

What is Prison for?



Background

The penal system has evolved over centuries into its current form. There has always been a need in society for citizens to be protected from those who have caused harm or who pose a threat. There has also been an expectation that those who are guilty of committing crimes will be punished. In the UK during the 16th and 17th centuries the sentence handed down for many crimes was the death penalty. During this time, prison was used as a place for people to be held while they awaited trial and then, if found guilty, while they awaited execution. Given that capital punishment is no longer used in the UK (though it can be found in other countries, including in parts of the United States – see [SCCJR 'Capital Punishment'](#) for further information on this), a lengthy prison sentence is the most severe form of punishment that can be handed down by courts.

See the [Howard League for Penal Reform's website](#) for more on the history of the prison system.

There is dispute over the precise purpose of imprisonment in modern society. Four of the key reasons commonly given for the current prison system are:

- to protect the public by removing people who have offended from communities (incapacitation)
- to punish offending (retribution)
- to serve as a deterrent
- to rehabilitate

While these reasons are often given for imprisoning people, there is disagreement among academics, policy-makers and wider society about the relative importance that the prison service should place on each of the four functions.

In a [written submission](#) to the commission set up to consider how imprisonment is used in Scotland, Alec Spencer, former Director of Rehabilitation and Care for the Scottish Prison Service, reflected on the development and purpose of imprisonment in contemporary

Scotland. Spencer noted that the prison service which emerged when the death penalty was abolished and when those convicted stopped being transported to foreign countries was one that focused on punishment (retribution), incapacitation and deterrence. Modern prisons also “*appear to meet a modern social purpose*”. Spencer described a process of reform in the prison service in Scotland since the 1990s resulting in prisons aiming to help with addictions, literacy, employability and programmes to reduce reoffending – in other words, rehabilitation (see [SCCJR ‘Prisons – reducing reoffending?’](#) for more information about rehabilitation). He also noted that “*there are dangerous offenders, those perpetrating murder and violence, sexual offenders, terrorists and those responsible for serious organised crime for whom prison is an appropriate response in order to protect the public from their brand of menace and reduce potential victimisation. It is a legitimate use of custody to ‘incapacitate’ those who would otherwise continue to seriously harm the public*”.

A 2010 UK Government policy-paper, [Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders](#), stated that “*what really matters*” is “*improved public safety through more effective punishments that reduce the prospect of criminals reoffending time and time again*”, indicating that prison system should serve to both punish and rehabilitate those who end up there.

For more on the complicated relationship between punishment and rehabilitation, see: <https://blogs.iriss.org.uk/discoveringdesistance/files/2012/06/McNeill-When-PisR.pdf>

The first two recommendations of the Scottish Prisons Commission’s 2008 report, [Scotland’s Choice: Report of the Scottish Prisons Commission](#), were as follows:

“1. *To target imprisonment better and make it more effective, the Commission recommends that imprisonment should be reserved for people whose offences are so serious that no other form of punishment will do and for those who pose a threat of serious harm to the public.*
2. *To move beyond our reliance on imprisonment as a means of punishing offenders, the Commission recommends that paying back in the community should become the default position in dealing with less serious offenders.*”

(See [SCCJR ‘Penal system – alternatives to prison’](#) for more on community sentences.)

Remand

It is important to recognise that the prison population includes not just people who have been convicted, but also those who have been ‘remanded’ in custody. Remand is the imprisonment of individuals prior to trial or after they have been convicted but while they are waiting to be sentenced.

Issue: Prisoners' Voting Rights

There has been some controversy in recent years over the issue of voting rights of prisoners in the UK. A series of rulings by the European Court of Human Rights (ECtHR) found that the UK's blanket ban on prisoners voting in local, national and international election is unlawful. These rulings have been criticised by the UK Government and some parts of the media, while other groups have welcomed the rulings. In February 2015 the court noted that the UK's ban continues to violate the European Convention on Human Rights (ECHR).

'The loss of liberty is punishment in itself'

The right to vote is seen by some as a privilege of law-abiding citizens which should be removed along with liberty (by imprisonment) if someone is found guilty of a serious crime. For others, voting in a democratic country is a fundamental right which no lawmaker has the right to remove. Being deprived of the ability to vote in elections can be viewed as a further punishment for offenders who have been imprisoned. This might be welcomed by those who believe prison should be a deliberately punishing experience, and necessitates the removal of certain rights that inmates would have enjoyed if they were not imprisoned. However, this argument would be rejected by those who argue that 'the loss of liberty is punishment in itself' and that everything that happens from the point of imprisonment should seek to rehabilitate inmates.

In December 2018 the Scottish Government launched a consultation which set out the Scottish Government's proposal for ensuring compliance with the European Convention on Human Rights on the matter of prisoners voting. Dr Hannah Graham responded to the consultation on behalf of SCCJR and concludes; "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."

In August 2019 it was announced that prisoners in Shetland would be given a remedial order by the Scottish Government which gave prisoners a vote in the by-election.

There exists a fundamental tension, then, between the perspective that prison should serve to punish and the view that prisons should serve to rehabilitate. It would be claimed by some that taking part in the democratic process, through voting, is an important part of the rehabilitation process, as it is an appropriate way to prepare prisoners for re-joining society.

