>.
- 2.14 Other comments addressed the profile of the prison population. It was suggested that the majority of prisoners are vulnerable members of society and that a ban on prisoner voting impacts disproportionately on the most deprived. Further comments included that many people who end up in the criminal justice system have struggled to access education or employment and that there is a disproportionate representation of people in prison with mental health problems, a background of being in care, with addiction problems, or with a background of abuse and neglect.
- 2.15 A Third Sector Organisation respondent highlighted that, given that women are far more likely to receive a short-term sentence following a non-violent offence, the current law acts as an unnecessary barrier to women's participation in public life.
- 2.16 There was a view, expressed by a diverse range of types of respondent, that allowing prisoners to vote should help their rehabilitation by making them feel less marginalised and more a part of the community. It was reported that research has shown that reintegration is aided by strong links between prisoners and their local community. On a similar theme, there was a question as to why those in prison for the longest periods of time, and who are therefore most in need of assistance in reintegrating into civic life, should be excluded.
- 2.17 It was also reported that there is no evidence that restricting the right to vote increases either public protection or community safety or that it prevents or reduces crime. It was also seen as at odds with the aims of Scotland's justice and wider societal system, as reflected in Justice in Scotland: Vision and Priorities, the National Community Justice Strategy, Mental Health Strategy 2017-2027 and more recently Rights, Respect and Recovery: alcohol and drug treatment strategy. Another perspective was that too much emphasis has been placed on the rights of the victims of crime and insufficient emphasis on possible benefits to wider society.

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<sup>6</sup> The Committee recommended that the Scottish Government legislate to remove the ban on prisoner voting in its entirety. The Committee's report is available at: <https://digitalpublications.parliament.scot/Committees/Report/EHRiC/2018/5/14/Prisoner-Voting-in-Scotland#Introduction>

2.18 A small number of primarily individual respondents thought that all prisoners should be able to vote other than under certain circumstances<sup>7</sup>. The circumstances suggested, in each case by only one or a small number of respondents, were:

- Being a repeat offender, either if the prisoner shows no signs of changing or on reaching more than two sentences of six months or less.
- Dependent upon their behaviour within the prison.
- Having completed a short course on voting rights.

2.19 It was also suggested that those serving community sentences should have restrictions placed on their right to vote.

2.20 Finally, a small number of issues relating to types of offence or sentencing arrangements were raised:

- With specific reference to extending voting rights based on length of sentence, it was argued that length of sentence is not a reliable indicator of the seriousness of offence. It was also suggested that decisions about imprisonment are often not clear-cut, including the divide between the types of offences which attract imprisonment.
- The withholding of any right to vote is arbitrary because its impact depends on a combination of the date of sentencing, how long someone has previously been on remand and the timing of elections, rather than the sentence or offence committed.

### **Comments about the proposed approach**

2.21 There were also a small number of comments from those who had either answered yes, or who had not answered Question 1. They included a view (from a Legal or Justice Sector Body respondent), that while noting the report of the Scottish Parliament Equalities and Human Rights Committee on Prisoner Voting in Scotland, any decisions are ultimately for the Scottish Parliament.

2.22 A Local Authority respondent thought that linking enfranchisement to length of sentence would seem a logical option as the length of sentence imposed is generally a reflection of the seriousness of the case, having regard to all circumstances including the nature of the offence, the circumstances and a person's previous convictions. They also suggested that Option 1 best balances the right to vote for short-term prisoners, the promotion of the rule of law, responsible citizenship, rehabilitation and the perspectives of victims of crime.

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<sup>7</sup> Comments made about restrictions based on the type of offence are covered below under views Option 3.

2.23 Other issues, raised by a Community Justice Partnership respondent, a Local Authority respondent, a Third Sector Organisation respondent, a Legal or Justice Sector Body respondent and a Public or Representative Body respondent included:

- The distinction between summary and solemn procedures should be recognised<sup>8</sup>.
- There are many incidences of cases being 'kept' and then prosecuted at one time, resulting in consecutive sentences well over 12 months. This may be problematic, as certain individuals would be excessively punished through disenfranchisement for multiple minor offences when a more serious (harmful) offence does not result in disenfranchisement.
- There should also be a mechanism to balance voting rights for prisoners who are initially sentenced below the proposed threshold and those who commit a serious crime but have served a sentence which is subsequently reduced to below any threshold introduced.

