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## **Standards, Procedures and Public Appointments Committee**

**Comataidh Inbhean, Dòighean-obrach is Cur-an-dreuchd  
Poblach**

# **Stage 1 Report on the Scottish Elections (Franchise and Representations) Bill**



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# Standards, Procedures and Public Appointments Committee

The remit of the Standards, Procedures and Public Appointments Committee is to consider and report on—

- (a) the practice and procedures of the Parliament in relation to its business;
- (ab) a proposal for a Bill relating to the arrangements for financial assistance to non-Government political parties represented in the Parliament;
- (b) whether a member's conduct is in accordance with these Rules and any Code of Conduct for members, matters relating to members interests, and any other matters relating to the conduct of members in carrying out their Parliamentary duties;
- (c) the adoption, amendment and application of any Code of Conduct for members; and
- (d) matters relating to public appointments in Scotland;
- (e) matters relating to the regulation of lobbying; and
- (f) matters relating to Scottish general elections falling within the responsibility of the Cabinet Secretary for Government Business and Constitutional Relations.



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# The Committee's conclusions and recommendations

## Part 1 – Foreign Nationals

### *The extension of the franchise to foreign nationals*

The majority of the Committee welcomed the proposals contained in the Bill to extend the franchise to foreign nationals resident in Scotland. We believe that people who live and contribute to our country should also have the right to vote in elections to local government and the Scottish Parliament as these bodies will develop policies that affect them. <sup>1</sup>

### *The accuracy of the electoral register*

The Committee was concerned by the high number of people who are eligible to vote, but who are not on the electoral register, as well as the number of people who are not correctly registered. The Committee believes that if the Scottish Government is seeking to promote democratic participation by extending the franchise to foreign nationals, it must also consider how it can promote participation more widely by ensuring that the register of local government electors is as complete and accurate as possible.

### *The proposal to extend the franchise to foreign nationals*

The Committee would have preferred greater clarity on the numbers of people who could be added to the register of local government electors. It notes that it was considered “manageable” to include new voters on the register by 2021, but calls on the Scottish Government to monitor progress in registering new voters and draw on the 2021 census data to provide an early indication of the number of foreign nationals actually resident in Scotland.

### *EU citizens resident in Scotland*

The Committee agrees with the approach taken in the Bill that makes residency the basis for including foreign nationals who have leave to remain in the UK on the register of local government electors in Scotland. The Committee understands that Electoral Registration Officers will be able to verify residence but that steps to verify residency and maintain the integrity of the register are kept under review and developed where necessary to improve its accuracy and encourage registration. <sup>2</sup>

The Committee does not consider that British citizens who had previously been included on the register of local government electors and who now no longer live in Scotland should be given the right to vote in Scottish elections. The Committee does not believe that the case for allowing people who do not live in Scotland the opportunity to influence the result of local government elections or Scottish Parliament elections is strong enough. <sup>3</sup>

### *The extension of the franchise to asylum seekers*

**The Committee recognises the practical barriers to enfranchising asylum seekers but calls on the Scottish Government to urgently examine whether the franchise could be extended to asylum seekers resident in Scotland. <sup>4</sup>**

*Voter education*

**The Committee welcomes the Cabinet Secretary's commitment to promote engagement with the Scottish Refugee Council and other organisations working at a local level across Scotland with the finance and resources to provide support and information on the electoral system and voter registration to those whom the Bill seeks to enfranchise.**

*Candidacy rights*

**The Committee believes that candidacy rights should reflect voting rights for people who choose to make Scotland their home. While it recognises the concerns expressed by the Scottish Government that a person without indefinite leave to remain in the UK might be in a position of having to stand down during their period of office, the Committee believes that the chances of this happening are slim. Any elected representative's circumstances can change for a variety of reasons including health, employment and other personal circumstances. Furthermore, the Committee believes it is important that candidates from all backgrounds can stand and it would not like to see those without a permanent right to remain from being dissuaded from becoming involved in political life. The Committee therefore calls on the Scottish Government to bring the candidacy provisions for foreign nationals in line with the franchise provisions. <sup>5</sup>**

**The Committee notes that there will be no requirement for EU and European Economic Area nationals to have an indefinite right to remain in order to stand for elections, thus putting them in a different position to other foreign nationals. The Committee notes that the Cabinet Secretary recognised that this was an anomaly and calls on the Scottish Government to address it by bringing forward amendments at Stage 2. <sup>6</sup>**

**Part 2 – Prisoners Etc.**

*The Scottish Government's approach to prisoner voting*

**The Committee believes that the blanket ban on prisoner voting is unsustainable as it is at odds with European Convention on Human Rights. The Committee would like to see the Scottish Government's policy on prisoner voting driven by principle and evidence. We believe the Scottish Government has settled on an approach which fails to address the central question of what disenfranchisement seeks to achieve.**

*The Scottish Government's approach to meeting European Convention on Human Rights requirements*

**The Committee notes that the margin of appreciation provided by the European Court of Human Rights allows wide scope for the Scottish Government in complying with the European Convention on Human Rights. Whilst we recognise that providing the vote to those sentenced for 12 months or less may satisfy the European Convention on Human Rights requirements, the Committee has not seen sufficient evidence as to why this approach has been selected over any other.**

*The 12-month cut-off point for enfranchising prisoners*

**The Committee believes that the approach taken in the Bill to allow prisoners sentenced for 12 months or less to vote is inconsistent in the context of the presumption against sentences of twelve months or less adopted by the Scottish Parliament in June 2019. In effect, very few people might be enfranchised by the provisions in the Bill. Moreover, the European Court of Human Rights could question whether the proposed legislation actually delivers a policy change that would bring Scotland within the margin of appreciation in relation to complying with the European Convention Human Rights. The range of approaches presented to the Committee was between 12 months and four years. No clear consensus emerged in the Committee in favour of one of these options.**

*Removing all restrictions on the right to vote for convicted prisoners*

**The Committee notes the arguments for enfranchising all prisoners made in evidence. These were related to the contribution that voting could make to rehabilitation, the weakness of losing the right to vote as a deterrent, the importance of considering the personal circumstances of prisoners and concepts of citizenship. The Committee would like the Scottish Government to publish evidence which has influenced the position they have settled on in the context of the range of options on the length of sentences.**

*The registration of prisoners on the electoral register and the practicalities of exercising their right to vote while in prison*

**The Committee considers that the provisions relating to the residence of prisoners will allow them to vote in a place where they have a local connection. The Committee is broadly content with the arrangements in relation to proxy or postal voting and is satisfied that there will be sufficient means for prisoners to access information on candidates and political parties.**

**The Committee recognises that voting is a private matter and there should not be a means of formally identifying whether prisoners have taken up the opportunity to vote. However, it notes that the Scottish Prison Service has confirmed to the Scottish Government that it would include a questionnaire in the biennial Prisoner Survey that is undertaken in each of the 15 Scottish prisons to see ask prisoners voluntarily whether they took the opportunity to vote. The Committee considers that this would be valuable in evaluating any provisions introduced by an eventual Act to allow prisoners the right to vote.**

*The Financial Memorandum*

**The Committee welcomes the Cabinet Secretary's commitment to revisit the funding available for local government and calls on him to write to the Committee before the Stage 1 debate to set out the Scottish Government's final position in relation to the financial support available to local government to implement the provisions in the Bill. In addition, the Committee requests that the Cabinet Secretary provides an accurate figure for the cost of adapting electoral management systems and software and a clear indication on whether the Scottish Government will meet the additional costs of the new registration work in the same letter.**

**The Committee is of the view that the Financial Memorandum should provide accurate and final information on the costs of implementing the policy changes set out in the Bill in order that these can be considered fully at Stage 1.**

*Overall Conclusion*

**The Committee supports the general principles of the Bill. <sup>7</sup>**

**However, we have highlighted a number of areas in which we consider the Scottish Government should reconsider its approach at Stage 2, as well as requesting clarity on the financial costs of the proposed changes before the Stage 1 debate.**

# Introduction

1. The Scotland Act 2016 (“the 2016 Act”) devolved increased autonomy to the Scottish Parliament and the Scottish Ministers in relation to the operation of Scottish Parliament and local government elections in Scotland.
2. Following commencement of the provisions in the 2016 Act relating to elections, the Scottish Government held consultations on electoral reform (December 2017 – March 2018) and prisoner voting (December 2019 – March 2019) with a view to developing legislation to improve the administration of devolved elections and to comply with Article 3 of Protocol 1 of the European Convention on Human Rights (ECHR).
3. The Scottish Elections (Franchise and Representation) Bill was introduced on 20 June 2019. The Standards, Procedures and Public Appointments Committee received written submissions in response to a call for views and held a series of evidence sessions on the Bill. The Committee would like to thank all of those who gave either written or oral evidence to the Committee, as well as representatives from refugee communities who discussed the provisions in the Bill with the Committee (see Annexe B for details of those who provided evidence and Annexe C for a report of the meeting with representatives from refugee communities).
4. Under section 11 of the Scotland Act 2016, a supermajority is required for provisions that relate to protected subject-matter as defined by section 31(5) of the Scotland Act 1998, for the Scottish Parliament to approve legislation. Legislation that requires a supermajority must secure at least two-thirds of the total number of seats for members of the Parliament for it to pass.
5. The Committee received a letter from the Minister for Parliamentary Business and Veterans on 17 October 2019 indicating that he considered that the following provisions in the Bill [as introduced] relate to protected subject-matter as defined by section 31(5) of the Scotland Act 1998 (“the 1998 Act”):
  - section 1 of the Bill, which makes a number of amendments in respect of the franchise for local government elections in Scotland;
  - section 4 of the Bill, which amends the Representation of the People Act 1983 to provide an exception, in relation to local government elections in Scotland, to the existing universal prohibition on “convicted persons” detained within a “penal institution” voting at any election in the UK; (As a result of section 11 of the 1998 Act, the amendments made by section 1 and section 4 of the Bill also apply to the persons entitled to vote as electors at an election for membership of the Scottish Parliament).
  - section 8 of the Bill, which confers on the Scottish Ministers a power to make such ancillary provision, by regulations, as they consider appropriate for the purposes of, in connection with or for giving full effect to the Bill or any provision made under it. As section 8 allows for modification of any enactment (including the Bill as enacted), regulations under section 8 may relate to the protected subject-matter defined in section 31(5)(a) of the 1998 Act.<sup>8</sup>


6. It is for the Presiding Officer of the Scottish Parliament to decide, under section 31(2A) of the 1998 Act, to take the decision after the last point at which a Bill may be amended but before the decision whether to pass or reject it, whether or not in his view any provision of the Bill relates to a protected subject-matter and state his decision.

# **The Committee's scrutiny of the Scottish Elections (Franchise and Representation) Bill**

7. The following report sets out the evidence taken by the Committee in relation to the two key parts of the Bill: foreign nationals and prisoners.

