

## **Welsh Government: Evidence paper presented to the Equality, Local Government and Communities Committee regarding the Committee’s inquiry into prisoner voting at Welsh elections**

*Issue 1 - Arguments for and against giving some or all prisoners the right to vote in Welsh elections, and whether distinctions might be drawn between different categories of prisoner on the basis of sentence length, expected date of release, or types of offence*

1.1 The Welsh Government supports the principle of at least some prisoners from Wales being allowed to vote in Welsh elections, these being elections to the National Assembly for Wales and local government elections. We make that statement in the knowledge that the Equality, Local Government and Communities Committee is examining the issue of prisoner voting for Welsh elections. No decisions have been taken in respect of our legislative proposals for local government elections; we have followed the Committee’s deliberations with interest and shall await the Committee’s conclusions before taking our decisions.

1.2 Arguments for and against prisoner voting tend to coalesce very broadly around two philosophical perceptions of the purpose of a penal institution: (i) that it is a place of punishment for persons who have committed offences which transgress the accepted norms of a society; as a result of their own actions, such persons have been removed from that society for a period; or (ii), that it is a place of rehabilitation that should promote the inclusion, social responsibility and human dignity of the persons it accommodates, with a view to their re-integration into normal society on their release and return to society.

1.3 In the UK, the proponents of prisoner voting tend to be more vociferous than those who favour continued prisoner disenfranchisement, but that is probably a reflection of the status quo being the prohibition on all convicted prisoners being able to vote whilst in prison. The onus is on those who want to change the system rather than those who want to defend it.

1.4 The Welsh Government consulted on a package of proposals for electoral reform for local government elections in 2017 with a view to legislating to address a range of local government electoral reforms, notably to allow 16 and 17 year olds to vote at local government elections. The consultation paper gave no undertaking to legislate for prisoner voting, acknowledging the complexities of the issues and the need to work through non-devolved agencies. The views expressed in response to the consultation were very finely balanced. In response to the question “should Welsh prisoners be allowed to vote and participate in Welsh local elections”, 50% of respondents (numbering 340) were in favour of allowing Welsh prisoners to vote in local government elections, 48% disagreed (326 respondents) and 2% (12 respondents) did not express a view either way.

1.5 The Welsh Government's firmly held view is that prison must be an environment which is safe and secure, enabling staff and resources to concentrate on the rehabilitation of offenders. The decision to send someone to prison and depriving them of their liberty is an act of punishment in itself; prison should be a place for rehabilitation, not for administering further punishment, unless warranted by the prisoner breaking prison rules. The focus of activity in prison should be on rehabilitation and re-connecting inmates with the values of society at large.

1.6 The Welsh Government believes that enabling prisoners to vote would send very strong and positive messages to prisoners that they still have a stake in society and, in turn, that they have responsibilities towards society as a whole.

1.7 In his Oral Statement on 30 January 2018, in responding to the consultation on electoral reform, the then Cabinet Secretary for Local Government and Public Services stated:

*I am also exploring options for extending the rights of prisoners to vote in local government elections if their due release date falls before the end of the term of office of the council being elected. They would be able to vote by post or by proxy on the basis of a connected address in Wales, usually their last address. People who are sent to prison need to feel part of the community when they are released, and the right to vote will form part of this.*

1.8 In the period since the Statement, we have been examining the various models of prisoner voting in the jurisdictions which permit at least some degree of prisoner voting. In doing so, we have been mindful of the need for us to find a solution which balances principle with pragmatism.

1.9 The administratively simplest solutions are those at either end of the debate, namely keeping the existing very limited provision for prisoner voting or legislating to enable all prisoners from Wales to vote. These are "simple" only in relation to other options. Keeping the status quo, in our view, misses an important opportunity to make a statement about the value of rehabilitation and reintegration of prisoners into society. Allowing all prisoners from Wales to vote raises issues about enabling people who have committed the most heinous of offences to vote, something which even supporters of prisoner voting may be unable to stomach.

1.10 The other options the Welsh Government has considered are:

- 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.
- To link disenfranchisement to the length of a prisoner's custodial sentence.

