

Engender response to the Scottish Government consultation on Prisoner Voting

1. INTRODUCTION

Engender works to give effect to women's equality and rights at local, national and international level, increase women's access to power, safety, and resources, and to make visible the impact of sexism on women, men and society. With over 25 years' experience in gendered policy and advocacy, we are ambitious in our desires to build a Scotland which secures equality for all women.

We therefore welcome the opportunity to respond to the Scottish Government's Consultation on Prisoner Voting. **Equal representation and participation in politics and public life is a key issue within feminist agendas.** Given that women are far more likely to receive a short term sentence following a non-violent offence, the current law acts as an unnecessary barrier to women's participation in public life. **It is vital that the nature and gravity of women's pattern of offending is taken into account in proposed reforms of Scottish election law.**

2. WOMEN IN PRISONS AND THE HUMAN RIGHT TO VOTE

Voting as a primary means of participation in public life has been affirmed as a human right by a number of international instruments, including the Universal Declaration of Human Rights; Article 25 of the International Covenant on Civil and Political Rights; and Article 3 of the Protocol to the European Convention on Human Rights (ECHR). While the latter does not explicitly refer to voting, early cases at the European Court of Human Rights clarified that individual rights are implied by the Protocol¹ and the Court has since confirmed that these rights are substantively the same as article 25 ICCPR, i.e. the right to vote and to be elected.²

While Engender would be broadly supportive of all prisoners' right to vote, we consider it a priority that women on short sentences are enfranchised. Prisoners are deprived of their liberty for the purposes of punishment and protecting the rights and security of others. Their imprisonment is a direct result of their sentencing, in theory at least, proportionate to the harm caused. The right to vote is an indirect loss of rights,

¹ *Mathieu-Mohin and Clerfayt v. Belgium*, ECtHR No. 9267/81.

² *Scoppola v. Italy (no. 3)* ECtHR No.126/05

flowing as a consequence of imprisonment. It serves no corrective purpose and is unresponsive to the harm caused by the crime.

Women's historic exclusion from political life and decision-making processes have left a long shadow, with women accounting for just 35% of MSPs and 29% of Scottish MPs. While Scotland was once ranked fourth in international rankings of women's representation it has now dropped to 20th place.³ It is therefore especially important that women's participation in the political process is not unnecessarily impeded. Women's right to vote is specifically protected by article 7 of the Convention on the Elimination of Discrimination Against Women, which requires states to facilitate a right "to vote in all elections and public referenda."

As women are far more likely to receive a short term sentence following a non-violent offence we argue that the current UK law acts as an unnecessary barrier to women's participation in public life. The majority of women who receive a custodial sentence are sentenced to short term sentences, with around two-thirds of the women at Cornton Vale serving sentences of six months or less.⁴ Around 79% of offences are for low-level offences such as - shoplifting, common assault, bail offences and breach of the peace.⁵ Women's involvement in crime often stems directly from socio-economic survival for themselves and their families.⁶

Scotland has one of the highest rates of women's imprisonment in the world. The average daily women's prison population is approximately 400, with 315 sentenced women and 85 women on remand.⁷ Female prisoners have higher lifetime incidences of trauma. Over 50% have been subjected to domestic violence at some point in their lives and 33% experienced sexual abuse.⁸ More than a quarter reported having been treated/counselled for a mental health and/or emotional problem in the year before custody, compared with 16% of men.⁹ Concerns have also been raised by the UN Special Rapporteur on violence against women over the disproportionate number of black and minority ethnic (BME) women in UK prison.¹⁰

As a result of these inequalities, women in prison are some of the most excluded from public life. Voting is a benefit of *active citizenship*, or the process of participating in community decision-making.¹¹ This is particularly important where the individual has been systematically socially and economically excluded from public life prior to

³ Inter-Parliamentary Union (2018) Women in parliaments

⁴ <http://howardleague.scot/tags/prison-population>

⁵ Ministry of Justice self-report study (2010)

⁶ M.R. Maidment, Women & Criminal Justice (1997) "Toward a "Woman-Centered" Approach to Community-Based Corrections".

⁷ Prison Reform Trust (2017) Why focus on reducing women's imprisonment in Scotland?

⁸ Prison Reform Trust (2012) Bromley Briefings Prison Factfile

⁹ <http://www.prisonreformtrust.org.uk/WhatWeDo/ProjectsResearch/Mentalhealth>

¹⁰ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14514&LangID=E>

¹¹ R. Bauböck (2005)'Expansive Citizenship- Voting Beyond Territory and Membership'

imprisonment.¹² Voting and civic participation have the power to entrench the feeling of community and belonging that is central to preventing reoffending. **We believe that voting sends an important message of inclusion and status within society.**

Where a prisoner's offence relates to violence, including acts of gender-based violence, there may be a particular public discomfort from their enfranchisement. The current law, and most of the Government's proposals, ignore the reality that this kind of expressive punitive response is contingent upon there actually being an election within the period of imprisonment. It is divorced entirely from the nature of the offence and sentence incurred.