### **Comments on other options**

2.24 As noted above, in addition to the Scottish Government's preferred way forward, Option 1, the consultation paper set out three possible alternatives. A small number of respondents who either did not favour Option 1 or who did not answer Question 1 went on to make comments about the other possible options.<sup>9</sup>

### ***Option 2: Disenfranchisement applied as an additional penalty***

2.25 This option would empower courts to impose loss of the right to vote as a sentence in itself. This would mean that a judge could impose disenfranchisement at their discretion when sentencing a person convicted of a crime.

2.26 A small number of primarily individual respondents stated a preference for Option 2, either in its own right, or in preference to Option 1 if their preferred alternative (voting for all prisoners) was not pursued. Reasons given in support of Option 2 included that:

- It is individualised and proportionate. Each individual and each case will have its own particular set of circumstances and the judges who preside over the cases would be best placed to take those into account.
- It has been implemented successfully in other countries, such as in France.

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<sup>8</sup> The consultation paper explains 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.

<sup>9</sup> Please note that as no specific questions were asked about alternative options any views expressed should not be seen as indicative of the overall views of those responding to the consultation.

- Of the available options, the fairest is basing disenfranchisement on the offence committed. For example, it could be based on removing voting rights for anyone who has committed crimes of dishonesty or fraud at a certain level, or who has attempted to interfere with the machinery of the state.

2.27 Other comments included the rationale behind the use of disenfranchisement would, however, need to be clarified by Parliament or that sentencing judges should receive clear guidance on when this loss of civil rights should be included in the prisoner's sentence. On a connected point, it was suggested that the loss of voting rights should be presumed, with the onus on the accused to plead 'special reasons'.

2.28 It was noted that Option 2 has been opposed by the judiciary because of its subjectivity and a Legal or Justice Sector Body respondent observed some practical implication, including that it would have an impact on the Scottish Courts and Tribunals Service in respect of: court time and relative court programming; associated staff training and accommodation resources; and costs involved in relevant IT changes.

### ***Option 3: An approach based on type of crime***

2.29 This option would link the disenfranchisement of convicted prisoners to the type, or severity, of crime committed. With this option, prisoners convicted of crimes deemed to be more serious would lose their right to vote. It would require the offences or broad types of offences which would carry a loss of the right to vote to be specified.

2.30 A small number of individual respondents commented that the right to vote should depend on the crime committed or that only those who have committed the most serious crimes, and particularly those who have harmed another or committed offences relating to voting or political participation, should not be able to vote.

2.31 Other comments about Option 3 included that there is difficulty with adopting any limitation which relies on the 'moral fitness' of individuals or their crimes to be assessed. A Public or Representative Body respondent suggested that, if there is a concern that there are different levels of seriousness within the definition of a specific crime, judicial decision-making on disenfranchisement (as at Option 2 above), could be combined with Parliament identifying the offences for which disenfranchisement could be considered at sentencing.

### ***Option 4: Enfranchisement towards end of sentence***

2.32 Option 4 would be to give each prisoner the vote for a specified period before the end of their sentence. 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.



- 2.33 Only three comments were made, the first being that Option 4 would be the preferred option if all prisoners were not given the vote; the option was seen as aiding reintegration back into society. One suggestion was a hybrid approach based on length of sentence and enfranchisement towards the end of sentence, particularly if one of the aims is reintegration into society in preparation for their full release.
- 2.34 A Third Sector Organisation respondent noted that, since women are far more likely to receive a short-term sentence, Options 2 and 4 would often have the same impact on women. They went on to comment, however, that Option 4 would offer the additional benefit of recognising upcoming physical re-entry into public life by returning voting rights. They also suggested that complexity and novelty do not offer a valid justification for not pursuing Option 4.