1.11 Each of these alternative options involves degrees of arbitrariness. The first and second options are used in France and Germany respectively; they allow disenfranchisement to be applied as additional penalties either by judges or by type of crime committed. They could be said to allow for a more considered and more appropriate application of disenfranchisement in line with the seriousness and nature of the crime committed. Evidence from countries which have such systems suggests that there are still inconsistencies in the application of the penalty of disenfranchisement. But whatever, the merits and disadvantages of the two options, the critical issue for the Welsh Government is that both these options raise issues relating to the administration of justice and sentencing policy, neither of which is currently within devolved competence.

1.12 The Welsh Government is also looking at the issues around the third and fourth options. We see some merit in the third option since it would enable a prisoner's right to vote being linked with and supporting the prisoner's rehabilitation and preparation for release. There are disadvantages however, since such a system requires definite information about the prisoner's release date, sufficiently in advance of polling day to allow for registration etc. Many prisoners in England and Wales serve indeterminate sentences and the final release date is subject to various considerations during the course of the prisoner's time in prison, not least a recommendation for release from the Parole Board. The administrative machinery and bureaucratic flow of information required to operate a system linked to a prisoner's release date may be prohibitive, particularly when we consider the relatively small numbers of prisoners who will be involved.

1.13 The fourth option would enfranchise only those prisoners serving a sentence of imprisonment for a length of time which is under a defined threshold. Proponents of this system believe it strikes an appropriate balance, taking into account the nature, gravity and circumstances of the offending and serves the wider objective of supporting the rehabilitation and reintegration of prisoners in order to reduce reoffending. The jurisdictions which use this system have varying thresholds; in Australia different thresholds apply for federal elections and for each of the state and territorial elections, ranging from a threshold of 1 year in New South Wales up to 5 years in Victoria (the threshold for federal elections is 3 years). Identifying a threshold appropriate for Welsh elections is inevitably somewhat arbitrary but the Welsh Government notes that sentencing policy in England and Wales considers a sentence of 4 years or more to be "long-term".

1.14 The Welsh Government has not yet taken decisions and awaits the conclusions of the Equality, Local Government and Communities Committee's report.

*Issue 2 - Practical issues, such as electoral registration (including address), voting method, prisoner engagement with the political process, the provision of political and citizenship information and education*

2.1 In considering prisoner voting one of the key issues to address is that of enabling the eligible prisoner to register to vote and where they are registered to vote. In general, most voters are registered to vote on the basis of their principal residence and vote in the electoral area where that residence is located. That principle would guide any Welsh Government proposal for prisoner voting. Our intention would be to

register prisoners from Wales on the basis of an address in Wales which the prisoner considered to be their home.

2.2 Some prisoners may not have a home with which they wish to identify or may be homeless. The existing electoral registration system does accommodate such eventualities and the Welsh Government would extend to newly eligible prisoners from Wales the existing system whereby certain categories of voter may register to vote by way of a *declaration of local connection*. Eligible prisoners would be able to register in a local authority where they have lived previously or where they could demonstrate a significant connection, for example: relatives or friends stayed with, regular use of a bed and breakfast guesthouse or hostel, or contact with agencies working with the homeless.

2.3 We do not envisage prisoners in prison being enabled to vote in person at a polling station, whether in the locality where they are registered or in the prison itself; they would be enabled to vote by post or by proxy, which are the means by which the small number of prisoners in the UK currently eligible to vote cast their ballots.

2.4 The Welsh Government would need to work closely with the Ministry of Justice (MoJ) and Her Majesty's Prison and Probation Service (HMPPS) to ensure that eligible prisoners were informed of their eligibility to vote and of the need for the prisoner to register to vote. Such information could be included in the administrative processes each prisoner goes through on arrival in a new prison. We would also expect Electoral Registration Officers to liaise with prison governors in Wales and those accommodating prisoners from Wales about registration requirements. Prison governors must already make arrangements for the tiny number of prisoners currently eligible to vote to be able to register and to cast their ballots and there are guidelines in place for such.

2.5 The Welsh Government already works closely with the MoJ and HMPPS to provide a wide range of devolved services which are vital in maintaining prisoner welfare and reducing reoffending. We would seek to build on the existing education links in the prisons in Wales to develop voter and citizen awareness among prisoners, perhaps using material we shall be developing for 16 and 17 year olds when they become eligible to vote. In reaching out to prisoners from Wales located in prisons in England we would look to build on and develop the links we already have with prisons in and outside Wales through our programmes to avoid homelessness and support the resettlement of prisoners on leaving custody.