# Part 1 – Foreign Nationals

## The extension of the franchise to foreign nationals

8. The Scottish Government states that increasing participation in elections by encouraging people to vote and stand for election is a key policy of the Bill. It considers that “Democratic participation challenges the inequalities of power and influence that exist in society” and that the legislation “seeks to ensure an electoral system that supports and empowers the engagement in elections of all of those who have chosen to make Scotland their home.”<sup>9</sup>
9. The provisions in the Bill to extend the franchise to foreign nationals were welcomed by those who provided evidence. International IDEA observed that citizenship has historically and often constitutionally been a requirement to exercise the right to vote but commented that, “an increasingly mobile global population has prompted many countries to reconsider the link between citizenship and voting rights to address democratic deficits and to support the social and political integration of non-citizens.”<sup>10</sup> It therefore observed that, “Introducing voting rights for non-citizens would be both symbolically and practically a step towards removing barriers for inclusion and strengthening overall political participation.”<sup>11</sup>
10. Jen Ang - Partner/Director, JustRight Scotland – regarded the Bill as recognising the contribution that foreign nationals make to Scotland and allowing them to participate in the democratic system:  
 “It is clear to us that people who choose to make Scotland their home and who contribute to our society as valued members should have a say on the laws that govern us all. Recognising that by extending the right to vote and the right to serve as elected members in our political institutions is a key way of empowering voices that we know have previously been marginalised and underrepresented.”<sup>12</sup>
11. Similarly, Lorna Gledhill - Policy Officer, Scottish Refugee Council - stated that her organisation whole-heartedly welcomed the proposed legislation as it addressed “a long-standing democratic deficit, whereby long-term residents in Scotland do not have a say on the areas that matter to them”<sup>13</sup> and the provisions in the Bill provided them with an opportunity to participate in elections. The Church and Society Council of the Church of Scotland also considered that, “The ability to vote enables people to take part in decision making that affects the society in which they live, and for them to be recognised as taking part in this way.”<sup>14</sup>
12. This was further echoed by the MIN Voices group of Maryhill Integration Network which stated that “extending the franchise is a fundamental means of tackling inequality in our country” and explained the significance to the members of its group:

” “People seeking refuge are part of our community, who want to settle and build meaningful lives in Scotland, often volunteering their time to contribute and give back to those around them. Extending the right to vote in this manner means that people will be given more opportunity to contribute to society, and that society together can be better equipped to tackle serious social issues.” <sup>15</sup>

13. The Committee also heard the views of representatives from refugee communities across Glasgow and Motherwell on the proposals in the Bill. They emphasised the importance to them of having the right to vote as it would give them a voice on issues affecting them and provide them with the opportunity to contribute to and participate fully in Scottish society. In addition, it would also make them feel welcomed, sending the message that “what matters is that you are here and live in this land.” <sup>16</sup>

14. The Committee received some evidence which suggested that while extending the franchise to foreign nationals would lead to an increase in the number of people enfranchised in Scotland, it might not boost voter turnout levels. The written submission from International IDEA stated that “voter turnout should not be expected to increase automatically” and that it is often higher among “citizens by birth, less for naturalized citizens and least for non-citizens.” <sup>17</sup> It also noted that “voter turnout will be affected by the democratic culture in the countries of origin of non-citizens as well as that of the government and society extending voting rights.” <sup>18</sup>

15. The Electoral Management Board highlighted that the Bill would not “necessarily improve participation” and emphasised the importance of addressing existing barriers to participation:

” “Participation is a measure of how many of those entitled to participate actually choose to do so. Even under the current franchise and candidacy rules participation rates can be low, particularly among certain sectors of society. There may be a range of barriers than limit participation. If enhanced participation is a goal, then those barriers need to be addressed. These may exist for potential voters and for potential candidates.” <sup>19</sup>

16. **The majority of the Committee welcomed the proposals contained in the Bill to extend the franchise to foreign nationals resident in Scotland. We believe that people who live and contribute to our country should also have the right to vote in elections to local government and the Scottish Parliament as these bodies will develop policies that affect them.** <sup>20</sup>

## The accuracy of the electoral register

17. Figures on the accuracy of the electoral register were published by the Electoral Commission in September 2018. This showed that as at December 2018 in Scotland, the parliamentary registers were 84 per cent complete and 87 per cent

accurate and local government registers were 83 per cent complete and 86 per cent accurate.<sup>21</sup>

18. The findings lead to an estimate of between 630,000 and 890,000 people in Scotland who were eligible to be on the local government registers but were not correctly registered, and between 400,000 and 745,000 inaccurate entries on the local government registers in December 2018. This is a reduction from the 2015 figures which showed 85 per cent completeness and 91 per cent accuracy for local government registers in Scotland.<sup>22</sup>
19. Peter Wildman – Chair, Electoral Registration Committee, Scottish Assessors Association - explained that as the register is a snapshot in time, there is inherent churn due to people changing their residence. He explained the proactive approach that the Electoral Registration Officers took to updating the register and highlighted that registration is a voluntary exercise in the UK.
20. Sarah Mackie – Manager, Electoral Commission Scotland - identified three factors influencing absences from the register. The first was the length of time that a person had been at their address with only 34 per cent of those who had been as their address for less than a year being registered. The second factor was age, with the young less likely to be on the register, and the third was those living in private rented accommodation less likely to be on the register.
21. Sarah Mackie also highlighted that individual electoral registration, introduced in 2014, had enabled people to register in time for elections for the first time but stressed that the Electoral Commission still considered that there was a longer-term problem that needed to be addressed. She explained:
 

“A lot of the electoral registration processes are really outdated and could be modernised to make it a lot easier for people to register to vote—even easier than registering online. The annual canvass process that the registration officers have to run is very highly prescribed. [Electoral Registration Officers] ... spend a lot of time contacting people they know are still at that address to get them to confirm that they are at that address.”<sup>23</sup>
22. The digital service provided by the UK Government for voter registration is reserved.<sup>24</sup> In this context, Sarah Mackie told the Committee about ongoing efforts across the UK to allow resource to be focused on identifying those who were missing from the register and finding other ways for people to update their registration details.

23. **The Committee was concerned by the high number of people who are eligible to vote, but who are not on the electoral register, as well as the number of people who are not correctly registered. The Committee believes that if the Scottish Government is seeking to promote democratic participation by extending the franchise to foreign nationals, it must also consider how it can promote participation more widely by ensuring that the register of local government electors is as complete and accurate as possible.**

## The proposal to extend the franchise to foreign nationals

24. Under current arrangements, EU citizens and qualifying Commonwealth citizens resident in Scotland have the right to vote at Scottish Parliament and local government elections in Scotland. Section 1 of the Bill extends the franchise for Scottish elections to include all those with a legal right to live in Scotland. It does so by creating a new category of voter: that of a “qualifying foreign national”.
25. A qualifying foreign national is someone who does not require leave to enter or remain in the UK under the [Immigration Act 1971](#). The Scottish Government’s proposal in the Bill will extend the franchise for Scottish Parliament and Scottish local government elections to all foreign nationals who are legally resident in Scotland.
26. Jen Ang, JustRight Scotland, perceived this change as providing a uniform right to vote for all foreign nationals. She pointed out:
 

” “Some individuals already have the right to vote by virtue of their nationality—they might happen to be British or Commonwealth citizens, or Europeans. It is a case of levelling things up and addressing the inequality for those who do not have that right. The simple proposal is that the rights and obligations should be rebalanced.” <sup>25</sup>
27. The Church and Society Council of the Church of Scotland welcomed the fact that EU nationals would retain the right to vote and those foreign nationals who were previously unable to vote were gaining the rights that EU nationals currently have:
 

” “The right of EU Nationals to vote in local government elections is part of an EU wide arrangement, which may be affected by the removal of the UK from the EU. The proposal to allow all people who are “legally resident” to vote would ensure that EU citizens currently resident in Scotland do not lose rights they already have to vote in local government and Scottish Parliament elections. The consequence of what is proposed by the consultation is that rather than downgrading the voting rights of EU Nationals to the status of third country nationals like Japan or USA, it raises the rights of citizens of other countries.” <sup>26</sup>
28. The Policy Memorandum states that “allowing persons of all nationalities legally resident in Scotland to vote at Scottish Parliament and local government elections has been estimated to extend the franchise to include around 55,000 non-EU, non-Commonwealth citizens who are currently not able to vote in any elections in Scotland.” <sup>27</sup> These figures draw on data from the 2011 Census collected for each local authority area in Scotland.
29. The extent to which these figures could provide an accurate indication of the number of people that would be enfranchised under the provisions in the Bill was discussed in evidence. None of the witnesses was able to draw on other sources of evidence that might provide a more accurate overall figure. However, Lorna Gledhill, Scottish Refugee Council, indicated that there had been an increase of

2,500 resettled refugees alone and on that basis the actual figure provided was likely to be higher than 55,000.

30. The Cabinet Secretary indicated that “we will have another figure from the 2021 census” but that the 2011 census was “roughly where the figure lies.” <sup>28</sup>
31. Peter Wildman, Scottish Assessors Association, reflected on the challenges of adding the anticipated number of people to the electoral register:  
  
” “The estimate was based on the 2011 census, so that number will have changed over time. Some 4.1 million electors are registered in Scotland, of which there are 132,000 European Union citizens on the electoral register. That excludes citizens of the UK, Ireland, Cyprus and Malta because they qualify as Commonwealth citizens or, in the case of Ireland, in their own right as Irish citizens. In that context, 55,000 is a reasonable number. It will take some time to get people on to the register, but in that context, it is a manageable number.” <sup>29</sup>
32. The next known electoral event using the register of local government electors is the 2021 Scottish Election. The Committee questioned the Cabinet Secretary on whether the provisions to extend the franchise in the Bill, if enacted, would be ready for the 2021 elections, and whether the new franchise could be used if another electoral event was to happen before then.
33. The Cabinet Secretary confirmed that the intention was that “everything should be ready for 2021 and that he did not consider that “we would not want to go sooner than that.” <sup>30</sup> He considered that this would allow the legislation time to “bed in” and for the relevant regulations to be made. <sup>31</sup>

34. **The Committee would have preferred greater clarity on the numbers of people who could be added to the register of local government electors. It notes that it was considered “manageable” to include new voters on the register by 2021, but calls on the Scottish Government to monitor progress in registering new voters and draw on the 2021 census data to provide an early indication of the number of foreign nationals actually resident in Scotland.**

## EU citizens resident in Scotland

35. Currently, EU citizens have reciprocal voting rights at local elections. As elections to devolved assemblies use the local government franchise, EU citizens are able to vote at elections to the Scottish Parliament but are not able to vote at UK Parliament elections. The Bill makes no change to the currently unrestricted rights of EU citizens to vote and stand in devolved elections as provided in current statute. The Policy Memorandum sets out the position of the Scottish Government:

” “The Scottish Government has made a public commitment to ensuring that the rights of EU citizens to vote are protected after the UK leaves the EU. The amendments to the franchise for devolved elections in the Bill make clear that all foreign nationals living in Scotland and with a legal right to be in the UK will be able to vote in devolved elections. As is currently the case, UK, Irish and EU nationals will not require to demonstrate a right to remain in order to vote in devolved elections. The Bill provides that, like Commonwealth citizens at present, qualifying foreign nationals will require to demonstrate that they have leave to remain in the UK, or are a person who does not require such leave, in order to register to vote.” <sup>32</sup>

36. BBC News [reported on 22 August 2019](#) that the Home Office had so far received 51,600 applications for settled status from EU citizens resident in Scotland to allow them to remain in the UK after Brexit. This represents just under a quarter of the estimated 220,000 EU citizens living in Scotland. Irish citizens do not need to apply as their rights are guaranteed under the preserved Common Travel Area. Andy Knox – Principal Solicitor and Director, Lanarkshire Community Law Centre - pointed out:

” “From a purely technical perspective, there is an inherent tension between the provisions in the bill that seek to ensure that EU citizens will continue to have rights post-Brexit, if Brexit happens, and the EU settlement scheme. If the scheme works out as planned over the two-year period, EU citizens who do not register with it will lose their free movement rights. There will come a point when they will not have leave to remain in the UK.” <sup>33</sup>