**Question 3: If your answer to Question 1 is 'yes', what length of sentence would be appropriate as the eligibility threshold for prisoner voting rights?**

2.34 Responses to Question 3 by respondent type are set out in Table 3 below.

**Table 3: Question 3 - Responses by respondent type**

Type of respondent	6 months or less	12 months or less	Another duration	Not answered	Total
Community Justice Partnership		1	1	3	5
Electoral Body or Group				4	4
Legal or Justice Sector Body			1	2	3
Local Authority		2	2	1	5
Other				4	5
Public or Representative Body		1	1	1	3
Religious Body or Group			1	2	3
Third Sector Organisation		1		7	8
Total organisations		5	6	24	35
<b>% of organisations answering</b>	<b>0%</b>	<b>45%</b>	<b>55%</b>		<b>100%</b>
Individuals	17	24	35	154	230
<b>% of individuals answering</b>	<b>22%</b>	<b>32%</b>	<b>46%</b>		<b>100%</b>
<b>All respondents</b>	17	29	41	178	265
<b>% of all respondents</b>	<b>6%</b>	<b>11%</b>	<b>15%</b>	<b>67%*</b>	<b>100%</b>
<b>% of all those answering</b>	<b>20%</b>	<b>33%</b>	<b>47%</b>		<b>100%</b>

\* Figures do not sum to 100% due to rounding

2.35 Most frequently, respondents who thought that length of sentence would be appropriate as the eligibility threshold for prisoner voting rights favoured

'Another duration' (47% of those answering the question). Of the remaining respondents, 33% favoured a threshold of 12 months or less and 20% favoured 6 months or less.

- 2.36 Organisations were more likely than individuals to favour a threshold of 12 months or less (45% and 32% respectively). There was no support for a threshold of 6 months or less among organisations, although 22% of individual respondents supported this option.
- 2.37 Although there was no opportunity to comment at Question 3, a small number of respondents made comments elsewhere in their response about the length of sentence options set out at Question 3. (These are over and above those relating to 'Another duration' which are covered at Question 4 below).

### **Up to 6 months**

2.38 The only specific comments made were that:

- If changes need to be made, 6 months would be the preferred threshold given that the sentence length for some serious crimes could fall within the 12-month timeframe.
- Six months or less is too small a step towards meeting the requirements of the ECHR.

### **Up to 12 months**

2.39 A small number of respondents addressed a possible 12-month threshold. Views included that extending voting rights to prisoners serving a sentence up to 12 months is fair and reasonable. An alternative perspective was that the 12-month option offers the best way forward if full franchise is not to be taken forward.

2.40 Reasons for supporting the 12-month timescale given were:

- It 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.
- It is in line with the conclusion of the 2013 cross-party joint committee of the UK Houses of Parliament, that all prisoners serving sentences of 12 months or less should be entitled to vote.

2.41 However, it was also suggested that, given the Scottish Government's policy objective to end prison sentences of less than 12 months, the impact of a 12-month or lower threshold would seem to be lessened.

**Question 4: If your answer to the above is ‘another duration’, please specify this here.**

2.42 A total of 39 respondents who had selected ‘Another duration’ at Question 3 went on to make a further comment made a comment at Question 4. Of these, 23 made a specific suggestion for another timescale:<sup>10</sup> The suggestions made, in ascending order of length of sentence, are set out in the table below.

2.43 The most frequently suggested timescale was 4 years or less (nine respondents), followed by 2 years or less (five respondents). Six respondents favoured a threshold that was shorter than 3 months.

**Table 4: Alternative lengths of sentence suggested as an eligibility threshold**

Duration suggested	Individual	Organisation	Total
1 week or less	1		1
1 month or less	2		2
1 - 3 months or less	1		1
3 months or less	2		2
12-18 months or less	1		1
2 years or less	4	1	5
4 years or less	6	3	9
5 years or less	1		1
10 years or less	1		1

2.44 Other timescale-related suggestions were: if the prisoner is expected to be released during the term of the Scottish Parliament or Local Government administration that is being elected (raised by three individual respondents); the last 12 months of a sentence of three years or more (raised by one individual respondent); or when a long-term prisoner is no longer deemed as presenting a risk to the public or when parole has been granted (one organisational respondent).

***Reasons for favouring 4 years or less***

2.44 A small number of respondents explained why they favoured a threshold of four year or less. Reasons given included that:

- It reflects the length of a Scottish Parliament session. Local Government electoral terms are also, typically, a period of four years.

<sup>10</sup> Other comments tended to reiterate a view (as covered in the analysis at Question 2) either that there should be no change to prisoners’ voting rights or that there should be a full franchise.

- It reflects the differentiation between a short- and long-term sentence. It was suggested that the distinction represents an important difference in the treatment of prisoners and would be consistent with the overall structure of the management of offenders in Scotland at the present time.

