



**PARTNERSHIP AND RESOURCES POLICY DEVELOPMENT AND SCRUTINY PANEL**

**CONSULTATION ON PRISONER VOTING**

**REPORT BY CHIEF EXECUTIVE**

**A. PURPOSE OF REPORT**

To inform the Panel of the Scottish Government's consultation on prisoner voting. The consultation paper sets out the Scottish Government's proposals for ensuring compliance with the European Convention on Human Rights on the matter of prisoners voting.

**B. RECOMMENDATION**

To consider the Scottish Government's consultation with a view to informing the council's response.

**C. SUMMARY OF IMPLICATIONS**

<b>I</b>	<b>Council Values</b>	Focusing on our customers' needs; being honest, open and accountable; providing equality of opportunities
<b>II</b>	<b>Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	Representation of the People Act 1983; Scotland Act 2016; Human Rights Act 1998
<b>III</b>	<b>Implications for Scheme of Delegations to Officers</b>	None
<b>IV</b>	<b>Impact on performance and performance Indicators</b>	None
<b>V</b>	<b>Relevance to Single Outcome Agreement</b>	None
<b>VI</b>	<b>Resources - (Financial, Staffing and Property)</b>	Within existing resources
<b>VII</b>	<b>Consideration at PDSP</b>	Partnership and Resources PDSP
<b>VIII</b>	<b>Other consultations</b>	Elections Team, Criminal Justice

## **D. TERMS OF REPORT**

### **D1 Background**

The European Court of Human Rights (ECHR) found in 2005 that the UK's ban on any convicted prisoners voting in elections breaches their human rights.

The Scottish Parliament's Equalities and Human Rights Committee published a report on Prisoner Voting in Scotland on 14 May 2018. The Committee asked the Scottish Government to consider a wide range of views on this issue going forward, and to consult as many stakeholders as possible.

The Scottish Government is consulting on its proposals for ensuring compliance with the European Convention on Human Rights on the matter of prisoners voting. The proposal relates to Scottish Parliament and Scottish local government elections.

The consultation sets out the background to the issue and seeks views on a proposal to allow only those prisoners sentenced to short sentences to vote. The Scottish Government's view is that it is not appropriate to give all prisoners the right to vote.

### **D2 The Proposals**

The options examined in the consultation paper are

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

In the light of the range of evidence and arguments, the Scottish Government's view is that it is neither appropriate, nor necessary, to enfranchise all prisoners to ensure compliance with the ECHR.

Having considered the Equalities and Human Rights Committee's report, the case-law of the ECtHR and international practice, the Scottish Government proposes that the right balance will be struck by enabling prisoners serving short sentences (which would be defined as a sentence of imprisonment for a length of time which is below a specified maximum threshold) to vote.

Views are sought on what length of sentence would be an appropriate threshold.

### **D3 Where and How Should Prisoners Vote**

The consultation paper proposes that prisoners would not be able to vote in person but would need to register for a postal or a proxy vote in the same way that prisoners on remand currently do. Prisoners would be registered to vote by declaration of local connection to a previous or intended address or local authority, rather than the prison address.

### **D4 The Consultation Questions**

The consultation asks the following

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? (Yes/No)
2. If your answer to Question 1 is 'no', what would be your preferred approach to extending prisoners' voting rights?
3. If your answer to Question 1 is 'yes', what length of sentence would be appropriate as the eligibility threshold for prisoner voting rights? (12 months or less/6 months or less/another duration)
4. If your answer to Question 3 is 'another duration', please specify this duration.
5. Do you have any comments on the practicalities of prisoner voting?
6. Do you have any other comments that have not been captured in the responses you have provided above?

The full consultation paper is available at:

[https://consult.gov.scot/elections/prisoner-voting/user\\_uploads/consultation-on-prisoner-voting.pdf](https://consult.gov.scot/elections/prisoner-voting/user_uploads/consultation-on-prisoner-voting.pdf)

Consultation responses should be made by 8 March 2019. Responses can be made online at <https://consult.gov.scot/elections/prisoner-voting>, or sent to Elections Team, Scottish Government, Area 2W, St Andrew's House, Edinburgh, EH1 3DG. Following the closing date, all responses will be analysed and considered along with any other available evidence.

COSLA has also asked for council responses, by 8 February 2019, with a view to informing a collective response to the Government, if possible.

## **D5 Electoral Administration**

Electoral administrators offer no view on whether prisoners should be entitled to vote. It is a matter of policy for legislatures to determine.

The Electoral Commission has previously highlighted the following issues in relation to the practicalities of prisoner voting.

- Any legislation should be commenced no later than six months prior to the beginning of the annual canvass. This would give Electoral Registration Officers (EROs) sufficient time to plan and implement the changes, both for the canvass and for related public awareness activities.
- As there is a relatively short window between the issue of postal ballot packs by Returning Officers and the deadline for returning a completed postal ballot in time for it to be counted. Arrangements for processing prisoners' mail would need to enable prisoners to receive and return their postal ballots within the necessary timeframe.
- If prisoners are entitled to vote by post, there should be necessary safeguards in place so that they can complete their postal ballot pack in secret. This may be achieved through including specific wording in the legislation or receiving an assurance from the prison service this will happen.

- If prisoners are able to vote by proxy they should not be required to have their application attested. This is because by nature of being in prison the voter has a sufficient reason for not being able to attend their polling station.
- If some prisoners become eligible to vote at elections, it will be important to ensure they know that they can vote and how to register and cast a vote. They should also have access to information about the policies of candidates, parties and other campaigners so they can make an informed decision when they vote.

The Electoral Management Board for Scotland is collating feedback on these practical issues from electoral administrators across Scotland, and will respond to the consultation on this perspective.

## **D6 Impact on council resources**

It is not anticipated that there will be any significant impact on council resources. It should be noted that there is already a presumption against short sentences of six months or less, with the Scottish Government committing to increase this to 12 months, so the numbers are likely to remain low. There may be a very small proportionate increase in the number of postal votes to be issued and counted. Awareness-raising activities will have to take account of any change in voting rights. These are minor changes and are expected to be absorbed in existing budgets for both the council and the Returning Officer.

## **E. CONCLUSION**

The Scottish Government is consulting on prisoner voting and a proposal enabling prisoners serving short sentences (which would be defined as a sentence of imprisonment for a length of time which is below a specified maximum threshold) to vote.

The Electoral Management Board for Scotland is co-ordinating a response on the practicalities of prisoner voting for electoral administrators across Scotland.

The Panel should consider whether it wishes to respond to the consultation and if so, recommend a response to the Council Executive.

## **F. BACKGROUND REFERENCES**

None

Appendices/Attachments: None

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