### *Issue 3 - Cross-border issues arising from prisoners from Wales being imprisoned in England and vice versa*

3.1 The Welsh Government is mindful that any proposal to enfranchise prisoners for Welsh elections will need to address the issue that a significant proportion of prisoners from Wales are accommodated in prisons across England. We know that at any one time about 35% of prisoners whose home address is in Wales are accommodated in prisons in England; the prisoners accommodated in England include all female prisoners from Wales.

3.2 In considering prisoner voting for Welsh elections, the Welsh Government believes that prisoners from Wales should be enabled to vote in these elections, wherever they may be located across the prison estate in England and Wales. Our most developed links are with the prisons located in Wales, but we would work with HMPPS to ensure those prisoners from Wales located in England would be aware of their enfranchisement.

3.3 Conversely, about 30% of the prisoners in the prisons located in Wales are from England. The Welsh Government does not believe that prisoners from England, but located in prisons in Wales should be entitled to vote in Welsh elections. Such prisoners are in Wales only by virtue of HMPPS's placement policy and we consider that this does not constitute sufficiently strong a connection with a locality to entitle such prisoners to vote in that locality.

3.4 Accordingly, the Welsh Government would not enable prisoners from England to register to vote in Welsh elections by virtue of the address of the prison in which they are accommodated. We would extend this principle to prisoners from Wales who are accommodated in the prisons in Wales. Such prisoners from Wales would be enabled to register in the locality from which they come or with which they have a local connection.

3.5 A key reason for not enabling prisoners whether from England or Wales to register to vote on the basis of the prison address is the fact that enabling registration on such a basis could create a concentration of a special interest group of potential electors in what are sometimes very small local government electoral wards. Parc Prison in Bridgend has about 1,700 inmates; the prison is located in the Coity Electoral ward of Bridgend County Borough Council, which has about 1,650 electors.

*Issue 4 - Whether special considerations apply to young offenders in custody if the franchise is extended to 16 and 17 year olds generally.*

4.1 The Welsh Government is committed to extending the vote to 16 and 17 year olds generally and we shall introduce legislation later this year to allow such young people to vote in local government elections; we note that the recently introduced Senedd and Elections (Wales) Bill would enable 16 and 17 year olds to vote in Assembly elections.

4.2 These developments invite the question of whether young offenders from Wales, aged 16 and 17 should be enabled to vote in Welsh elections alongside other young people. The number of young people from Wales placed by the courts in prison-type institutions in England and Wales has declined considerably in recent years. There are normally about 25 young offenders (below the age of 18) from Wales detained in young offender institutions, secure training centres and secure children's homes; a small number of these are below the proposed new voting age.

4.3 The only young offender institution in Wales is at Parc in Bridgend; 6 places at Hillside Secure Home (in Neath) are reserved for young offenders. There are no secure training centres in Wales. Accordingly, a proportion of young offenders from Wales are placed in England.

4.4 In reaching conclusions about enfranchising young offenders aged 16 and 17 also, the Welsh Government would have to be mindful of the principles set out in *Children and Young People First*, the Welsh Government/Youth Justice Board's joint strategy to improve services for young people from Wales at risk of becoming involved in, or in, the youth justice.

4.5 *Children and Young People First* includes a statement of principles which will underpin the approach taken to effectively deliver the Youth Justice strategy. The stated principles include the following declaration:

*Young people in the youth justice system have the same access to their rights and entitlements as any other young person.*

4.6 A proposal to enfranchise young offenders would entail many of the same considerations as would apply to the enfranchisement of adult prisoners and we would apply the same principles, namely that young offenders from Wales would be enfranchised whether accommodated in England or in Wales, that young offenders from England and accommodated in Wales would not be enfranchised, young offenders eligible to vote would be entitled to do so by post or by proxy and the education programmes the Welsh Government already supports for young offenders would include modules on citizenship and the franchise.

#### Issue 5 - Other countries' approaches to prisoner voting.

5.1 The Welsh Government has undertaken research of the approaches to prisoner voting adopted in other jurisdictions and reference is made to such in the above paragraphs.