### 3 Practicalities of prisoner voting

- 3.1 The consultation paper explains that prisoners would not be entitled to vote in person but would be able register for a postal or a proxy vote, in a similar way to remand prisoners who are currently eligible to vote. Prisoners would be registered to vote by Declaration of Local Connection (DLC) to a previous address or local authority, rather than the prison address, thereby avoiding both local distortion of voter numbers and electoral results, and the impracticalities of having to deal with ballots from wards and constituencies all over the country in one polling station located in a prison.
- 3.2 Prisoners wishing to register to vote would need to submit a paper form to an Electoral Registration Officer (ERO) to register. Postal votes would be sent to the prison address which prisoners have provided to EROs. Postal vote packs would be treated as privileged correspondence, and so Scottish Prison Service (SPS) staff would not open the packs when they enter or leave the prison.

#### Question 5: Do you have any comments on the practicalities of prisoner voting?

- 3.3 A total of 162 respondents answered Question 5. However, around 1 in 4 of these, all individual respondents, expressed a view that prisoners should not be allowed to vote at all, sometimes also adding that resources should not be devoted to this issue. These respondents did not raise matters specific to the practicalities of prisoner voting.
- 3.6 Amongst other responses at Question 5, around 1 in 3 respondents (primarily individuals) suggested that a **postal or proxy voting** approach would be their preferred one. As noted in Chapter 1, this cannot be seen as indicative of overall levels of support for this approach but simply reflects the proportion of respondents who raised the issue.
- 3.4 Respondents who noted their support for postal or proxy voting sometimes also noted that declaration of a connection to a previous address:
- Would be desirable, including as a means of retaining connection to a local community.
  - Would avoid undue influence on electoral results in areas where there are prisons.
  - Would be more practical to implement than setting up polling stations in prisons.
- 3.5 A number of detailed points associated with the organisation of postal and proxy voting are discussed below.

3.6 In contrast to those advocating postal or proxy voting, around 1 in 8 respondents, again predominantly individuals, suggested that voting could take place at **polling stations within prisons**. Where specified, respondents suggested these ballots should be for the prisoner's normal place of residency.

3.7 The importance of **security or secrecy around the voting process** was raised by around 1 in 6 respondents, including a small number of Electoral Body or Group respondents and a Legal or Justice Sector Body respondent. Several respondents suggested a potential risk of intimidation or coercion, or that this must be avoided. Commenting on the fundamental principle of the secret ballot, one Electoral Body or Group respondent noted:

*Whatever the voting method, it needs to maintain and protect that secrecy as fully as possible. The voter's choice must be anonymous, so that attempts to influence the voter by intimidation, blackmail, or "treating" are eliminated.*

3.8 Issues associated with **access to electoral information** for prisoners were highlighted by around 1 in 6 respondents from a diverse range of respondent types, but from Third Sector Organisation respondents in particular. Specific suggestions included that political parties could issue written campaign materials to prisoners in the same way as other to constituents, and that candidates might even engage in hustings within prisons. For example:

*...meaningful exercise of the human right to vote would also require opportunities to engage with the process of elections, i.e. hustings, opportunities to question candidates (either in person or virtually) and access to manifestos and media coverage of the election period.*

Third Sector Organisation respondent

3.9 It was also noted, however, that since access to online materials for prisoners is very limited and varies between prisons, scope for online campaigning would be restricted. The need for electoral information to be provided in an accessible format was highlighted.

3.10 The importance of measures to ensure that eligible prisoners are **made aware of their right to vote** or **encouraged to engage with the electoral process** were also identified, largely by organisational respondents, and by Electoral Body or Group and Third Sector Organisation respondents in particular. Suggestions included holding 'mock' elections within prisons.

3.11 The need for some prisoners to be **provided with practical support** was suggested, for example if they experience mental health problems, have literacy issues, learning difficulties or are suffering from dementia. It was also noted that proposals for postal voting require literacy of a higher level than that required for voting at a polling place. Appropriate training and awareness-raising for prisoner officers was suggested, and the right to

independent advocacy for those covered by the Mental Health (Care & Treatment) (Scotland) Act 2003 was highlighted.

- 3.12 Since the franchise for Scottish Parliament and Local Government elections extends to 16 and 17-year olds, it was noted that provision of information and support to young prisoners should also be considered.
- 3.13 A small number of respondents observed that for the proposals on prisoner voting to make a real difference there will need to be active support from prison authorities. Commenting on the currently very low level of voting amongst remand prisoners, one Religious Body or Group respondent expressed a view that, at present, there is “no effort to encourage voting”.
- 3.14 The remainder of the analysis at Question 5 concentrates on the administration of the voting process and draws heavily on a small number of substantial responses made by Electoral Body or Group respondents in particular. As a result, few of the points made below are raised by more than one or a small number of respondents.

