

Report on Prisoner Voting in Scottish Devolved Elections

May 2023

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Introduction

The Scottish Ministers are required, under section 6 of the [Scottish Elections \(Franchise and Representation\) Act 2020](#) ("the Franchise Act"), to undertake a review of the operation of section 5 of that Act (voting by convicted persons sentenced to terms of 12 months or less) with a view to considering whether the length of sentence expressed in section 3(1A) of the Representation of the People Act 1983 is appropriate. Having undertaken that review, this is the Scottish Ministers' report. In carrying out the review, the Scottish Ministers consulted with representatives of the Scottish Prison Service (SPS), the Electoral Commission, Scotland, the Scottish Assessors Association and the Electoral Management Board for Scotland (EMB). This report is laid before the Scottish Parliament under section 6(2) of the Franchise Act.

Background

Since 2 April 2020, the Franchise Act has allowed prisoners serving sentences totalling 12 months or less to register and vote in Scottish Parliament and local government elections (and also national park elections). Section 5(3) of the Franchise Act amended the Representation of the People Act 1983 to permit prisoners sentenced to a term of imprisonment not exceeding 12 months to vote in Scottish local government elections (the local government franchise is used for Scottish Parliament elections, so this change enables eligible prisoners to vote in both types of election).

The right to vote applies where a person would have been ordinarily resident in Scotland if it were not for their imprisonment. The Franchise Act did not affect the rights of civil prisoners and people on remand (e.g. people detained in prison awaiting trial or sentencing), as they were already entitled to vote. It is not known how many remand prisoners are registered to vote (this is because as unconvicted persons they would appear on the electoral register in relation to their normal home address, with no special identifier).

Background on the enactment of the Franchise Act is available at the Scottish Parliament website:

[Scottish Elections \(Franchise and Representation\) Bill – Bills \(proposed laws\) – Scottish Parliament | Scottish Parliament Website](#)

Review of prisoner voting

Section 6 of the Franchise Act placed a legislative requirement on the Scottish Ministers to review the operation of the prisoner voting provisions with a view to considering whether the 12 month sentence threshold is appropriate, and to lay a copy of the report on that review before the Scottish Parliament no later than 4 May 2023. This duty was added to the Act in the context of discussion over the length of the 12 month threshold, with some arguing that enfranchising prisoners serving longer terms, e.g. 3 or 4 years, would be more likely to assist rehabilitation (see the [Official Report](#) of the Stage 3 amendment proceedings for the Scottish Elections (Franchise and Representation) Bill, Columns 91-103).

Actions taken to support prisoner voting

The Scottish Parliament passed secondary legislation in 2021 to make special provision in relation to the circumstances of prisoners:

- In order to ensure emergency proxy voting would be available for prisoners:
- [The Representation of the People \(Absent Voting at Local Government Elections\) \(Scotland\) Amendment Regulations 2021 \(legislation.gov.uk\)](#)
- To oblige the returning officer to send an official poll card or notification to a detained prisoner, or a prisoner held on remand, at the place at which they are being detained rather than the address at which they are registered to vote:
- [The Scottish Local Government Elections Amendment Order 2021 \(legislation.gov.uk\)](#)

The Electoral Commission has been working with the SPS and other relevant partners to explore opportunities to provide political literacy education for prisoners. It prepared a guide for prison staff in relation to prisoner voting and guidance for electoral professionals in March 2021. This material is attached as Appendices 1 and 2 to this Report.

The SPS took a number of measures to facilitate and publicise prisoner voting rights within prisons and to prepare prison staff to handle related requests from prisoners. This included:

- Monthly transmission of data in relation to eligible prisoners to Electoral Registration Officers (EROs) to allow EROs to contact prisoners to assist them in registering to vote. This transfer is documented in a data sharing agreement.
- Circular communications to Prison Governors highlighting the changes in relation to prisoner voting
- Notices in prisons to highlight voting rights
- Initiatives through the prisoner education service in prisons.

