

1. This response sets out our views on the Equality, Local Government and Communities Committee of the National Assembly for Wales' inquiry into voting rights for prisoners. We are responding to this consultation as part of our statutory role to keep electoral law under review and to recommend changes where we think they are needed.

2. We take no view on whether prisoners should be entitled to vote or not. This is a matter of constitutional policy which is for the National Assembly to determine. Our response therefore focuses on the practical implications should prisoners in Wales be given the right to vote.

3. 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.

The current position

4. The Welsh Government and Assembly Commission are currently considering whether certain prisoners from Wales should be able to vote in local government and National Assembly for Wales elections and have previously consulted on this issue.

5. Under existing legislation, prisoners who are detained are not entitled to be registered to vote because they are legally incapable of voting. However there are some prisoners who are currently eligible to vote:

- Unconvicted prisoners (i.e. those on remand).
- Convicted but unsentenced prisoners.
- Persons imprisoned for contempt of court or under Prison Rule 7(3) 2. ¹
- Those serving a term of imprisonment in default of payment of a sum of money, adjudged to be paid on conviction.

¹ <http://www.legislation.gov.uk/uksi/1999/728/article/7/made>

Practical issues of prisoner voting

Eligibility

The Welsh Government is currently considering whether to prescribe the criteria for prisoners to be eligible to vote to include for example length of sentence, nature of offence and proof of having previously resided in Wales.

6. As residence is one of the main criteria for electoral registration, consideration will need to be given to the address in respect of which prisoners would be registered. For example if any eligible prisoners were registered to vote at the prison address, this could mean that registered prisoners make up a significant proportion of the electorate in the ward where the prison is located.
7. As prisoners are only present at the prison address as a result of their sentence, an alternative option would be for prisoners to register at a previous or intended address. An existing category of electors who are not living at their usual UK address are service voters. In paragraph 27 we outline the process for registering service voters. A similar approach could be replicated for registering prisoners.
8. EROs will need to be able to establish whether a prisoner is eligible to register, as it is possible that not all prisoners will meet the eligibility criteria. For example, the National Assembly may choose to enfranchise only those prisoners serving sentences of less than a determined length, or to retain the voting ban for prisoners serving sentences in relation to specified offences. In that case, details of an individual's prison sentence would need to be confirmed in order to determine if they are eligible to vote.
9. To clearly and simply establish eligibility it might be helpful to develop a specific 'application to register form' for prisoners. This could be similar to the application to register as an anonymous elector or a declaration of local connection, the latter of which is used for remand prisoners and includes an attestation requirement.
10. If EROs need confirmation of the length or other details of a sentence, this could be provided through some form of attestation. The level of prison staff who could attest these applications could be prescribed, as it is for certain police ranks in relation to anonymous registration. The prescribed level should be low enough that the registration process is not reliant on too few people but high enough that the attester will be aware of who can and cannot register, and would carry sufficient authority.
11. There is a risk that prisoners won't have access to the information required in order to verify their identity as part of their application to register to vote, such as their national insurance number or any other documentary evidence. Consideration would therefore need to be given to alternative ways for prisoners

to verify their identity so that they can register.

The method by which prisoners would cast their vote

In a polling station

12. The setting up of polling stations in prisons would logistically be very difficult and require significant resourcing. For example, making sure that all prisoners were issued with the correct ballot papers for their registered address, and that the completed ballot papers were returned to the correct wards or constituencies ahead of the count would be difficult to deliver in practice.

13. If polling stations were set up in prisons, consideration would also need to be given to how to maintain the integrity of the voting process, ensuring that the voter can cast their vote in secret. In addition, all voter materials and the ballot boxes would need to be kept secure at all times. There are questions around who would run the polling station and how they would be trained.

14. Given the practical challenges highlighted above, we do not recommend that polling stations are set up in prisons. This would therefore mean that prisoners would need to rely on absent voting methods, such as postal voting or voting by proxy.

15. Currently, prisoners on remand are classified as special category electors, and are only able to vote by post or proxy.

By post

16. 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. The HM Prison Service – Wales would therefore need to ensure that their current arrangements for processing prisoners' mail would enable prisoners to receive and return their postal ballots within the necessary timeframe.

17. If prisoners are entitled to vote by post, we would expect there to 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.

By proxy

18. If prisoners are able to vote by proxy they should not be required to have their application attested, as is the case for overseas and service voters. This is because by nature of being in prison the voter has a sufficient reason for not being able to attend their polling station.