### **Establishing an entitlement to vote**

- 3.15 A requirement to provide clear guidance on who can apply to vote and a process for verifying eligibility were identified as essential, with close working between Government, the Scottish Assessors Association and the SPS to allow smooth transfer of relevant information suggested to be key. It was also argued that the process must be made as efficient as possible for EROs. Specific points were made with regard to confirming both length of sentence and nationality requirements.
- 3.16 Potential models for a new prisoner voting system were suggested to include existing process in place for remand prisoners or for Service voters, and those in place in other jurisdictions.
- 3.17 A number of issues were highlighted concerning identification of the ward or constituency in which an eligible prisoner’s ballot would be counted, including a suggestion that many prisoners will not have been on the electoral roll prior to imprisonment. In particular, arrangements for cross boundary situations (including Scottish prisoners in English prisons) and for prisoners who have been homeless were queried. One respondent pointed to the proportion of the prison population falling into these categories:

*Within the Scottish Prison service... there are individuals from outwith Scotland, individuals with “no fixed abode” and some where there is no identifiable address on record. Recent statistics suggest that these three groupings equate to over 12% of the prison population, “no fixed abode” equating to over 8% alone.*

Community Justice Partnership respondent

## Registration process

- 3.18 It has been noted above that respondents sometimes pointed to the importance of eligible prisoners being informed of their right to vote and provided with help to do so if necessary. Further points on registration to vote included:
- A specific application to register form should be developed for prisoners which could also incorporate a DLC<sup>11</sup> and a postal or proxy vote application. The process should be as straightforward as possible for prisoners.
  - If the registration process requires attestation by a prison officer to confirm a prisoner meets eligibility criteria, the level of prison staff authorised to do this could be prescribed.
  - Consideration could be given for applications to be received through the prison record system, allowing information to be checked against records already held by the prison service.
  - The registration process should be allowed to take longer than usual because it cannot be done online. Further, prisoners may not have easy access to information needed to verify their eligibility.
  - Since prisoners will be registered via a DLC, EROs should not be obliged to follow up the non-return of an application form with a personal visit, as is usually the case. Likewise, changes to normal procedures for EROs to hold registration hearings may be necessary.
  - The usual requirement for EROs to provide an annual renewal reminder to a voter with a DLC could be waived for prisoners.
  - A suitable marker for prisons on the registers should be considered, but also that there may be data protection issues associated with prisoners being on local registers.
- 3.19 With respect to the proposed DLC for prisoners, one Electoral Body or Group respondent noted that requiring prisoners to be removed from the register at their home address and to reapply to register as a prisoner via a DLC could prove very bureaucratic for short sentences. As an alternative it was suggested that prisoners serving only short terms could remain registered at their home address.
- 3.20 Points on the annual canvass / census included both that current legislation excludes prisons, and that prisons should not be included in future.

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<sup>11</sup> As noted above, prisoners would be registered to vote by Declaration of Local Connection (DLC) to a previous address or local authority, rather than the prison address.



### **Issues specific to postal votes**

3.21 Issues around timing were identified as important for postal voting in view of the relatively short period between issue of postal ballots and the deadline for returning a completed ballot: arrangements for processing or distributing prisoners' mail would need to facilitate this. It was noted that the usual right to hand a postal vote into a polling place would not apply to prisoners.

3.22 Other points on postal votes included that:

- An approach would be required to deal with the replacement of lost or spoilt votes.
- Prison authorities would need to facilitate provision of a sample signature to the ERO.
- Consideration should be given to risk of postal packs being misdelivered to prisoners of the same name within the same prison.

### **Issues specific to proxy voting**

3.23 A small number of points were raised specific to proxy voting, including a suggestion that a current loophole should be addressed:

*...there is currently nothing to prevent someone with a Proxy vote in place prior to imprisonment... from continuing to benefit from that Proxy being exercised on their behalf during their period of imprisonment.*

Local Authority respondent

3.24 With respect to attestation of a proxy vote application, it was suggested both that consideration be given to whether this is necessary and that it should not be required, since being in prison provides the voter with a sufficient reason for not being able to attend a polling station.