EROs receive data from SPS and write to all eligible convicted prisoners on a monthly basis to invite them to register to vote (termed an Invitation to Register or “ITR”).

Addresses at which prisoners register

Eligible prisoners will not typically be registered as residing at a prison. In the first instance, prisoners should register with reference to an address where they would be residing but for their detention. If that is not possible, they can register with reference to an address at which they were resident immediately before being detained (this includes the address of, or which is nearest to, a place in Scotland where the person commonly spent a substantial part of their time if they had been homeless immediately before being detained) but it cannot be the address of a penal institution. Only if neither of these are possible, or the prisoner could only give an address from which they are prevented from residing at because of an order of any court, a prisoner can register to vote by a declaration of local connection with reference to the prison as the “required address.” In addition, a person cannot specify the prison as their address for registration purposes if they have a home outwith Scotland or would otherwise not be resident in Scotland but for their detention.

This means that it is not always clear exactly how many prisoners at any one prison are registered to vote. It also means that any one individual prison can contain prisoners registered to addresses across Scotland. This could be a complicating factor for any candidate wishing to engage prisoner voters, as it will not be certain whether any one prison might or might not contain prisoners registered in the ward, constituency or region in which they are seeking election. In addition, campaign leaflets and letters will typically be delivered to the 'home' address at which a prisoner is registered rather than their prison address.

Scottish Parliament Election 2021

The Scottish Parliament election on 6 May 2021 was the first national election in which eligible prisoners were able to exercise the new voting rights. However, both the prison population and preparations for the 2021 election were impacted by the coronavirus pandemic. SPS report that numbers of short term prisoners were reduced as a result of the pandemic. There were also limits on the extent to which promotion activity in relation to prisoner voting could be conducted in pandemic conditions. This report therefore is focused upon efforts to engage prisoners ahead of the May 2022 local government elections.

Nonetheless, the Electoral Commission's [Report](#) on the 2021 Scottish Parliament election noted that 38 eligible prisoners registered to vote in the May 2021 election. The Report noted:

“The Commission worked with Electoral Registration Officers (EROs) in Scotland to develop a set of prisoner voter application forms, including registration and absent vote forms which could be distributed by the Scottish Prison Service (SPS). EROs also developed protocols with the SPS to ensure that they received notification where any eligible voters entered the prison system so that they could invite them to register to vote. Voting information for prisoners was also circulated by the SPS through all prisons ahead of the election. In partnership with Citizens Advice Scotland, the Commission also developed a guide for professionals working with prisoners, which was distributed to their network of member bureaux.

Data from EROs indicates that 38 eligible prisoners were registered to vote for the Scottish Parliament election in 2021. We understand that COVID-19 had a significant impact on prisons in Scotland, including the turnover of short-term prisoners. However, it is important to ensure that those who have the right to vote are fully aware of their options for registration and voting and that processes are in place to support this.

There is a legislative requirement for the Scottish Government to review the arrangements for prisoner voting after the May 2022 local government elections. In the interim, we will work with the Scottish Prison Service and any other relevant partners to explore opportunities to provide political literacy education for prisoners.”

Local Government Elections 2022

SPS data indicated that as of 18 April 2022 (the last date on which it was possible to apply to register to vote in the 5 May 2022 local government elections) the number of detained prisoners potentially able to apply to register to vote was as follows:

Prisoner category	Number
On remand	2224
Serving 12 months or less	604
Civil prisoners	0
Total	2828

The Electoral Commission's [Report](#) on the May 2022 Scottish local government elections concluded:

“The 2022 elections were the second in which prisoners serving a sentence of 12 months or less in a UK prison, who would usually be resident in Scotland, had the right to vote, following the introduction of the Scottish Elections (Franchise and Representation) Act 2020. Data from EROs indicates that 49 eligible prisoners were registered to vote ahead of the council elections in 2022.

