



Scottish Government Consultation on Prisoner Voting – submission by Dr Hannah Graham

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I welcome this Scottish Government consultation and the opportunity to comment. I encourage and urge the Scottish Government and Scottish Parliament to lift the current blanket ban and give prisoners voting rights, just like other citizens – this is needed to comply with human rights legislation. It is overdue in Scotland; we lag behind our fellow European nations on this issue.

By way of background, I wish to emphasise that the current blanket ban on prisoner voting in Scotland is anachronistic and arbitrary; it is arbitrary in terms of when elections are held and the timing of when a person might be disenfranchised by virtue of the timing and length of their imprisonment. It is retributive. It does not necessarily deter crime¹, nor aid public protection. Furthermore, the current blanket prisoner voting ban entails anomalies or problems of inequalities affecting the human rights of those convicted and sentenced to custody, compared to those convicted and given community-based sanctions and measures. In light of this, I welcome either the abolition of the ban in its entirety (i.e. all Scottish prisoners can vote) or, failing that, and at the very least, major reforms to limit it (i.e., a significant number of Scottish prisoners can vote and a selected ban on voting applies to only a small group of prisoners).

I acknowledge and support the conclusions and recommendations of the Scottish Parliament Equalities and Human Rights Committee report on Prisoner Voting in Scotland in May 2018. In particular, to underscore a key aspect informing my position, it is worth reiterating part of the evidence given by my SCCJR colleague, Professor Fergus McNeill, a

¹ Liberty (2016) [Liberty's Briefing Prisoners' Voting Rights](#)

leading Scottish criminologist, to that Committee which is quoted on page 26 of their report (EHRiC, 2018):

‘Such people [prisoners] are also wounded in a civic sense, in that they have already been substantively disenfranchised before their formal disenfranchisement by punishment. They come from communities where their life opportunities are severely restricted, where health inequalities are profound and where levels of political participation are already minimal and deeply troubling. They are therefore civically wounded, and then as part of their punishment — or as an accidental consequence of it — we apply civic death in the form of full and formal disenfranchisement during their punishment. To make matters more absurd — in my view — we insist that they resurrect themselves civically at the moment of their release and enter back into society, fully prepared to make a robust and rounded contribution as politically and civically engaged citizens. That is completely paradoxical.’ (McNeill, cited in EHRiC, 2018: 26).

The Scottish Government should critically reflect on its part in imposing ‘civic death’ on Scottish prisoners and expecting civic ‘resurrection’ and reintegration upon release – a paradox indeed. Also, how does the Government’s proposed enfranchisement of people serving short prison sentences of 6 or 12 months coherently fit with the Government’s proposal to increase the presumption against short sentences up to 12 months? Some clarification would be helpful.

I wish to draw attention to the views of Scottish prisoners themselves. The Scottish Prison Service Prisoner Survey is undertaken in each of the Scottish prisons. All Scottish prisoners are given the opportunity to participate and, in 2017, approximately half the prison population took part. A finding of the Prisoner Survey 2017 is that a large majority (90%) of prisoner participants believed that convicted/sentenced prisoners should have the right to vote in elections.

I do not support the option of allowing or limiting the right to vote based on crime type, as a compelling rationalisation for this has not been provided in sufficient depth, and it risks remaining open to relentless media, political and public campaigns to be punitive by removing this right from certain prisoner groups in the wake of a high profile case. The type of crime(s) a person is convicted of does not make them any less of a human rights holder or citizen. The only caveat or exclusion I might make to this position regarding crime type is to note the provisions of the Representation of the People Act 1983 and to support selected disenfranchisement if it is *directly relevant* as a known penalty for those convicted of and imprisoned for an offence against the electorate or contravening electoral laws, or crimes of dishonesty while in public office/abuse of public office. This occurs in some European nations.

Two options or courses of action are advocated as warranting consideration and debate:

1. The first and foremost is to advocate the Scottish Parliament Equalities and Human Rights Commission report (2018: 28) recommendation that the 'Scottish Government legislate to remove the ban on prisoner voting in its entirety', that is, for all prisoners. In countries such as Denmark, Sweden, Norway, Finland, Switzerland, and Ireland, there is no electoral ban on prisoners being able to vote – and these are examples of countries that Scotland might look to learn from their record on human rights, social democracy, prison and penal reform.

2. The second option proposed here, if the first/above option is rejected or not enacted, is, *at a minimum*, to enfranchise Scottish prisoners serving short-term custodial sentences of up to four years, enabling them to vote. Scottish Parliament and local government electoral terms are, typically, a period of four years. This timeframe may make enfranchisement of short-term prisoners and disenfranchisement of long-term prisoners slightly less arbitrary if, irrespective of when an election is held and timing in relation to how much of a short-term custodial sentence has been served, there is a good likelihood those individuals will be liberated and living in the community within the electoral term in which they are voting for.

Progressive, tolerant options advocated here and in the Equalities and Human Rights Committee (2018) report may be opposed due to populism and fear of negative public opinion. Yet, in explaining rights guaranteed under Article 3 of Protocol No. 1 of European Convention of Human Rights, the European Court of Human Rights (2017) states (emphasis added):

There is no question, therefore, that a prisoner forfeits his Convention rights merely because of his status as a person detained following conviction. Nor is there any place under the Convention system, where tolerance and broadmindedness are the acknowledged hallmarks of democratic society, for automatic disenfranchisement based purely on what might offend public opinion.

In pursuing electoral reform to allow prisoner voting, I encourage the Scottish Government and Scottish Parliament to courageously demonstrate tolerance and broadmindedness as hallmarks of our democratic society and of our place in Europe as a human rights defending nation.

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