37. As the proposal to extend the franchise is based on whether an individual has the right to remain under the [Immigration Act 1971](#), a question arose as to whether any changes made by the UK Government to immigration legislation might impact upon the franchise for Scottish elections. Jen Ang, JustRight Scotland, noted that this was currently the case and that while it “has not been a serious issue thus far... It is right to point out the tension, but we should not be too cautious or concerned, because that is how the system already operates.” <sup>34</sup>

38. In evidence to the Committee, the Cabinet Secretary articulated a desire to “guarantee people some rights” and explained the focus on residence as a means of having a wide franchise which includes all those entitled to be in Scotland:

” “If we take a wider issue that is not directly affected by the bill—that of settled status—as MSPs, we know about the difficulties that individuals are having with that. A number of people are getting pre-settled status, which is confusing and difficult. I want to make sure that the bill creates the circumstances in which we have the widest possible franchise, and that we can protect it, so that we can say who is entitled to vote here. The qualification for that is residence. That seems to me to be pretty incontrovertible. Once you are resident, you get the chance to vote. Settled status is not mentioned. The qualification is that you are entitled to be here and you are here.” <sup>35</sup>

39. The Cabinet Secretary was questioned as to whether he considered there were sufficient safeguards in place to ensure that, in the context of widening the franchise, the people who are entitled to vote are those that should be voting. He

explained to the Committee that residency is checked by electoral officers as part of the annual canvass. A person is included on the electoral register on the basis of being able to provide an address, although an electoral officer would be entitled to make further inquiries in order to provide verification. The Cabinet Secretary also confirmed that criminal penalties would apply in cases where an individual had provided misleading information and that he would listen to any concerns that the Electoral Commission had in relation to any need for stronger penalties, including issues relating to election campaigns.

40. British citizens living overseas are entitled to be registered to vote in UK Parliamentary elections for up to 15 years in the constituency they were registered in before leaving the UK. That means that British citizens who had been registered to vote in Scotland for UK general elections retain the right to vote in those elections in that constituency for up to 15 years so long as they re-register to vote each year. The Cabinet Secretary was asked whether he had considered any similar proposals to allow “Scottish citizens” who live overseas to vote in Scottish elections.

41. The Cabinet Secretary responded:

“We have not considered such proposals. It is a complex business. The experience of the UK Government in that regard has been pretty difficult. However, I make the point that I have made previously about looking for good ideas. If someone lodged an amendment that seemed to be workable, we would, of course, consider it seriously. It is a very complex and expensive area.”<sup>36</sup>

42. **The Committee agrees with the approach taken in the Bill that makes residency the basis for including foreign nationals who have leave to remain in the UK on the register of local government electors in Scotland. The Committee understands that Electoral Registration Officers will be able to verify residence but that steps to verify residency and maintain the integrity of the register are kept under review and developed where necessary to improve its accuracy and encourage registration.**<sup>37</sup>

43. **The Committee does not consider that British citizens who had previously been included on the register of local government electors and who now no longer live in Scotland should be given the right to vote in Scottish elections. The Committee does not believe that the case for allowing people who do not live in Scotland the opportunity to influence the result of local government elections or Scottish Parliament elections is strong enough.**<sup>38</sup>

## The extension of the franchise to asylum seekers

44. The Bill’s provisions will extend the franchise to those whose claim for asylum has been allowed and have been granted refugee status and leave to remain in the UK (normally for an initial period of five years). It would also include those who have been granted temporary protection or humanitarian protection or other forms of

leave to remain in the UK. The Policy Memorandum notes that “these individuals are likely to be residing in Home Office supported accommodation and the documentation which they have from the Home Office should enable them to demonstrate residence to an Electoral Registration Officer for the purposes of electoral registration.” <sup>39</sup>

45. The Scottish Refugee Council argued that those with an outstanding asylum claim should also be allowed to vote. They made the case that if a person’s integration starts on their day of arrival, as set out in the Scottish Government’s *New Scots: refugee integration strategy 2018-2022* <sup>40</sup>, and if political participation and integration are seen as part of that, a person’s voting rights should not be delayed until they are granted leave to remain in the country. The Scottish Refugee Council stated that many of those who are still in the asylum system “sense that when they are in the asylum system, day-to-day life is full of exclusions: things that they cannot do, things that they are unable to do and things that they feel that they are not welcome to take part in”. <sup>41</sup>
46. The Policy Memorandum sets out the registration process for those that will be newly enfranchised by the Bill. It states that they:
- ” “... would be required, as is currently the case for all voters, to prove residency in a particular local authority area in order to register to vote in Scotland. This will ensure that, in most cases, only those with a permanent address in Scotland will be able to vote and that temporary visitors and tourists will not be able to register. E[lectoral] R[egistration] O[fficers]s will assess residence as they do at present for existing voters.” <sup>42</sup>
47. Lorna Gledhill, Scottish Refugee Council, expressed a concern about refugees being in a position to provide the documentation that might be required, particularly if they were in temporary accommodation. She noted that:
- ” “There have been reports from the Red Cross about delays to people receiving their biometric residence card, which has their national insurance number on it, after they get their leave to remain. If someone does not have that when they register to vote, they might be asked by the electoral registration officer to give more information.” <sup>43</sup>
48. She therefore called for consideration of “the additional barriers that the newly enfranchised communities, including people who are refugees, might face when registering to vote and to consider whether a piece of work—similar to the work that has been done with homeless people—needs to be done on that.” <sup>44</sup>
49. In evidence to the Committee, the Cabinet Secretary stressed the difference between refugees and asylum seekers. He stated that “it would be extremely difficult to grant the right to vote to people who have no right to be here. Once the person has been granted refugee status—and that is nothing to do with citizenship—that right is given.” <sup>45</sup> He further explained that:

” “The bill is about where we are now, and that means that the status of an asylum seeker is such that the person could be here today and, regrettably—I do not support this—gone tomorrow. In those circumstances, there would be no opportunity for us to rectify that. The issue is to do with the difference between refugees and asylum seekers.” <sup>46</sup>

50. The Cabinet Secretary also stated that “We are all determined that the bill will be as wide as it possibly can be but even then, there has to be a limit, and that limit is the right to remain.” <sup>47</sup>

51. **The Committee recognises the practical barriers to enfranchising asylum seekers but calls on the Scottish Government to urgently examine whether the franchise could be extended to asylum seekers resident in Scotland.** <sup>48</sup>

## Voter education

52. A number of witnesses highlighted the importance of voter education, particularly those who might be unfamiliar with the electoral system and political parties in Scotland. The written submission from Dr Thomas Loughran and Dr Andy Mycock of the University of Huddersfield stated:

” “It is important to consider the provision of political education for newly enfranchised voters who may well not have access to many of the established forms of democratic socialisation (via family, community, or formal education). Those coming from other countries to settle in Scotland or who have been imprisoned are less likely to have had structured opportunities to learn about and gain experience of electoral registration and voting, as well an appreciation of the political system and party politics.” <sup>49</sup>

53. Andy Knox, Lanarkshire Community Law Centre, also emphasised the need for advice about the entitlement to register to vote. He observed:

” “Sometimes, migrants fear engagement about the franchise and distrust the system. The bill will give an opportunity to people who have not been able to vote or even stand before. Also, it is important that advice is available so that people understand their rights.” <sup>50</sup>

54. Lorna Gledhill, Scottish Refugee Council, stressed the importance of the accessibility of the documentation produced to support the extension of the franchise and emphasised that:

” “...it is also about where the information is made available. There are two stages, the first of which is broader political education, which is about how particular systems work in Scotland, what vote for X means and what vote for Y means, and about getting understanding of the different political parties. Then there is getting an understanding of how to register to vote and how to go about voting.” <sup>51</sup>

55. Lorna Gledhill further emphasised the importance of “going into communities and speaking directly to people” and the role that peer education could play, “including working with in refugee communities and “upskilling their representatives on how the system works and how to register to vote and supporting them to go out into their communities to help people engage.”<sup>52</sup> However, she was also clear that such work would involve resource, funding and support that was “not necessarily budgeted for” in the Bill.
56. At the Committee’s meeting with representatives of migrant communities, we were told that it was valuable to have the support of organisations such as the Scottish Refugee Council who could talk to refugees about the Scottish electoral system, as well as supporting the provision of peer education and peer support on the voting process.
57. Sarah Mackie, Electoral Commission Scotland, told the Committee that it would seek to work closely with EROs, who could draw on links in their communities, in order to try and reach the newly enfranchised individuals who would be scattered around Scotland. She recognised the opportunities of working with organisations such as the Scottish Refugee Council given their existing role in working with these communities. Sarah Mackie also explained that in the past the Electoral Commission had developed educational resources on how to vote, the electoral system and the roles of politicians and political parties.
58. The Cabinet Secretary told the Committee that he had been “struck by the evidence that the Committee had heard” in relation to education for newly enfranchised voters. He stated:
- “It is in my mind to see whether we can enter into dialogue with some of those organisations and perhaps give them additional support to help their clients and service users. They have given convincing evidence that more needs to be done. That is positive: in a democracy, we should encourage people to vote. In parallel with the bill going through Parliament—this is not a matter for legislation, per se—I want to engage with those organisations and ensure that we take that work forward. We will encourage the Electoral Commission to do so as well.”<sup>53</sup>
59. The Cabinet Secretary also recognised that there was a need to engage with smaller organisations as well to ensure that engagement was with people from a range of different cultures and countries living all over Scotland.
60. **The Committee welcomes the Cabinet Secretary’s commitment to promote engagement with the Scottish Refugee Council and other organisations working at a local level across Scotland with the finance and resources to provide support and information on the electoral system and voter registration to those whom the Bill seeks to enfranchise.**

## Candidacy rights

61. The Bill seeks to allow all foreign nationals with an indefinite right to live in Scotland to stand as candidates in Scottish elections and hold office following those elections. This provision differs from that relating to the franchise in that it requires a permanent right to reside in the UK in order to stand for election in Scotland. The Policy Memorandum explains the rationale for this approach:
- ” “On foreign nationals the view is taken that it would be undesirable to allow a person with a limited right of residence to stand as a candidate. Such a person could be elected to a term of office that extends beyond the period in which they are legally allowed to reside in the country. Their departure from the country would prejudice the effective representation of constituents and could bring the electoral system into disrepute. In some cases persons permitted to remain for a limited period are subject to a condition against seeking employment, which would include serving as an elected representative.” <sup>54</sup>
62. The Bill does not seek to change the candidacy criteria beyond the citizenship requirements. This means that, for example, individuals aged 16 or 17 who are currently unable to stand as candidates will still be unable to stand for election. The Cabinet Secretary acknowledged that the Scottish Government had not consulted on 16 and 17-year olds standing at elections and therefore stated that he did not consider that the Scottish Government was “entitled to bring it into the Bill.” <sup>55</sup>
63. Jen Ang, JustRight Scotland, commented that she thought it was disappointing that the Bill only gave candidacy rights to those with indefinite leave to remain, thereby excluding refugees and asylum seekers. She questioned the consistency of this approach which would prevent someone who was a refugee, and who had been given leave to remain for five years and could then apply for leave to remain, from standing. She pointed out that:
- ” “... aside from refugee status, the longest period for which the Home Office now grants leave is two and a half years, and that is unusual. However, people will have their two and a half years of leave to remain renewed for a period of up to 10 years, at which point they achieve the right to stay here permanently. People might have lived here lawfully for seven or nine years and have every intention of settling here—and we, as immigration lawyers, would agree that they are highly likely to do so—but if the right to stand for election is confined to those who are already permanently resident, that former group of people would be excluded from participating.” <sup>56</sup>
64. Jen Ang questioned how principled such an approach was and suggested that it “would be simpler to say that if someone was in office and became unlawfully resident, they would be required to resign on that basis.” <sup>57</sup> She also highlighted that someone whose leave expired could still work if they had applied for further leave as they were lawfully resident. Thus, the approach in the Bill was, in her view, inconsistent with employment law.
65. At present, under European freedom of movement provisions, there is no period of leave, so EU and European Economic Area (EEA) nationals are immediately able to stand as candidates. The Scottish Government has indicated that it has no intention to change this. The Bill provides that foreign nationals who do not have candidacy

rights at present will be able to stand once they have indefinite leave to remain. It can take many years to be granted such status. This means that in future any EU and EEA national would be able to stand as a candidate from the day of their arrival. Others, from countries such as the United States of America or Syria would be required to have indefinite leave to remain before they are able to stand.