Information provision

19. If some prisoners are in future eligible to vote at elections in Wales, it will be important to ensure they know that they can vote and how to register and cast a vote. The Commission would expect to work with governments and the prison service to explore how an awareness programme for prisoners would be delivered to enable this.

20. Prison officers would need to be trained so they can support prisoners, and signs on voting rights and how to register to vote and vote could be displayed in relevant areas of the prison. Prisoners who are disabled or who have any learning difficulties should be able to receive help to complete forms if they ask for it. We would be happy to explore with the prison service the practical steps they could take to support prisoners to vote and advise on the materials that they could use to raise awareness.

Access to campaign arguments

21. If prisoners are eligible to vote at elections in Wales they must have access to information about the policies of candidates, parties and other campaigners so they can make an informed decision when they vote. The prison service would need to consider how this would be delivered.

Cross-border issues arising from prisoners from Wales being imprisoned in
England

22. As residence is one of the main criteria for registration there will need to be careful consideration about how to register people who have previously been resident or registered to vote in Wales but who are serving a prison term in a prison in England, Scotland or Northern Ireland. If prisoners were registered at the prison address, this could have a disproportionate impact on the electorate in the ward in which the prison is located. It would also mean that Welsh prisoners in prisons in England would not be able to vote in Welsh elections.

23. Allowing prisoners to register in respect of a previous or intended address in Wales could help address this issue.

Special considerations for young offenders in custody if the franchise is extended
to 16 and 17 year olds generally

24. We are aware that the Welsh Government intends to legislate to extend the franchise for National Assembly and local government elections in Wales to include 16 and 17 year olds. This means that the local government register will include 16 and 17 year olds as full electors. Additionally, 15 year olds and some 14 year olds will be entitled to be included on the register as 'attainers'.

25. If the franchise is extended further to include prisoners, information and support would need to be made available to 15, 16 and 17 year-olds in custody

by the prison service about entitlement to register to vote, and to encourage them to apply to register online.

Example of an existing special category of elector – service voters

26. The current process for registering HM Forces as service voters is an example of a system used for registering a specific group of people who are not living at their usual UK address.

27. HM Forces service voters complete a service declaration which states either the address where they are living in the UK, the address where they would have been living if they are serving abroad, or if they do not have either, an address at which they have lived in the UK.

28. The application to register as a service voter is prescribed and differs from the standard registration application form. All applications to register are processed by the ERO who determines if the applicant is entitled to be registered. If they are, information on postal and proxy voting is generally provided to them as they are likely to be unable to vote in person.

29. In the case of service voters, each unit of the services has a designated member of staff who acts as the Unit Registration Officer (URO). Each base commander gives assistance to the URO and other personnel in their unit to promote participation in the electoral process.

30. HM Forces service voters are listed as ‘other electors’ on the register when they no longer have a connection to their qualifying address.

Other countries’ approaches to prisoner voting: Canada

31. Canadians who will be 18 years of age or older on polling day, and who are in a correctional institution or a federal penitentiary in Canada, may vote by special ballot in an election or referendum.

32. In each institution a staff member is appointed liaison officer and facilitates the process of registering and voting.

33. For electoral purposes, the incarcerated elector's place of ordinary residence is not the institution in which he or she is serving a sentence. It is either:

- his or her address before being imprisoned
- the address of a spouse, common-law partner, a relative or dependant of the elector, a relative of his or her spouse or common-law partner or a person with whom the elector would live if not incarcerated;
- the place of his or her arrest; or
- the last court where the elector was convicted and sentenced.

34. To register to vote, the incarcerated elector must fill out an Application for Registration and Special Ballot form, which is returned to the liaison officer, who validates it.

35. During a general election or referendum, eligible prisoners vote in their prison on the tenth day before polling day. A polling station is set up from 9am and remains open until all those who wish to vote have done so, but closes no later than 8pm.

36. The elector is responsible for sending their ballot paper to Elections Canada no later than 6pm on polling day. They can either send it themselves or leave it with the deputy returning officer to forward by special arrangement.

37. The ballot papers of prisoners are counted at the same time as those of other residents temporarily absent from their electoral districts. At the end of polling night, special ballot votes are added to the total results for each district.

38. Further information is available on the Elections Canada website: (<http://www.elections.ca/content.aspx?section=vot&dir=bkg&document=ec90545&lang=e>)