

**ITEM No ...6.....****DUNDEE CITY COUNCIL**

**REPORT TO:** COMMUNITY SAFETY AND PUBLIC PROTECTION COMMITTEE

**REPORT ON:** SCOTTISH GOVERNMENT CONSULTATION ON PRISONER VOTING

**REPORT BY:** EXECUTIVE DIRECTOR OF CHILDREN AND FAMILIES SERVICES

**REPORT NO:** 94-2019

**1.0 PURPOSE OF REPORT**

1.1 The purpose of this report is to seek approval of the proposed response to the Scottish Government consultation on Prisoner Voting. When the Scottish Parliament gained new powers over elections in the Scotland Act 2016, it became necessary to consider how to comply with the European Convention on Human Rights on the issue of prisoner voting.

**2.0 RECOMMENDATIONS**

It is recommended that members:

- Note the background to the consultation
- Approve the proposed council response to the Scottish Government consultation as detailed in the attached appendix. In particular, the preferred option to link the enfranchisement of prisoners to those serving a sentence of 2 years or less.

**3.0 FINANCIAL IMPLICATIONS**

There are no financial implications.

**4.0 MAIN TEXT****Background**

4.1 There has been a longstanding ban on convicted prisoners voting in all elections in the UK. This ban applies irrespective of the length of the sentence and applies to Local Government and Scottish Parliament elections. Prisoners held on remand are allowed to vote, casting their ballots by postal and proxy voting. Those who have been released from prison on parole or home detention curfew (HDC) are eligible to vote.

4.2 In 2005, the European Court of Human Rights (ECHR) found that the UK blanket ban on convicted prisoners voting in elections is in breach of Article 3 of Protocol 1 of the ECHR. The Scotland Act 2016 devolved responsibility for the franchise at Local Government elections to the Scottish Parliament, which now has responsibility for ensuring compliance with the ECHR in relation to these matters.

**Government response to the Consultation**

4.3 The consultation sets out the Scottish Government's suggestions for ensuring compliance with the ECHR on the matter of prisoners voting in elections. The Scottish Government is aware that there are strongly held views on whether or not prisoners should be able to vote and that there are a number of aspects that need to be considered.

- 4.4 These include the rights of victims and the public interests in sanctioning criminal conduct and in enhancing civic responsibility and respect for the rule of law, as well as the rights of prisoners as members of society and the needs of rehabilitation. The Scottish Government proposes that the right balance will be struck by enabling prisoners serving short sentences (below a specified maximum threshold) to vote.
- 4.5 Views are therefore sought on the length of that threshold and the practical issues associated with giving some prisoners the right to vote. The consultation asks whether prisoner voting should be linked to the length of sentence and if so, whether it should be for 12 months or less, 6 months or less or another duration. Practicalities include such things as arrangements in prisons to vote.
- 4.6 The consultation comes at the same time that the Scottish Government is also considering an extension to the presumption against short-term sentences of 3 months or less outlined in the Criminal Justice and Licensing Act (Scotland) 2010. A previous Scottish Government consultation - Proposals to Strengthen the Presumption against Short Periods of Imprisonment - in September 2015, outlined options to extend this to 6, 9 or 12 months.
- 4.7 In analysing responses to this consultation, the Scottish Government indicated that 85% agreed with extending the presumption against short-term prison sentences beyond the current 3 months and that 84% of those favoured a presumption against short-term sentences of 12 months or less. Clearly, any change would require further legislation but it would seem important to align options in relation to voting rights with any extension to the presumption against short-term sentences.

#### **Proposed Dundee Position**

- 4.8 The proposed response to the consultation is set out in Appendix 1. The preferred option stated in the response is to link the enfranchisement of prisoners to those serving a sentence of 2 years or less. This would align developments with separate Scottish Government proposals to extend the presumption against short-term prison sentences from 3 to 12 months. In effect, the Scottish Government is aiming to end very short term sentences associated with very high short-term prison populations, higher levels of re-offending upon release and a revolving door syndrome of repeatedly going into and out of prison.
- 4.9 The extension of voting rights would therefore apply to prisoners serving the shortest possible sentences and would reflect the seriousness of the case, based by the Courts on its impact on victims and/or the community, the persistence of offending and responses to previous sentences. The approach would strike a balance between the rehabilitation and reintegration of short-term prisoners as part of a process of reducing reoffending and the absolute importance of continuing to respect the rights of victims and promoting public interests in sanctioning criminal conduct, the rule of law and responsible citizenship.
- 4.10 Regardless of the appropriate length of sentence, there are a number of practicalities relating to prisoner voting. These are also documented in Appendix 1 and include prisoners with no fixed abode; the process of registering to vote and the ability of prisoners to complete the registration process. These practicalities would need to be addressed by the Scottish Government in partnership with the Scottish Prison Service (SPS).

#### **5.0 POLICY IMPLICATION**

- 5.1 The report has been screened for any policy implications in respect of Sustainable Development, Strategic Environmental Assessment, Anti-Poverty, Integrated Impact Assessment and Risk Management. No major issues were identified.

## 6.0 CONSULTATIONS

- 6.1 The Council Management Team have been consulted in the preparation of this report and no concerns were expressed.

## 7.0 BACKGROUND PAPERS

- 7.1 Scottish Government Consultation Paper on Prisoner Voting.  
<https://www2.gov.scot/Publications/2018/12/1034>

Paul Clancy  
Executive Director



**Consultation Questions on Prisoner Voting**

**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?

Yes  No

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

Comments: N/A

**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?

12 months or less  6 months or less  **Another duration**

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

Comments: **2 years or less**

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

- If prisoners have been or are homeless in the community, arrangements would need to be made to ensure they can still register to vote.
- Some prisoners may require support to complete registration forms and vote including, for instance, where they have literacy or mental health problems.
- There may be resource and practice implications for the Scottish Prison Service if a large number of prisoners decide to vote.

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

Comments:

- Tethering 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 nature of the offence, circumstances and person's previous convictions. This would appear to be the option that 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.

- This would include cases where people are sentenced to a series of short-term sentences and retain their vote but in fact are in and out of prison on numerous occasions in quick succession. For example, a long term prisoner, sentenced to more than 4 years would not be eligible to vote under the government's favoured option, but in that same period, someone could have been in and out of prison over the 4 years on short-term sentences but still retain their right to vote.
- Consideration is required on whether prisoners need to be consulted on their views as part of this consultation process with wider stakeholders. Potentially, longer-term prisoners may be more inclined to want to vote as opposed to the short-term prisoners who will have more immediate needs of housing, healthcare and employment. Equally, the majority of long-term prisoners will be released into the community and voting might be seen as part of the process of reintegration before release.
- There may be an argument for a hybrid of enfranchisement 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. This would take into account long-term prisoners about to be released and would encourage a greater sense of social responsibility but this may, as mentioned in the consultation, cause distress to the victims of crime and could be difficult to implement.