EROs worked with the Scottish Prison Service (SPS) to ensure that they received notification where any eligible individuals entered the prison system so that they could invite them to register to vote. The Commission also worked with the SPS to develop and circulate a guide for prison staff and a poster to raise awareness amongst prisoners.

The Scottish Government is required to review the arrangements for prisoner voting by March 2023. Ahead of this review, we are committed to continuing to work with EROs, the SPS and the EMB to ensure that prisoners who have the right to vote understand how to register and vote, and can access information and support as required.”

In summary, around 8% of eligible prisoners registered to vote in the 2022 local government elections (based on 49 eligible prisoners from the total eligible prisoner population of 604 as of 18 April 2022). For information, it is estimated by the Electoral Commission that the national electoral register in Scotland is roughly 83% complete, meaning 17% of the general public who are eligible to vote are either not registered or are not registered correctly.

The SPS report that the eligible prison population as of 26 April 2023 is:

Prisoner category	Number
On remand	2104
Serving 12 months or less	678
Civil prisoners	1
Total	2783

Factors in assessing prisoner voting participation

A central issue assessing participation is the possibility that a prisoner eligible to register to vote may be released (or expect to be released) before a scheduled election occurs. For example, the deadline to register to vote in the 5 May 2022 Scottish local government elections was Monday 18 April. A person eligible to register on that date but who expected to be released before 5 May might not have chosen to register as a prison voter.

Prisoner registration and engagement

It is clear that take up among the newly enfranchised group of prisoners (serving 12 months or less) has been low. As noted above, EROs reported that there were 49 eligible prisoners registered to vote as of 27 April 2022, while 38 eligible prisoners registered to vote for the Scottish Parliament election in 2021.

In discussion with the SPS, the Electoral Commission, EROs and Scottish Government analytical services a survey seeking the views of prisoners on their engagement with prisoner voting was conducted around the May 2022 local government elections. SPS issued the survey questionnaire to all prisoners serving sentences of 12 months or less. The survey questions focused upon assessing the awareness of prisoners of their voting rights and assessing the barriers to prisoner engagement with voting. The report outlining the results of this survey has been published separately to this paper on the Scottish Government [website](#). The report concludes:

“The findings detailed in this report suggest that the majority of prisoners who voted in the 2022 Scottish Local Government elections, and who completed the survey, felt that the processes put in place to facilitate voting could benefit from further consideration and improvement. Areas for improvement included better information on how to register and who was eligible to vote, as well as information regarding political parties, candidates and their policy positions.

However it should also be kept in mind that the results of this survey are not necessarily reflective of the entire eligible population of prisoners. As such further research and information gathering may provide a more detailed understanding of how to encourage participation, and the broader views of prisoners on their recently acquired right to vote.”

The 12 month sentence threshold

Section 5(3) of the Franchise Act inserts two new subsections into section 3 of the Representation of the People Act 1983. New subsection (1A) permits prisoners who have been sentenced to a term of imprisonment not exceeding 12 months to vote in Scottish local government elections. New subsection (1B) makes provision for prisoners serving consecutive or concurrent sentences which in total do not exceed 12 months. This applies where a person receives more than one sentence on the same occasion; or where a person is sentenced on separate occasions but is not released (other than on temporary release) for any period between the first occasion of sentencing and the last. 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 the Franchise Act as serving a total term of seven months and would therefore be covered by the provision of voting rights. A prisoner sentenced to two sentences of seven months that are to run consecutively would

not be able to vote whilst in prison, as for the purposes of the Act they would be considered to be serving a single term of 14 months.

The threshold was informed by the Scottish Government's [public consultation on prisoner voting](#), which concluded on 8 March 2019. Responses were received from 35 organisations and 230 individuals. The published [analysis](#) of the consultation reported that respondents 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). Of those respondents that engaged with the question about an appropriate threshold, around 20% favoured a threshold of 6 months or less, one third of respondents favoured a threshold of 12 months or less, and almost half favoured 'another duration'.