66. In evidence to the Committee, the Cabinet Secretary acknowledged that there was “an anomaly in the bill around standing for election” and indicated that he wished to “clear that up during the bill process.” <sup>58</sup> He said:

” “There is an anomaly between European Union citizens who have the right to be candidates, and non-EU citizens. That is a hangover from the existing position of EU citizens, which is simply being replicated in the bill. We can do better than that, and I want to.” <sup>59</sup>

67. **The Committee believes that candidacy rights should reflect voting rights for people who choose to make Scotland their home. While it recognises the concerns expressed by the Scottish Government that a person without indefinite leave to remain in the UK might be in a position of having to stand down during their period of office, the Committee believes that the chances of this happening are slim. Any elected representative's circumstances can change for a variety of reasons including health, employment and other personal circumstances. Furthermore, the Committee believes it is important that candidates from all backgrounds can stand and it would not like to see those without a permanent right to remain from being dissuaded from becoming involved in political life. The Committee therefore calls on the Scottish Government to bring the candidacy provisions for foreign nationals in line with the franchise provisions.** <sup>60</sup>

68. **The Committee notes that there will be no requirement for EU and European Economic Area nationals to have an indefinite right to remain in order to stand for elections, thus putting them in a different position to other foreign nationals. The Committee notes that the Cabinet Secretary recognised that this was an anomaly and calls on the Scottish Government to address it by bringing forward amendments at Stage 2.** <sup>61</sup>

## Part 2 - Prisoners Etc

### Background on prisoner voting

69. As Her Majesty's Inspectorate of Prisons in Scotland (HMIPS) explained in its written submission, there was "no ban on prisoner voting for 20 years prior to 1969 and that prior to 1949 only prisoners convicted of the most serious crimes were banned from voting".<sup>62</sup> Thus, there has not historically been a consistent position in relation to prisoner voting in the UK.
70. The [Representation of the People Act 1983](#) provides the current legal basis for the disenfranchisement of prisoners in the UK. Under section 3 of that Act, someone who has been convicted and is detained in pursuance of their sentence is "legally incapable" of voting. The ban applies irrespective of the length of sentence. People who are held on remand (awaiting trial but not convicted) and people on parole or home detention curfew are already able to vote by post or proxy as they are not 'detained'. These rules apply to all parliamentary elections (to the UK Parliament, the Scottish Parliament, the European Parliament and the Welsh and Northern Ireland Assemblies), and all local government elections.
71. In 2005, in the case of *Hirst v United Kingdom (No 2)*,<sup>63</sup> the European Court of Human Rights found that the UK's blanket ban on prisoner voting was in breach of Article 3 of Protocol 1 of the European Convention on Human Rights (ECHR) which requires states to "hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature".<sup>64</sup>
72. The new powers gained under the Scotland Act in relation to the franchise for Scottish Parliament and local government elections in Scotland allow the Scottish Parliament to legislate in relation to prisoners voting in devolved elections. Thus the Scottish Parliament now "has the responsibility for ensuring compliance with the ECHR in relation to prisoner voting in these elections".<sup>65</sup>
73. The ECHR also provides a framework within which the Scottish Government and all other public bodies must act and it is given legal force in Scotland through the Human Rights Act 1998 and the Scotland Act 1998. Under the Human Rights Act 1998, all public authorities in Scotland must act in accordance with the Convention rights in everything they do: this includes private bodies that are carrying out public functions. The Scotland Act places a specific duty on Scottish Ministers and the Scottish Parliament to act in accordance with the Convention rights. As such, Acts of the Scottish Parliament must be in compliance with the ECHR. The effect of the Scotland Act 1998 and the Human Rights Act 1998 is that Scots law can be challenged and declared unlawful in the Scottish courts if it does not comply with the Convention.
74. In the context of the Scottish Parliament gaining powers in relation to the franchise, the Scottish Parliament's Equalities and Human Rights Committee conducted an inquiry into [Prisoner Voting in Scotland](#) in 2018 in which the majority of the Committee called on the Scottish Government to legislate to remove the ban on prisoner voting in its entirety. The Committee would like to thank the Equalities and

Human Rights Committee for writing to it to highlight its report and the evidence that it took on prisoner voting.

75. The Scottish Government held a consultation on prisoner voting which concluded in March 2019 and sought views on linking voting rights to the length of sentence: either to a six month or a 12-month sentence.<sup>66</sup> A range of responses were received:
- Around 3 in 10 thought that prisoners' right to vote should be linked to the length of their sentence (of these, 20% favoured a threshold of 6 months or less; around one third favoured a threshold of 12 months or less; and almost half favoured another duration);
  - Around 1 in 3 of respondents thought no prisoners should be allowed to vote;
  - Around 3 in 10 considered that all prisoners should be able vote.
76. The Cabinet Secretary explained how the results of the Scottish Government consultation informed the policy relating to prisoner voting in the Bill:
- ” “There are people who are dead set against any change and there are those who are very enthusiastic about having a complete change. The consultation showed us a range of opinions and we felt that the 12-month option was the one that sat most happily within that range, so that is our proposal.”<sup>67</sup>
77. The Cabinet Secretary further elaborated on the rationale behind the proposals in the Bill in evidence to the Committee:
- ” “We have proposed that prisoners who are serving sentences of 12 months or less should be able to vote. We think that there is justification for that in relation to how the justice system works. The number of people who would be affected is not inconsiderable. We think that our proposal is better than the UK Government's proposal, which has not been legally tested. I am not a lawyer, but it seems to me that our proposal is more robust in that respect. We have put our proposal on the table, and it is what we want to happen.”<sup>68</sup>
78. While the responses to the Scottish Government's consultation on prisoner voted were varied, reflecting a range of views, the Committee received a far fewer number of responses to its consultation and the majority were in favour of enfranchising prisoners. The written and oral evidence received by the Committee covered the following issues:
- The Scottish Government's approach to prisoner voting;
  - Removing all restrictions on the right to vote for convicted prisoners;
  - The Scottish Government's proposal and ECHR requirements;
  - The 12-month cut-off point for enfranchising prisoners; and
  - The registration of prisoners on the electoral register and the practicalities of exercising their right to vote while in prison.

## The Scottish Government's approach to prisoner voting

79. The Scottish Government proposes through the Bill to amend Section 3 of the Representation of the People Act 1983 as it relates to Scottish Parliament and local government elections. Section 4 of the Bill provides that prisoners serving sentences of 12 months or less have the right to vote at both Scottish Parliament and Scottish local government elections. This will include young offenders who are detained in young offenders' institutions.
80. The right to vote will not extend to people who are convicted and sentenced to consecutive or concurrent terms of imprisonment which, when taken together, exceed 12 months. In addition, the 12-month cut-off point relates only to the sentence passed by the judge; the potential for early release does not allow for the prisoner to be able to vote if the sentence served is ultimately less than 12 months.
81. The Scottish Government's position, as stated in the Policy Memorandum, remains that which is set out in the consultation paper: "that it is neither appropriate, nor necessary to ensure compliance with the ECHR, to enfranchise all prisoners, but that the correct balance is to be found in extending voting rights to those prisoners serving shorter sentences." <sup>69</sup>
82. The Policy Memorandum also states that, "Fixing the prisoner voting threshold at 12 months or less is consistent with the distinction within the Scottish criminal justice system between the sentencing powers of courts of summary jurisdiction and courts of solemn jurisdiction." <sup>70</sup> Solemn procedure involves the most serious of criminal cases and trials are conducted with a jury. Summary procedure is used for less serious offences and may lead to a trial before a sheriff or, in justice of the peace courts, before a bench of one or more lay justices.
83. Thomas Halpin, Sacro, called on all prisoners to "be rehabilitated and to play a full part in a successful Scotland, and the right to vote is a fundamental building block of that." <sup>71</sup> He stated:
- ” “There is an emotional question in separating out crimes that are so serious or so abhorrent that we should take away the right to vote. However, it is very difficult to make that distinction. There are many people in our prisons who have been convicted of homicide but whose cases have circumstances around them. They are not evil people; they have made very bad decisions in their lives, or maybe there were not even decisions and they are there due to the circumstances. The idea that we can be rational in separating out prisoners in a judgemental way is questionable.” <sup>72</sup>
84. The issue of whether prisoners who have committed electoral fraud should be able to vote was raised with the Cabinet Secretary, who commented:
- ” “If you believe that there should be no restrictions on prisoner voting, you believe that no crime should exclude prisoners from voting. If committing murder does not exclude a prisoner from voting, why should electoral fraud?” <sup>73</sup>

85. The issue of prisoner voting and compliance with the ECHR has been the subject of some debate over the last two decades. Cathy Asante – Legal Officer, Scottish Human Rights Commission - stated that, “In the simplest sense, the issue can be looked at as a need to ensure compliance with article 3 of protocol 1 of the European Convention on Human Rights – a matter that has been outstanding since 2001.”<sup>74</sup> It has also rumbled on for a long time: Dr Hannah Graham of the Scottish Centre for Crime and Justice Research (SCCJR) considered that enabling voting was long overdue and argued that, “Intransigence and politicisation of this human rights issue has meant that we lag far behind our fellow European democratic nations.”<sup>75</sup>
86. In its written evidence, the Scottish Human Rights Commission highlighted the importance of an approach to prisoner voting which focused on promoting and protecting human rights. It stated, “We would be concerned if populist opinion acted as a primary driver of reform rather than a more objective assessment of human rights standards and, accordingly, which option promotes and protects human rights to the greatest degree.”<sup>76</sup>
87. Professor Antony Duff – Member, Howard League Scotland Committee - told the Committee that there was an opportunity to think beyond compliance with the ECHR in relation to prisoner voting:
- ” “It would be a shame to focus only on compliance with the convention on human rights. That is a minimum requirement that we need to meet. Here is a chance to think beyond that and to think for ourselves about how we should treat prisoners when it comes to voting. Should we do rather more than what is required, minimally, under the convention? Howard League Scotland is saying that we should go beyond that and think about enfranchising all prisoners, but not just because that brings compliance with the requirements of the convention. It means going beyond that and thinking for ourselves about how we should see and treat those people. I would not want to focus only on what is required to comply with the convention on human rights.”<sup>77</sup>
88. Dr Hannah Graham, SCCJR, pointed out that, “In countries such as Denmark, Sweden, Norway, Finland, Switzerland, and Ireland, there is no electoral ban on prisoners being able to vote – and these are good examples of countries that Scotland might look to learn from their record on human rights, social democracy, prisons and penal reform.”<sup>78</sup>
89. The Committee sought clarity from the Cabinet Secretary on the Scottish Government’s view on whether prisoners should be allowed to vote. The Cabinet Secretary stated that:
- ” “Removing a prisoner’s right to vote is an indication of punishment and disapproval. The view has been that society wishes that to happen, which is why it has been enshrined in legislation. Many people do not believe that that is correct and want to see the restriction removed entirely.”<sup>79</sup>
90. In response to further questions from the Committee on the rationale behind his approach, the Cabinet Secretary articulated the view that there was a need to “find a compromise to move things forward, because there are extreme positions on the

issue. Compromise is the position that we are putting forward.” He further argued that:

“The 12-month option shows that it would be useful and important for some prisoners to be able to vote. There is a means by which to do that, and we are required to do so under the European convention on human rights, so we had better get on with it.”<sup>80</sup>

91. **The Committee believes that the blanket ban on prisoner voting is unsustainable as it is at odds with the European Convention on Human Rights. The Committee would like to see the Scottish Government’s policy on prisoner voting driven by principle and evidence. We believe the Scottish Government has settled on an approach which fails to address the central question of what disenfranchisement seeks to achieve.**

## The Scottish Government’s approach to meeting European Convention on Human Rights requirements

92. As indicated earlier in this report, in 2005 in the case of *Hirst v United Kingdom*, the European Court of Human Rights found that the UK’s blanket ban on prisoner voting was in breach of Article 3 of Protocol 1 of the ECHR which requires states to “hold free elections (...) under conditions which will ensure the free expression of the opinion of the people”<sup>81</sup>
93. As Michael Clancy of the Law Society of Scotland observed, “Having the capacity to legislate on elections means that the crunch point of compliance with the ECHR comes into sharp relief.”<sup>82</sup> This “crunch point” came in the summer, shortly after the Bill was introduced, when the decision to hold the Shetland by-election on 29 August 2019 required the Scottish Government to consider whether and how to comply with Convention requirements in relation to that electoral event. In the by-election for Ettrick, Roxburgh and Berwickshire held on 8 June 2017, the Scottish Government made no provision in relation to enfranchising prisoners and risked contravening the ECHR.
94. Section 12 of the Convention Rights (Compliance) (Scotland) Act 2001 allows Scottish Ministers to make a remedial order where necessary or expedient to ensure compatibility with the European Convention on Human Rights. On 1 August 2019, the Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, announced that the Scottish Government would make a Remedial Order to extend the franchise for the Shetland by-election.
95. The Scottish Government stated that the provision made by the Order was “necessary or expedient in consequence of section 3 of the Representation of the People Act 1983 being incompatible with a Convention right”.<sup>83</sup> It further stated:

” “The courts have been crystal clear – the blanket ban on prisoner voting is not compliant with the ECHR. Whether people agree with that or oppose it, one thing everyone should agree on is that elections must be compliant with the law. And, unlike the UK Government, who did not rectify this issue for more than a decade, the Scottish Government is legally obliged under the Scotland Act to comply with the ECHR. The timing of the by-election means action must be taken now, on a temporary basis, to ensure Scotland does not breach the ECHR.” <sup>84</sup>

96. The Representation of the People Act 1983 Remedial (Scotland) Order 2019 allowed prisoners serving sentences of 12 months or less, and who met the other franchise criteria, to register to vote in the by-election. This therefore reflected the provisions relating to prisoner voting contained in the current Bill.
97. Thus, by the time the Committee took oral evidence on the Bill, identical provisions had been adopted in relation to the Shetland by-election.
98. The evidence gathered by the Committee was clear in identifying the need to amend the law to comply with the ECHR, but it also addressed the question of the margin of appreciation – that is the scope – within which the European Court of Human Rights judges whether a party to the ECHR should be sanctioned for any derogation. Cathy Asante, Scottish Human Rights Commission, stated:

” “There is no doubt that the law needs to be amended to give some prisoners the right to vote in order to ensure compliance with the ECHR, so the question is about how far to go in terms of providing that right to vote. The European Court of Human Rights has not prescribed exactly how that should be done. It leaves a wide margin of appreciation, which means that it is the job of national legislatures to decide what is most appropriate for the national context.” <sup>85</sup>

99. Michael Clancy, Law Society of Scotland, referred to the Court’s ruling in the Hirst case and highlighted that the Law Society of Scotland considered that a “landing point of four years would be more appropriate” as a proportionate point for imposing a ban on voting:

” “The court’s decision in that case talked about the support for universal suffrage, but it said that the franchise of prisoners may be restricted, provided that the restriction is proportionate to a legitimate aim. Such aims include the sanctioning of the conduct of convicted prisoners and enhancing civil responsibility and respect for the rule of law. Crucially, the length of the sentence that is given to the prisoner indicates the seriousness of the offence.” <sup>86</sup>

100. **The Committee notes that the margin of appreciation provided by the European Court of Human Rights allows wide scope for the Scottish Government in complying with the European Convention on Human Rights. Whilst we recognise that providing the vote to those sentenced for 12 months or less may satisfy the European Convention on Human Rights requirements, the Committee has not seen sufficient evidence as to why this approach has been selected over any other.**

## The 12-month cut-off point for enfranchising prisoners

101. The Policy Memorandum makes the Scottish Government's position clear in relation to what it perceives as "the correct balance" for enfranchising prisoners being those serving sentences of 12 months or less.
102. The Scottish Government's consultation on prisoner reform estimated that the proposal to enfranchise people serving terms of 12 months or less would enfranchise around 1,000 individuals.
103. Her Majesty's Inspectorate of Prisons in Scotland (HMIPS) gave a qualified welcome to the decision to enfranchise prisoners serving a sentence of 12 months or less. It stated:

” "In principle HMIPS believes that all prisoners should be allowed to vote, but supports the provisions in the bill to extend the right to vote to convicted prisoners with a sentence of 12 months or less as a welcome and proportionate move in that direction." <sup>87</sup>
104. Professor Duff, Howard League Scotland Committee, described the 12-month cut-off point as "a mean-minded way of allowing some prisoners the right to vote" which would still disenfranchise many prisoners who are not serious core criminals. <sup>88</sup> He also questioned the basis on which any decision was taken on whether someone should lose the right to vote:

” "If we say that some people should lose the right to vote and some should not, we need to look carefully at what picks out those who should lose the right to vote. Is it the content of their crime? Is the crime somehow against the political system? Is it just the fact that it is a serious crime? If so, how serious does it need to be before someone loses the right to vote? There is no true answer to that question. That is one reason why we think that prisoners should all get the right to vote." <sup>89</sup>
105. Thomas Halpin, Sacro, told the Committee that there was inconsistency in sentencing practice and that "There are loads of examples of people who have been convicted of the same crime being sentenced differently at different diets, with one excluded while another is not." <sup>90</sup>
106. There was also evidence highlighting the policy tension between the extension of the presumption against short sentences from three to 12 months, which affects cases where the offence was committed on or after 4 July 2019, in the context of the provision in the Bill identifying 12 months or less as the cut off point for enfranchising prisoners. <sup>91</sup>
107. The Faculty of Advocates had, in its response to the Scottish Government's consultation, questioning whether the enfranchisement of prisoners on short sentences, when there is a presumption against these, will meet the requirements of ECHR and the ruling of the European Court of Human Rights.
108. The Law Society of Scotland stated in written evidence that:

” “...means that more persons who have been convicted will be at liberty within the community and eligible to vote in a conventional sense. The size of the prison electorate enfranchised to vote will be smaller in the future given the consequences of these changes.” <sup>92</sup>

109. When questioned about the impact of the presumption against short sentences on the proposals relating to prisoner voting in the Bill, the Cabinet Secretary stated:

” “I am not sure that the two things are connected in any way. Here we have a principled position that we have looked at and come to a compromise on. We have justified that compromise and it is a fair thing to do.” <sup>93</sup>

110. One alternative approach identified as an alternative cut-off point was to enfranchise convicted persons sentenced to four years or less. Dr Hannah Graham proposed that all convicted prisoners should be enfranchised, but that if this was not done, then – as a minimum - enfranchising prisoners serving short-term custodial sentences of up to four years could be an alternative. She explained the rationale for this:

” “Four years is the marker commonly accepted to delineate between short-term and long-term sentences. People with convictions and their families are affected by Scottish Parliament, Scottish Government and local government decisions and policies; those who are in prison at the time of an election should be eligible to vote rather than be subject to the arbitrariness of whether or not their short-term prison sentence happens to fall within an election year.” <sup>94</sup>

111. The Faculty of Advocates also stated in its response to the Scottish Government’s consultation that it considered that there were strong arguments for setting the eligibility criteria at four years:

” “The main reason for that suggestion is that four years is already recognised as the appropriate point at which to differentiate between prisoners, marking as it does the boundary between “short term” and “long term” prisoners. That distinction represents an important difference in the treatment of prisoners (for example, in terms of access to home detention curfew and automatic release provisions). In the Faculty’s view, it marks an obvious point at which to differentiate also between those prisoners who are entitled to vote and those who are not and would be consistent with the overall structure of the management of offenders in Scotland at the present time.” <sup>95</sup>

112. When questioned about having a cut-off point of four years, rather than 12 months, the Cabinet Secretary said:

” “Twelve months is the maximum sentence that can be imposed in a summary trial, which is one that does not involve a jury. In those circumstances, there is a clear legal justification for our proposal. In our view, there should be a relationship between the seriousness of the crime and the ability to vote. Some people will disagree with that, but it is the view that we have taken. The proposal sets the line, because crimes for which sentences of more than 12 months are given, following a jury trial, are seen as more serious. The 12-month option was supported by the largest group in the consultation, but not by the majority—there was no majority for anything in the consultation. As I said, we have put that proposal on the table. We think that it is a reasonable and moderate proposal that meets the requirements and which does something significant by moving the issue on.” <sup>96</sup>

113. **The Committee believes that the approach taken in the Bill to allow prisoners sentenced for 12 months or less to vote is inconsistent in the context of the presumption against sentences of twelve months or less adopted by the Scottish Parliament in June 2019. In effect, very few people might be enfranchised by the provisions in the Bill. Moreover, the European Court of Human Rights could question whether the proposed legislation actually delivers a policy change that would bring Scotland within the margin of appreciation in relation to complying with the European Convention on Human Rights. The range of approaches presented to the Committee was between 12 months and four years. No clear consensus emerged in the Committee in favour of one of these options.**

## Removing all restrictions on the right to vote for convicted prisoners

114. The Committee received considerable evidence on whether there should be any restriction on the right to vote for convicted prisoners. This was discussed in the context of ensuring the human rights of all citizens, the practice in other countries, the value of voting as part of wider rehabilitation and the whether being imprisoned should incur a “civil death” penalty.
115. The argument for enfranchising all prisoners was framed in relation to human rights and rehabilitation and questioned the purpose of disenfranchisement as an effective deterrent. HMIPS argued that the European Court of Human Rights had implied that there should be an aim for maximum suffrage and providing the vote to all prisoners. It pointed out that the Court stated:
- ” “...the right to vote is not a privilege. In the 21st century the presumption in a democratic state must be in favour of inclusion”. <sup>97</sup>
116. HMIPS also emphasised that international human rights instruments recognise that the purpose of imprisonment is “primarily rehabilitative and the deprivation of a person’s liberty” and quoted Article 10, paragraph 3 of the International Covenant on Civil and Political Rights which states that “The penitentiary system shall

comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.”<sup>98</sup>

117. Dr Hannah Gordon also referred the Committee to the position of the European Court of Human Rights highlighting its position on the link between the human rights in the Convention and the status of prisoners. She argued that there was no question:

” “... that a prisoner forfeits his Convention rights merely because of his status as a person detained following conviction. Nor is there any place under the Convention system, where tolerance and broadmindedness are the acknowledged hallmarks of democratic society, for automatic disenfranchisement based purely on what might offend public opinion.”<sup>99</sup>

118. The arguments in favour of enfranchising all prisoners were also made in relation to the contribution that voting could make to rehabilitation, the weakness of losing the right to vote as a deterrent and the importance of considering the personal circumstances of prisoners. These were also issues that were considered in depth by the Equalities and Human Rights Committee in its report on prisoner voting.<sup>100</sup>

119. Professor Duff, Howard League Scotland Committee, set out his reasons as to why depriving a prisoner of the right to vote did not “serve the standard aims of punishment” and undermined rehabilitation:

” “If we think about the standard aims that punishment might be thought to have—retribution, deterrence, incapacitation and rehabilitation—and ask whether losing the right to vote serves any of those aims, it is hard to see how it does. It does not do that for retribution; we believe that it does not deter; it does not help to incapacitate; and, if anything, it works against rehabilitation, because having the vote helps to rehabilitate.”<sup>101</sup>

120. Chris Highcock – Secretary, Electoral Management Board for Scotland – echoed the view that enfranchisement could contribute to rehabilitation:

” “It is worth saying that the extension of the franchise in that way is potentially an opportunity for education and rehabilitation for prisoners. The lessons and the openness about voting can be part of a process for giving them a broader explanation of life in open society.”<sup>102</sup>

121. HMIPS argued that not having the right to vote could increase the alienation of prisoners from society:

” “Exclusion from the electoral process may potentially only add to their sense of alienation and marginalisation in a way that may not help with efforts to encourage rehabilitation and reduce the risk of reoffending. That would not be in the best interests of society, even though that may not necessarily be fully recognised by the public.”<sup>103</sup>

122. HMIPS stressed that losing the right to vote had a very limited impact, if any, as a deterrent:

” “The deprivation of a person’s liberty is the punishment for committing a crime. It does not appear to HMIPS that the loss of voting rights should also form part of the punishment. It is hard to see the loss of voting rights acting as a deterrence to those contemplating crime, therefore it is strange for that to form part of the punishment. Equally, as with society as whole, we can expect a sizeable number of prisoners not to care whether they vote or not. Accordingly, as David Strang, the previous Chief Inspector of Prisons for Scotland, said ...: “It is an odd punishment because it only affects those who want to vote.” <sup>104</sup>

123. Some of the witnesses giving evidence to the Committee raised the concept of civic death. This is a term that has been used to describe the impact of losing the franchise as a consequence of being imprisoned.

124. Thomas Halpin, Sacro, emphasised the importance of understanding that prisoners are “largely a group of people who have been excluded and deprived throughout their lives in all sorts of circumstances.” <sup>105</sup> He argued that prisoners, even when they were imprisoned for a long time, had interests in wider society and urged the decision on prisoner voting should not be “fudged”:

” “This is my plea: please do not fudge this. The right to vote is a human right. If we want an inclusive Scotland, we should provide all prisoners with the right to vote.” <sup>106</sup>

125. Professor Andrew Duff, Howard League Scotland Committee, stated that the central issue was one of citizenship. He questioned:

” “Do we see prisoners as citizens and members of the polity with rights to engage in its affairs, or do we see them as outsiders with no part to play? For reasons of both democratic recognition and rehabilitation, we feel strongly that prisoners should still be seen, understood and treated as citizens. They are in prison and they are being punished, but still they are members of the polity and therefore should have the right to vote at elections and vote for their own future. In the end, we would like the right to vote to be extended to all prisoners, not just those who are serving sentences of less than 12 months.” <sup>107</sup>

126. **The Committee notes the arguments for enfranchising all prisoners made in evidence. These were related to the contribution that voting could make to rehabilitation, the weakness of losing the right to vote as a deterrent, the importance of considering the personal circumstances of prisoners and concepts of citizenship. The Committee would like the Scottish Government to publish evidence which has influenced the position they have settled on in the context of the range of options on the length of sentences.**

## The registration of prisoners on the electoral register and the practicalities of exercising their right to vote while in prison

127. The Bill makes provision for the residence of convicted persons in prison either as an uninterrupted residence or a notional residence. That means that in most cases, prisoners will be registered by reference to their previous home address or by a declaration of local connection which allows them to be allocated to an electoral community. All registration decisions will be made by the ERO on the basis of information provided by the Scottish Prison Service (SPS) or the prisoner. Peter Wildman, Scottish Assessors Association, explained the approach taken in the Bill and how the provisions would be implemented in practice:

” “The way that the draft legislation is framed is that people will be able to remain registered at their home address even though they are detained in prison. One hopes that they will already be registered. We have had discussions with the Scottish Prison Service as to whether we can identify those prisoners. If we discover that people are not on the register, that offers opportunities. There is a challenge around contacting them, but certainly from the way that the legislation is framed, they will not have to come off the register. One concern would be if we had to take them off at their home address and register them at the prison for a very short time. One of the challenges is that some of the short sentences could be quite short—shorter than a year. We therefore welcome the fact that prisoners can remain registered at their home address.” <sup>108</sup>

128. Prisoners will be allowed to vote only by proxy or postal vote. The SPS indicated that it would build on existing practices in relation to those on remand or detained on civil matters – who are currently eligible to vote – to develop the practicalities of voting in the run up to Scottish elections. It stated that this would ensure that any “changes are communicated to persons in our care prior to any devolved elections to the Scottish Parliament and Scottish Local Authorities, which take place following the introduction of any such change.” <sup>109</sup>

129. HMIPS supported the provisions in the Bill relating to the registration of prisoners, “linked where possible to a previous home address, and voting by proxy or by postal vote only.” <sup>110</sup> It also recognised that “proxy or postal vote may be easier to administer than bringing polling boxes into prisons and better mitigate concerns around maintaining order and security in Scotland’s prisons”. <sup>111</sup>

130. Andy Hunter, Association of Electoral Administrators, explained that there would be a need to reduce the timeframe for postal votes for prisoners:

” “On the point about postal vote replacements, there is also a point about timing. Currently, electors can go to the polling station and hand deliver a postal vote right up until the last minute, at one minute to 10. Obviously, prisoners will not be able to do that, so everything will have to be posted back and forward. Their timescales for dealing with the postal vote will therefore be shortened to compensate for that.” <sup>112</sup>

131. Chris Highcock, Electoral Management Board for Scotland, stressed the importance of ensuring that prisoners could vote in secret:
- ” “People have a hard-won right to vote in secret so that others do not know how they are casting their vote. We may need to think about that. People vote in secret so that they are free from coercion and influence and no one tells them how to vote or rewards them in a particular way. We have to think about creative ways to ensure that people can vote in secret in prison. Those are some of the issues that flow from that.” <sup>113</sup>
132. Dr Hannah Graham highlighted the complexity of registering young offenders, particularly those that are care experienced, noting:
- ” “Circumstances and living arrangements prior to custody may add complexity to the process of registering to vote. Being care experienced can influence an individual’s sense of where they are from and their use of a declaration of local connection, as their most recent previous address prior to custody may or may not be the most appropriate for registration to vote. The Scottish Prison Service is a corporate parent. ... Enabling the rights and political participation of care experienced people with convictions is important.” <sup>114</sup>
133. In relation to access to information on elections, SPS explained that a prisoner who had made an application for an absent vote could be sent electoral literature and would be allowed to write to the campaign organisations’ agents in the relevant constituency or ward in which they were registered. Prisoners would also have “routine access to TV, radios and newspapers to ensure that they have the opportunity to be kept informed of current affairs.” <sup>115</sup> The Scottish Prison Service also indicated that it would be content to facilitate hustings in prison, although such events “would be subject to the usual requirements that apply to any persons visiting a prison.” <sup>116</sup>
134. Sarah Mackie, Electoral Commission Scotland, made the point that there would be a need to consider how prisoners could find out about candidates as well as the wider manifestos of the political parties:
- ” “One issue that will need to be looked at is that, if somebody is given the vote, they need to be given the opportunity to make an informed choice. As I understand it, there is not unlimited internet access in prison. There will have to be thinking about how people can inform themselves, particularly for elections where people want to look at the candidate’s policies. You can put every party’s manifesto in front of them, but they might want to know about a particular candidate.” <sup>117</sup>
135. Dr Hannah Graham emphasised that the “views of prisoners are important to the consideration of this Bill.” <sup>118</sup> She referred to the 2017 Scottish Prison Service Prisoner Survey from 2017 in which 90 per cent of prisoner participants “believed that convicted/sentenced prisoners should have the right to vote in elections.” <sup>119</sup>

136. **The Committee considers that the provisions relating to the residence of prisoners will allow them to vote in a place where they have a local**

**connection. The Committee is broadly content with the arrangements in relation to proxy or postal voting and is satisfied that there will be sufficient means for prisoners to access information on candidates and political parties.**

- 137. The Committee recognises that voting is a private matter and there should not be a means of formally identifying whether prisoners have taken up the opportunity to vote. However, it notes that the Scottish Prison Service has confirmed to the Scottish Government that it would include a questionnaire in the biennial Prisoner Survey that is undertaken in each of the 15 Scottish prisons to see ask prisoners voluntarily whether they took the opportunity to vote. The Committee considers that this would be valuable in evaluating any provisions introduced by an eventual Act to allow prisoners the right to vote.**

# Finance and Constitution Committee

## consideration and the Financial Memorandum

138. The Finance Committee issued a call for views on the Financial Memorandum and received four response.<sup>120</sup>
139. The Financial Memorandum allocates a £280,000 one-off payment to the Electoral Commission for the purpose of publicity, guidance and forms. Of this, around £200,000 “would be an appropriate estimate for the additional public awareness costs for the Scottish Parliament election in 2021, given this will be the first planned elections using the new franchise.”<sup>121</sup>
140. The Scottish Refugee Council written submission called for more money to be allocated:
- ” “The Financial Memorandum should be amended to reflect a fair funding package for comprehensive democratic education and awareness raising targeted at newly enfranchised communities. This work should be tailored to meet the needs of specific groups, including refugees and people seeking asylum. The Scottish Government should also commit to including funded political education and awareness raising about voting rights within broader refugee integration strategies.”<sup>122</sup>
141. Sarah Mackie, Electoral Commission, explained the purpose of the additional funding:
- ” “The sum in the financial memorandum is largely for work taking place around the annual canvass. We have a separate budget that sits outside the financial memorandum of usually around £1.5 million to run a public awareness campaign ahead of a poll, and that will kick in in 2021. The amount in the financial memorandum will just be for work that will take place up until our main public awareness campaign runs in 2021, which will also include elements for new voters.”<sup>123</sup>
142. The Financial Memorandum identified the following costs to local authorities:
- ” “Additional costs which will be incurred directly by local authorities are limited to the estimated £200,000 as a result of the additional voters at local government elections. Since this represents a marginal cost, split across all thirty-two local authorities, it is not proposed that additional funding would be required.”<sup>124</sup>
143. The written submission from the Scottish Assessors Association (SAA) to the Finance and Constitution Committee stated that “Whilst there has been some informal discussion with Scottish Government officials as to what the possible costs might be, suppliers have not been approached as yet to establish a firm estimate and the SAA are therefore not in a position to confirm the accuracy or otherwise of these figures.”<sup>125</sup>