3.25 Other points on proxy voting included that:

- There would need to be a mechanism for the prisoner to instruct the proxy how they wished their vote to be cast, with implications for protection of the secrecy of the ballot.
- Some prisoners may not have a friend or relative trusted to vote on their behalf.

### **Other points**

3.26 Finally, while not arguing against prisoner voting, a small number of respondents noted the administrative challenges and potential level of resource required, with implications both for the SPS and those responsible for the organisation of the electoral process. In particular it was suggested that registration of prisoners will be a new duty for EROs and should be funded accordingly.

3.27 With respect to timing of the proposed changes, an Electoral Body or Group respondent requested that:

*Should any reforms be introduced we ask the Scottish Government to ensure that any changes in legislation relating to elections are made well in advance of the polls in which the changes will take effect.*

3.28 Specifically, it was argued that since EROs will need time to plan and implement changes, at least 6 months should be allowed between legislation being passed and it being required to be complied with.

3.29 Further consultation with relevant electoral stakeholders was also proposed.

## 4 Other issues raised

**Question 6: Do you have any other comments that have not been captured in the responses you have provided above?**

- 4.1 Although a total of 111 respondents answered Question 6, only a small number of responses included material that has not already been covered at earlier questions, hence all points noted below were made by only one or a very small number of respondents.

### **Consultation process**

- 4.2 Comments on the nature of consultation included that consideration could be given to further consulting prisoners on their views or that further research on the views of the prison population would be appropriate. It was noted that prisoners would not have had the opportunity to respond online to an online consultation.
- 4.3 It was also suggested that the consultation process would have been improved by a review of how the proposed changes would fit into the Scottish Government's wider penal policy, as set out in "Justice in Scotland: Vision and Priorities".

### **Referendums and consistency**

- 4.4 It was argued both that any right to vote in Scottish Parliament and Local Government elections should, for consistency, be extended to referendums although also that, even if a right to vote in other elections were not available, an exception should be made to allow prisoners to vote in referendums.
- 4.5 Consistency in voting rights for prisoners between UK Parliament, Scottish Parliament and Local Government elections in Scotland was also advocated.

### **Compulsion Orders**

- 4.6 Clarification was sought on application of the proposals to people detained in secure psychiatric care on Compulsion Orders. It was noted that such individuals are currently denied the right to vote which, it was argued, adds stigma and runs counter to the idea that society should look after vulnerable people.

### **New voting technologies**

- 4.7 Potential modernisation of the electoral process to include new technologies around "eVoting" and "live" electronic registers was suggested to create both opportunities and challenges with respect to prisoner voting. It was argued that current debates on new technology and electoral reform should take account of any intention to extend the franchise to prisoners.

# Annex 1: Organisations responding to the consultation

Respondent type	Name
Community Justice Partnership	Angus Community Justice Partnership
	Community Justice Ayrshire
	Community Justice Glasgow
	Dumfries and Galloway Community Justice Partnership
	Midlothian Community Safety and Justice Partnership
Electoral Body or Group	Association of Electoral Administrators (AEA). A joint response from the National AEA and the Scotland and Northern Ireland Branch of the AEA.
	Scottish Assessors Association
	The Electoral Commission
	The Electoral Management Board for Scotland
Legal or Justice Sector Body	Faculty of Advocates
	Law Society of Scotland
	Scottish Courts and Tribunals Service
Local Authority	Dundee City Council
	East Ayrshire Council
	East Lothian Council
	Perth and Kinross Council
	West Lothian Council
Other	Department of Public Health and Health Policy, NHS Lothian
	People's Involvement Networking Group (PING)
	Scottish National Party
	West Dunbartonshire Community Party
Public or Representative Body	Community Justice Scotland
	COSLA
	Scottish Human Rights Commission

<b>Respondent type</b>	<b>Name</b>
Religious Body or Group	Alloa Spiritualist Church
	Jt Faiths Board on Community Justice
	The Religious Society of Friends. Quakers in Britain
Third Sector Organisation	Apex Scotland
	Criminal Justice Voluntary Sector Forum (CJVSF)
	Engender
	Howard League for Penal Reform in Scotland
	Positive Prison? Positive Futures...
	Sacro
	Scottish Independent Advocacy Alliance
	WebRoots Democracy



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