The table below highlights some of the arguments relating to prisoners' voting rights.

If you are interested in finding out more about this issue, more detailed arguments can be found using the following sources:

- [UK House of Commons Briefing on Prisoners' Voting Rights](#), published March 2019
- [Joint Committee on the Draft Voting Eligibility \(Prisoners\) Bill - First Report](#)
- [Liberty's Response to the Department for Constitutional Affairs' Consultation on the Voting Rights of Convicted Prisoners](#)
- [Howard League Scotland](#)
- [Prison Reform Trust Barred From Voting: The Right to Vote for Sentenced Prisoners](#)

Prisoners should be allowed to vote	Prisoners should not be allowed to vote
<ul style="list-style-type: none"> • Denying the vote to prisoners is viewed by some as essentially an additional punishment that does not contribute towards the prisoners' reformation and social rehabilitation. • It has been claimed that disenfranchisement is a "degrading punishment" which can have a dehumanising impact on prisoners, reinforcing prisoners' social exclusion. This could lead to continued social exclusion when they leave prison, causing further negative consequences for society. • It is argued by some that reinstating prisoners' right to vote could be a powerful tool for rehabilitation. The theory is that prison could be a successful way of introducing offenders to the democratic process, which they would continue to engage with upon their release. • Voting is believed by some to be a fundamental right, which should be granted to all citizens, including those who have been imprisoned. The effects of voting (the creation of governments) have both direct and indirect impacts on all citizens, even those 'cast out', (in most cases temporarily) from society who are accommodated in prison. In short, prisoners' lives are impacted by political decisions too (e.g. prisoners' book 	<ul style="list-style-type: none"> • A commonly-held view is that those who have committed a crime for which they are imprisoned have broken their 'social contract' (the unwritten agreement between individuals and society), as coined by philosopher Rousseau. One of the consequences of this breach of contract is that offenders will be deprived of some of their rights, including the right to vote. • It has been the position of the UK Government that prisoners convicted of a crime serious enough to warrant imprisonment have lost the "moral authority" to vote. • The government has drawn attention to various practical issues, including cost and the administrative burden on prison services, the accessibility of any new courses offered to prisoners, and establishing criteria for re-enfranchisement. • It has been argued that the disenfranchisement of convicted prisoners serves as a "symbolic" act, which enhances civic responsibility and reflects the consequences of

<p>ban in England and Wales; the removal of automatic early release in Scotland).</p> <ul style="list-style-type: none"> • The ECtHR has been particularly concerned by the indiscriminate way in which all prisoners are disenfranchised in the UK. The ban on voting applies to all sentenced prisoners irrespective of the length of their sentence or the nature or the seriousness of their crime. 	<p>failure to respect the laws made by the community as a whole. (See SCCJR 'Scottish criminal justice system' and SCCJR 'What is crime?' for more detailed discussion of the relationship between societal norms and defining which acts are deemed 'crimes')</p>
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Indiscriminate: this means that no distinction is made between the differences that exist between different people. In this case, the ban on voting does not discriminate between someone who is serving a sentence for a relatively minor offence and another person who has committed a more serious crime.

Further Reading

Howard League of Penal Reform Blog (2019) Prisoner Voting by Frances Crook. Available from: <https://howardleague.org/blog/prisoner-voting/>

Howard League Scotland (2015) *Prisoner Voting*. [Online] Available from: <http://howardleaguescotland.org.uk/policy/prisoner-voting>

Joint Committee on the Draft Voting Eligibility (Prisoners) Bill (2013) *Draft Voting Eligibility (Prisoners) Bill*, HL Paper 103 HC 924, London: The Stationary Office Limited. Available from: www.publications.parliament.uk/pa/jt201314/jtselect/jtdraftvoting/103/10302.htm

Liberty (2007) *Liberty's Response to the Department for Constitutional Affairs's Consultation on the Voting Rights of Convicted Prisoners Detailed within the United Kingdom*. Available from: <https://www.liberty-human-rights.org.uk/sites/default/files/prisoners-voting-rights.pdf>

Liberty (2014) Liberty's responding to Court of Human Rights judgment on prisoner voting. Available from: <https://www.libertyhumanrights.org.uk/news/press-releases/prisoner-voting>

Prison Reform Trust (2010) *Barred From Voting: The Right to Vote for Sentenced Prisoners*. Available from: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/barred%20from%20voting%20Feb%202010.pdf>

SCCJR response to the Scottish Government's consultation on prisoner voting rights (March

2019) Available from: https://www.sccjr.ac.uk/wp-content/uploads/2019/03/SCCJR_SG-Consultation-Submission-on-Prisoner-Voting.pdf

Scottish Prisons Commission (2008) *Scotland's Choice: Report of the Scottish Prisons Commission*. Available from: www.gov.scot/Resource/Doc/230180/0062359.pdf

Spencer, A. (2007) *Rethinking Imprisonment in Scotland: The Dilemma for Prison Reform and the Challenges Beyond*. Available from: <http://www.gov.scot/resource/doc/1102/0056826.pdf>

UK Ministry of Justice (2010) *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*. Available from: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/186345/breaking-the-cycle-government-response.pdf

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