The Scottish Government's [Policy Memorandum](#), setting out its approach in preparing the Scottish Elections (Franchise and Representation) Bill, concluded:

“61. The length of sentence reflects the sentencing judge’s assessment of the severity of the offence and other circumstances including the criminal record of the accused. The approach taken by the Bill therefore ensures that disenfranchisement is similarly linked to the seriousness of the crime.

62. Fixing the prisoner voting threshold at 12 months or less is consistent with the distinction within the Scottish criminal justice system between the sentencing powers of courts of summary jurisdiction and courts of solemn jurisdiction.”

During parliamentary debate on the Scottish Elections (Franchise and Representation) Bill, Michael Russell MSP, the then Cabinet Secretary for the Constitution, Europe and External Affairs commented (at [column 98](#)):

“The 12-month threshold that is set out in the bill is the Government’s considered response on the issue, which has been reached following consultation of and deliberation by not one, but two parliamentary committees. The proposal has a direct link to a key aspect of the Scottish justice system—the sentence threshold for courts that sit without a jury—and it was the option that had the greatest support in the consultation.”

Prisoner voting in Ireland and in England and Wales

Prisoners are able to vote in Irish elections if they would otherwise meet the normal electoral registration requirements. Prisoners are registered at their home address and, for voting purposes, are deemed to be ordinarily resident in their home constituency.

The [Electoral \(Amendment\) Act 2006](#) made adjustments to ensure that eligible prisoners had access to postal voting. In an answer to a [Parliamentary Question](#) asked in 2019, the Irish Government confirmed that 229 prisoners were registered to vote in the May 2018 Presidential Election and 224 in the May 2019 Local, European & Divorce Referendum poll.

Convicted persons detained in prisons are unable to register to vote in UK Parliament, Welsh Parliament or local elections in England and Wales. A House of Commons paper containing information on prisoner voting in England and Wales is available at: [House of Commons Library - Prisoners' Voting Rights \(parliament.uk\)](#). It outlines the approach of the UK Government in relation to prisoner voting in UK Parliament elections and local elections in England, under which prisoners released on temporary licence and prisoners released on home detention curfew are able to register to vote. In 2020, the Welsh Government [announced](#) plans to allow prisoners and young people in custody serving sentences of less than four years to vote in local government elections in Wales. These plans were not taken further due to the onset of the Covid-19 pandemic.

Conclusion and Next Steps

Levels of engagement with voting amongst the eligible prisoner population remain low. The Scottish Government's survey of affected prisoners held in 2022 suggests a need for improved information on candidates and their policies during an election campaign (for reference, prisoners have access to television, but access to the internet is restricted). The Government therefore intends to review processes surrounding prisoner voting registration and awareness raising. In addition, the Government is discussing with the SPS and the Electoral Commission ways in which further information on election campaigning could be provided to prisoners.

The Government considers that there is not at present sufficient data available to assess the impact of any potential change to the sentence threshold. As a result, the Government is discussing with SPS the merits of adding a question or questions on attitudes to prisoner voting to the SPS's survey of all prisoners, conducted every two years (note: in response to the [2017 Prison Survey](#), a majority (90%) of prisoners indicated that convicted/sentenced prisoners should have the right to vote in elections). This could also be used to gauge the attitudes of prisoners serving sentences longer than 12 months to voting and to assess the views of those on remand in relation to their voting rights. It would also be possible to conduct a further dedicated survey of eligible prisoners after the next national devolved elections.

The Scottish Government's position remains that it is neither appropriate, nor necessary to ensure compliance with the European Convention on Human Rights, to enfranchise all prisoners, but that the correct balance is found in extending voting rights to those prisoners serving shorter sentences. The Scottish Government does not plan to revisit the 12-month threshold for prisoner voting.



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