144. Chris Highcock, Electoral Management Board Scotland, stated that his understanding was that the £200,000 referred to in the financial memorandum for the work of local authorities on the expansion of the franchise was regarded as “small enough when spread across 32 local authorities that no additional funding will be required and local authorities will be able to cope with it.” <sup>126</sup> He stated a concern that:
- ” “... when it comes to the work of local authorities, £200,000 is still £200,000. Given that there are other pressures that they have to deal with at the moment, an additional £200,000 cost represents still more money that will come away from other services.” <sup>127</sup>
145. The Cabinet Secretary committed to revisiting the funding for local government. He stated:
- ” “The money for the Scottish Parliament elections comes from the Scottish Government—we give money to the Scottish Electoral Commission—so it is anomalous for local government to have to meet an additional £200,000 out of its own resources. I want to go back to my colleagues and have a conversation about that to see whether we can assist in some way. I accept that it is anomalous and we need to look at it.” <sup>128</sup>
146. The SAA also stated that the extension of the franchise would represent new duties for Scottish EROs:
- ” “The SAA therefore anticipates that the cost of these new duties will be met by the Scottish Government and not by the local authorities that appoint EROs. The Financial Memorandum is not clear on this point and a definitive statement that the additional costs of the new registration work will be met by the Scottish Government would be appreciated.” <sup>129</sup>
147. The Electoral Management Board stated that it also believed that “any additional and ongoing costs from the extension to the franchise should be met by the Scottish Government and not by the local authorities.” <sup>130</sup>
148. The Financial Memorandum also includes provision for adapting electoral management systems and software to respond to the changes to the franchise. There were three software systems in use across Scotland, as well as a bespoke system in Dumfries and Galloway, and each system needs to be developed separately. The Financial Memorandum indicated that adapting the systems would cost in the range of £150,000 to £250,000, although later correspondence from the Scottish Government stated:
- ” “Following further discussions with representatives of the Scottish Assessors Association (“SAA”), we now consider this to have been over-definitive. Although informal discussion with the Association informed the assessment of possible costs, the figures in the Memorandum were not solely based on information provided by EROs”. <sup>131</sup>
149. When questioned further about the costs, the Cabinet Secretary explained:

” “We have estimated the cost range as between £150,000 and £250,000. The mention of “over-definitive” is an indication that that figure should not have been given, because someone else clearly had a different view. The discussions that officials had with the relevant organisation did not seem to be properly reported. In the circumstances, we will stick to the idea that the cost range is £150,000 to £250,000, but we need to make much more progress on ensuring that that is accurate. I have seen suggestions that it might be less than that. We need to have an accurate figure for you.” <sup>132</sup>

**150. The Committee welcomes the Cabinet Secretary’s commitment to revisit the funding available for local government and calls on him to write to the Committee before the Stage 1 debate to set out the Scottish Government’s final position in relation to the financial support available to local government to implement the provisions in the Bill. In addition, the Committee requests that the Cabinet Secretary provides an accurate figure for the cost of adapting electoral management systems and software and a clear indication on whether the Scottish Government will meet the additional costs of the new registration work in the same letter.**

**151. The Committee is of the view that the Financial Memorandum should provide accurate and final information on the costs of implementing the policy changes set out in the Bill in order that these can be considered fully at Stage 1.**

# Delegated Powers Provisions

152. The Delegated Powers and Law Reform Committee considered each of the powers in the Bill. It determined that it did not need to draw the attention of the Parliament to the delegated powers in Section 8 - power to make ancillary provision and Section 9 – power to make commencement provision and that it was content with the delegate powers provisions contained in the Bill. <sup>133</sup> The Committee has nothing further to add to the report of the Delegate Powers and Law Reform Committee.

# Policy Memorandum

153. In accordance with Standing Order rule 9.6.1, the Committee has considered and is content with the Policy Memorandum.

# Overall Conclusion

154. The Committee supports the general principles of the Bill. <sup>134</sup>

155. However, we have highlighted a number of areas in which we consider the Scottish Government should reconsider its approach at Stage 2, as well as requesting clarity on the financial costs of the proposed changes before the Stage 1 debate.

# Annex A: Extract from minutes

## 12th Meeting, 2019 (Session 5), Thursday 27 June 2019

**Work programme (in private):** The Committee considered its work programme. As part of its work programme discussion, the Committee considered its approach to the Scottish Elections (Franchise and Representation) Bill and agreed a provisional schedule for taking evidence; to delegate any further decisions on witnesses to the Convener in consultation with the clerks; to delegate to the Convener responsibility for arranging for the SPCB to pay, under Rule 12.4.3, any expenses of witnesses in the inquiry; a call for views and that it should be issued over the summer recess; and that any consideration of the evidence heard and of the draft report should be taken in private.

## 13th Meeting, 2019 (Session 5), Thursday 12 September 2019

**Scottish Elections (Franchise and Representation) Bill:** The Committee took evidence on the Bill at Stage 1 from—

Jen Ang, Partner / Director, JustRight Scotland;

Andy Knox, Principal Solicitor and Director, Lanarkshire Community Law Centre;

Lorna Gledhill, Policy Officer, Scottish Refugee Council.

**Scottish Elections (Franchise and Representation) Bill (in private):** The Committee considered the evidence heard earlier in the meeting.

## 14th Meeting, 2019 (Session 5), Thursday 19 September 2019

**Scottish Elections (Franchise and Representation) Bill:** The Committee took evidence on the Bill at Stage 1 from—

Professor Antony Duff, Member, Howard League Scotland Committee;

Michael Clancy, Director Law Reform, the Law Society of Scotland;

Thomas Halpin, Chief Executive, Sacro;

Cathy Asante, Legal Officer, Scottish Human Rights Commission.

**Scottish Elections (Franchise and Representation) Bill (in private):** The Committee considered the evidence heard earlier in the meeting.

## 16th Meeting, 2019 (Session 5), Thursday 3 October 2019

**Scottish Elections (Franchise and Representation) Bill:** The Committee took evidence on the Bill at Stage 1 from—

Andy Hunter, Chair, Association of Electoral Administrators (Scotland and Northern Ireland Branch);

Sarah Mackie, Manager, Electoral Commission Scotland;

Chris Highcock, Secretary, Electoral Management Board for Scotland (EMB);

Peter Wildman, Chair, Electoral Registration Committee, Scottish Assessors Association.  
2.

**Scottish Elections (Franchise and Representation) Bill (in private):** The Committee considered the evidence heard earlier in the meeting.

**17th Meeting, 2019 (Session 5), Thursday 10 October 2019**

**Scottish Elections (Franchise and Representation) Bill and the Representation of the People Act 1983 Remedial (Scotland) Order 2019:** The Committee took evidence on the Bill at Stage 1 from—

Michael Russell, Cabinet Secretary for Government Business and Constitutional Relations, Iain Hockenhull, Bill Team Leader, Elections Team, and Ewan McCaig, Solicitor, Legal Directorate, Scottish Government.

**Scottish Elections (Franchise and Representation) Bill (in private):** The Committee considered the evidence heard earlier in the meeting.

**18th Meeting, 2019 (Session 5), Thursday 31 October 2019**

**Scottish Elections (Franchise and Representation) Bill (in private):** The Committee considered a draft Stage 1 report.

**19th Meeting, 2019 (Session 5), Thursday 7 November 2019**

**Scottish Elections (Franchise and Representation) Bill (in private):** The Committee considered a draft Stage 1 report and agreed to finalise by correspondence.

# Annex B: Evidence

## Oral Evidence

- [Meeting on 12 September 2019](#)
- [Meeting on 19 September 2019](#)
- [Meeting on 3 October 2019](#)
- [Meeting on 10 October 2019](#)

## Written evidence

- [Association of Electoral Administrators \(Scotland and Northern Ireland Branch\) \(161KB pdf\)](#)
- [Electoral Commission, Scotland \(74KB pdf\)](#)
- [Electoral Management Board for Scotland \(211KB pdf\)](#)
- [Sheila Field \(215KB pdf\)](#)
- [HM Inspectorate of Prisons for Scotland \(178KB pdf\)](#)
- [Howard League Scotland \(325KB pdf\)](#)
- [International IDEA \(253KB pdf\)](#)
- [Maryhill Integration Network \(170KB pdf\)](#)
- [Law Society of Scotland \(184KB pdf\)](#)
- [Newcastle University \(119KB pdf\)](#)
- [Scottish Assessors Association \(169KB pdf\)](#)
- [Scottish Centre for Crime and Justice Research \(SCCJR\) \(165KB pdf\)](#)
- [Church and Society Council, Scottish Churches Parliamentary Office \(152KB pdf\)](#)
- [Scottish Human Rights Commission \(147KB pdf\)](#)
- [Scottish Prison Service \(2.5MB pdf\)](#)
- [Scottish Refugee Council \(307KB pdf\)](#)
- [Universities of Huddersfield and Liverpool \(160KB pdf\)](#)

## **Supplementary written evidence**

- [Howard League Scotland - supplementary evidence \(12KB pdf\)](#)
- [Scottish Refugee Council - supplementary evidence \(102KB pdf\)](#)

## Annexe C: Meeting with representatives from refugee communities

The Committee with representatives from refugee communities



Source:

The Committee met with a group of refugees supported by employees from the Scottish Refugee Council and Maryhill Integration Network on 20<sup>th</sup> October 2019 to discuss the Scottish Elections (Franchise and Representation) Bill.

The representatives from refugee communities came from Glasgow and Motherwell. Some had arrived as resettled refugees to Scotland, whereas others had come and claimed asylum. They were all active members of different community groups, such as Maryhill Integration Network's Voices group, the Scottish Refugee Council's Refugee Advisory Group, and Best Way Community Development in Motherwell.

The participants were:

- Ahlam Al Bashiri
- Sam Bisiriyu
- Serge Kasongo
- Vatican Kayembe

They are accompanied by:

- Lorna Gledhill (Scottish Refugee Council)

- Pinar Aksu (Maryhill Integration Network)
- Graham O'Neill (Scottish Refugee Council)

The points they made included the following:

- Being able to vote was important to them as they considered Scotland to be their home and their future would be in Scotland.
- Having the right to vote would support their social and political integration into Scottish society.
- Being given the right to vote, being given a voice on issues affecting them and having an opportunity to contribute fully to Scottish society was significant and valuable from their perspective.
- They pointed out that they had had no opportunity to vote in the 2014 Independence Referendum but it was an issue that would affect them. In the words of one of the participants, you “just have to look; you can’t have a say.”
- Voting was seen as an important way of making refugees and people seeking asylum more visible and supporting them in becoming more engaged with society.
- Having the right to vote would help ensure that politicians listen to them. At the moment, participants felt they had less power to influence change because they did not have the right to vote. It was highlighted that most people seeking asylum don’t have the right to work and having the vote would allow them to make the case for being allowed to work.
- Gaining the right to vote would make sure that everyone had the same fundamental human rights in Scotland and refugees and people seeking asylum would feel equal to other citizens.
- Giving the vote to refugees and people seeking asylum would make Scotland seem more of a welcoming country and send the message that “what matters is that you are here and live in this land”.
- Refugees have the right to work and therefore contribute to the Scottish economy but felt voiceless as they can’t express themselves through the voting system.
- Some had fled countries which weren’t democratic, or in which they had little trust in the democratic system, and therefore placed great value on being able to vote.
- Some refugees come from countries where they don’t feel much faith in politics so it is valuable to have the support of organisations such as the Scottish Refugee Council who talk to refugees about the Scottish electoral system. Peer education and peer support are particularly valuable in relation to understanding the voting systems in Scotland.
- The cost of applying for citizenship was prohibitive for many, but the provisions of the Bill would allow them the right to vote in Scottish elections regardless of whether they had citizenship or not.
- Having the right to vote provides a route into politics and standing for election. It was also seen as important that refugees should be allowed to stand in elections.