Furthermore, the symbolic removal from the society a person resides in ignores the possibility for corrective or educational responses to justice, which rely on the relationship between prisoner and society to be retained. The Howard League has noted that the denial of voting becomes an "an instrument of social exclusion" with consequences for post-prison participation.¹³ **We therefore believe it is vital that any conversation about prisoner voting acknowledges the particular disadvantages and exclusion experienced by women in prison.**

3. THE SCOTTISH GOVERNMENT PROPOSALS

Option one in the Consultation Paper (*enfranchisement based on length of sentence*) is stated to be the Government's preferred option of those put forward in the consultation paper. **At a minimum, this should reflect the distinction between summary and solemn procedures.** However, given the Scottish Government's policy objective to end prison sentences of less than 12 months,¹⁴ the impact of a 12-month – or lower – threshold would seem to be lessened.

The Scottish Government has stated that any option brought forward would have to meet the aim of "*promotion of the rule of law and responsible citizenship, as well as wider objectives of the rehabilitation and reintegration of prisoners in order to reduce offending.*" As we have already stated, the ability to reintegrate will be greatly improved by retaining a civic connection.

There is a risk that any threshold may deliver arbitrary results. For example, two persons convicted of the same offences and sentenced for the same number of days one week apart may have different rights depending entirely on the date of the next election. Prisoners serving 12 months or more could be serving summary sentences

¹² Howard League for Penal Reform in Scotland—Written evidence to the House of Commons Joint Committee on the draft Voting Eligibility (Prisoners)

¹³ <http://howardleague.scot/tags/prisoner-voting>

¹⁴ <https://www.gov.scot/news/7-million-hours-of-payback/>

consecutively. This could place persons in a cycle of recidivism for minor offences in a more privileged position than those serving consecutive sentences.

The Scottish Government's fourth option (*enfranchisement towards the end of sentences*) replicates many of these issues and would have in practice the same effects for women on short term sentences. However, it would deliver the additional benefit of recognising upcoming physical re-entry into public life by returning voting rights. The Scottish Government argues that complexity and novelty render this option less desirable. We do not believe that this is a valid justification for not pursuing it.

The remaining options could better deliver the sufficient link between the sanction and the nature or gravity of the offence and length of the sentence set out in *Hirst* as part of the proportionality assessment.¹⁵ Option two (*disenfranchisement applied as an additional penalty*) would offer more discretion but has been opposed by the judiciary for its subjectivity.

Option three (*an approach based on type of crime*) therefore has the potential to address the fears of an approach based on subjectivity and arbitrariness. This would enable the loss of voting rights to be linked with particular categories of violent offences or those defined as dishonesty. However there is difficulty with adopting any limitation (restricted) which relies on the 'moral fitness' of individuals or their crimes to be assessed. What acts are considered palatable for voting rights and which are not will be different for each citizen, and may not neatly coincide with criminal acts.

4. PRACTICAL CONSIDERATIONS

The Scottish Government must also ensure that the right to vote for prisoners is made practicable. There should be specific consideration of the high rates of homelessness among women coming into prison¹⁶ and the need to establish a local connection. Prison staff should be proactive in ensuring that new prisoners are entered onto the register and made aware of their voting rights.

The CEDAW Committee has also noted that a lack access of information and resources to participate in the electoral process can act as a barrier to voting,¹⁷ a risk even more acute for women in prison. Accordingly meaningful exercise of the human right to vote would also require opportunities to engage with the process of elections, i.e. hustings, opportunities to question candidates (either in person or virtually) and access to manifestos and media coverage of the election period.

¹⁵ *Hirst v The United Kingdom (No. 2)* ECHR No. 74025/01 §61; *Anchugov and Gladkov v. Russia* No. 11157/04 §102

¹⁶ Prison Reform Trust (2016) Home truths: housing for women in the criminal justice system

¹⁷ CEDAW Committee General Recommendation No. 23 (16th session, 1997)

One of the potential downsides for a short limit for enfranchisement is that those in prison for short sentences are less likely to get the benefit of the kind of information that may help rebuild connections with local and wider society. Women in prisons are already less likely to benefit from education programmes etc. which are run in men's prisons.¹⁸

While the European Court of Human rights has been clear that elections to municipality or local authority level are not protected by the material scope of P1-3, we can find no practical benefit to delinking the franchise for these elections.¹⁹ Furthermore article 7 of CEDAW protects a broader range of opportunities for exercise, including local government elections and referendums.

Finally, any policies and practices adopted by prisons should have regard to the secrecy of the ballot as contained in the European Convention, the ICCPR and Universal Declaration. Prisoners voting by postal vote should benefit from this protection, as well as the right to freely express their opinion without coercion.

5. CONCLUSION

Engender acknowledges the sensitivity that is felt with regards to prisoner voting and welcomes the Scottish Government's consultation on this issue. Each of the proposed options represents an improvement to the status quo, however each has its downsides, namely the arbitrariness and subjectivity of enfranchising some prisoners but not others. We are clear that international human rights law recognises voting as a human right and that deprivation of that right involves a proportionality assessment.

The disenfranchisement of women on short term, non-violent offences is to us clearly disproportionate to the Scottish Government's aim and objectives and further exacerbates their exclusion from public life. We therefore believe that any option taken forward should give effect to their human rights and should further proactively aid their reintegration and rehabilitation by strengthening the bond with society.

FOR FURTHER INFORMATION

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ABOUT US

Engender is a membership organisation working on feminist agendas in Scotland and Europe, to increase women's power and influence and to make visible the impact of sexism on women, men and society. We provide support to individuals, organisations and institutions who seek to achieve gender equality and justice.

¹⁸ Commission on Women Offenders: Final Report 2012

¹⁹ McLean and Cole v. the United Kingdom Nos. 12626/13 and 2522/12