- They were concerned about the distinction made in the Bill between refugees and people seeking asylum.
- The point was made that people can be in the asylum system for ten years, waiting for their status to be resolved. They emphasised that people seeking asylum are part of the social fabric of our communities and contribute to Scottish society but are not included in the franchise. Giving the vote to asylum seekers would recognise all residents in Scotland as equally valued, help to empower them as individuals as well as giving them hope. People seeking asylum have come to seek sanctuary, rebuild their lives and to stay.
- The group also talked about the proposed candidacy rules and the need for a more representative and diverse Scottish Parliament.

- 1 Jamie Halcro Johnston MSP and Tom Mason MSP dissented from this paragraph.
- 2 Jamie Halcro Johnston MSP and Tom Mason MSP dissented from this paragraph.
- 3 Jamie Halcro Johnston MSP and Tom Mason MSP dissented from this paragraph.
- 4 Jamie Halcro Johnston MSP and Tom Mason MSP dissented from this paragraph.
- 5 Jamie Halcro Johnston MSP and Tom Mason MSP dissented from this paragraph.
- 6 Jamie Halcro Johnston MSP and Tom Mason MSP dissented from this paragraph.
- 7 Jamie Halcro Johnston MSP and Tom Mason MSP dissented from this paragraph.
- 8 [Letter from the Minister for Parliamentary Business and Veterans](#).
- 9 [Scottish Elections \(Franchise and Representation\) Bill. Policy Memorandum](#), as introduced (SP Bill 51, Session 5 (2019)), paragraph. 2.
- 10 International IDEA. Written submission.
- 11 International IDEA. Written submission.
- 12 Standards, Procedures and Public Appointments Committee. *Official Report, 12 September 2019*, Col 3.
- 13 Standards, Procedures and Public Appointments Committee. *Official Report, 12 September 2019*, Col 4.
- 14 The Church and Society Council of the Church of Scotland. Written submission.
- 15 MIN Voices group of Maryhill Integration Network. Written submission.
- 16 Report from meeting with representatives of refugee communities. Annexe C.
- 17 International IDEA. Written submission.
- 18 International IDEA. Written submission.
- 19 Electoral Management Board. Written submission.
- 20 Jamie Halcro Johnston MSP and Tom Mason MSP dissented from this paragraph.
- 21 Electoral Commission. [National estimates of accuracy and completeness](#) . 2 September 2019.
- 22 Electoral Commission. [National estimates of accuracy and completeness](#) . 2 September 2019.
- 23 Standards, Procedures and Public Appointments Committee. *Official Report, 3 October 2019*, Col 4.
- 24 The Scotland Act 2016 amends [Schedule 5 Head 3 B of the Scotland Act 1998](#) to place a specific reservation on “Any digital service provided by a Minister of the Crown for the registration of electors”.

- 25 Standards, Procedures and Public Appointments Committee. *Official Report*, 12 September 2019, Col 15.
- 26 Church and Society Council of the Church of Scotland. Written submission.
- 27 Policy Memorandum, paragraph 41
- 28 Standards, Procedures and Public Appointments Committee. *Official Report*, 10 October 2019, Col 5.
- 29 Standards, Procedures and Public Appointments Committee. *Official Report*, 3 October 2019, Col 2.
- 30 Standards, Procedures and Public Appointments Committee. *Official Report*, 10 October 2019, Col 11.
- 31 Standards, Procedures and Public Appointments Committee. *Official Report*, 10 October 2019, Col 11.
- 32 Policy memorandum, paragraph 45.
- 33 Standards, Procedures and Public Appointments Committee. *Official Report*, 12 September 2019, Col 8.
- 34 Standards, Procedures and Public Appointments Committee. *Official Report*, 12 September 2019, Col 9.
- 35 Standards, Procedures and Public Appointments Committee. *Official Report*, 10 October 2019, Col 5.
- 36 Standards, Procedures and Public Appointments Committee. *Official Report*, 10 October 2019, Col 8.
- 37 Jamie Halcro Johnston MSP and Tom Mason MSP dissented from this paragraph.
- 38 Jamie Halcro Johnston MSP and Tom Mason MSP dissented from this paragraph.
- 39 Policy memorandum, paragraph 42
- 40 Scottish Government. *New Scots: refugee integration strategy 2018-2022*  
<https://www.gov.scot/publications/new-scots-refugee-integration-strategy-2018-2022/>
- 41 Standards, Procedures and Public Appointments Committee. *Official Report*, 12 September 2019, Col 11.
- 42 Policy Memorandum, paragraph 46
- 43 Standards, Procedures and Public Appointments Committee. *Official Report*, 12 September 2019, Cols 12-13.
- 44 Standards, Procedures and Public Appointments Committee. *Official Report*, 12 September 2019, Col 13.
- 45 Standards, Procedures and Public Appointments Committee. *Official Report*, 10 October 2019, Col 3.

- 46 Standards, Procedures and Public Appointments Committee. *Official Report*, 10 October 2019, Col 4.
- 47 Standards, Procedures and Public Appointments Committee. *Official Report*, 10 October 2019, Col 4.
- 48 Jamie Halcro Johnston MSP and Tom Mason MSP dissented from this paragraph.
- 49 Dr Thomas Loughran and Dr Andy Mycock of the University of Huddersfield. Written submission.
- 50 Standards, Procedures and Public Appointments Committee. *Official Report*, 12 September 2019, Col 7.
- 51 Standards, Procedures and Public Appointments Committee. *Official Report*, 12 September 2019, Col 16.
- 52 Standards, Procedures and Public Appointments Committee. *Official Report*, 12 September 2019, Col 16.
- 53 Standards, Procedures and Public Appointments Committee. *Official Report*, 10 October 2019, Col 11.
- 54 Policy Memorandum, paragraph 73.
- 55 Standards, Procedures and Public Appointments Committee. *Official Report*, 10 October 2019, Col 10.
- 56 Standards, Procedures and Public Appointments Committee. *Official Report*, 12 September 2019, Col 19.
- 57 Standards, Procedures and Public Appointments Committee. *Official Report*, 12 September 2019, Col 19.
- 58 Standards, Procedures and Public Appointments Committee. *Official Report*, 10 October 2019, Col 3.
- 59 Standards, Procedures and Public Appointments Committee. *Official Report*, 10 October 2019, Col 5.
- 60 Jamie Halcro Johnston MSP and Tom Mason MSP dissented from this paragraph.
- 61 Jamie Halcro Johnston MSP and Tom Mason MSP dissented from this paragraph.
- 62 Her Majesty's Inspectorate of Prisons in Scotland. Written submission.
- 63 [European Court of Human Rights. Case of Hirst v. The United Kingdom \(No.2\)](#). 6 October 2005.
- 64 [European Convention on Human Rights](#), Protocol 1, Article 3.
- 65 Policy Memorandum, paragraph 32.
- 66 Scottish Government. [Consultation on Prisoner Voting](#).

- 67 Standards, Procedures and Public Appointments Committee. *Official Report*, 10 October 2019, Col 14.
- 68 Standards, Procedures and Public Appointments Committee. *Official Report*, 10 October 2019, Col 15.
- 69 Policy memorandum, paragraph 59.
- 70 Policy memorandum, paragraph 62.
- 71 Standards, Procedures and Public Appointments Committee. *Official Report*, 19 September 2019, Col 13.
- 72 Standards, Procedures and Public Appointments Committee. *Official Report*, 19 September 2019, Col 11.
- 73 Standards, Procedures and Public Appointments Committee. *Official Report*, 10 October 2019, Col 20.
- 74 Standards, Procedures and Public Appointments Committee. *Official Report*, 19 September 2019, Col 2
- 75 Dr Hannah Graham of the Scottish Centre for Crime and Justice Research. Written submission.
- 76 Scottish Human Rights Commission. Written submission.
- 77 Standards, Procedures and Public Appointments Committee. *Official Report*, 19 September 2019, Col 7.
- 78 Dr Hannah Graham. Written submission.
- 79 Standards, Procedures and Public Appointments Committee. *Official Report*, 10 October 2019, Col 17.
- 80 Standards, Procedures and Public Appointments Committee. *Official Report*, 10 October 2019, Col 17.
- 81 [European Convention on Human Rights](#), Protocol 1, Article 3.
- 82 Standards, Procedures and Public Appointments Committee. *Official Report*, 19 September 2019, Col 4.
- 83 [The Representation of the People Act 1983 Remedial \(Scotland\) Order 2019](#).
- 84 Cabinet Secretary for Government Business and Constitutional Relations, [Scottish Government press release, 1 August 2019](#)
- 85 Standards, Procedures and Public Appointments Committee. *Official Report*, 19 September 2019, Col 2.
- 86 Standards, Procedures and Public Appointments Committee. *Official Report*, 19 September 2019, Col 14.
- 87 Her Majesty's Inspectorate of Prisons Scotland. Written submission.

- 88 Standards, Procedures and Public Appointments Committee. *Official Report*, 19 September 2019, Col 13.
- 89 Standards, Procedures and Public Appointments Committee. *Official Report*, 19 September 2019, Col 14.
- 90 Standards, Procedures and Public Appointments Committee. *Official Report*, 19 September 2019, Col 5.
- 91 [The Presumption Against Short Periods of Imprisonment \(Scotland\) Order 2019](#)
- 92 Law Society of Scotland. Written submission.
- 93 Standards, Procedures and Public Appointments Committee. *Official Report*, 10 October 2019, Col 18.
- 94 Dr Hannah Graham. Written submission.
- 95 Faculty of Advocate's [response](#) to the Scottish Government's consultation on prisoner voting.
- 96 Standards, Procedures and Public Appointments Committee. *Official Report*, 10 October 2019, Col 16.
- 97 Her Majesty's Inspectorate of Prisons Scotland. Written submission.
- 98 Her Majesty's Inspectorate of Prisons Scotland. Written submission.
- 99 Dr Hannah Gordon. Written submission.
- 100 Scottish Parliament. Equalities and Human Rights Committee. [Prisoner Voting in Scotland](#). SP Paper 315, 3<sup>rd</sup> Report, 2018 (session 5). Published 14 May 2018.
- 101 Standards, Procedures and Public Appointments Committee. *Official Report*, 19 September 2019, Col 8.
- 102 Standards, Procedures and Public Appointments Committee. *Official Report*, 3 October 2019, Cols 14-15.
- 103 Her Majesty's Inspectorate of Prisons Scotland. Written submission.
- 104 Her Majesty's Inspectorate of Prisons Scotland. Written submission.
- 105 Standards, Procedures and Public Appointments Committee. *Official Report*, 19 September 2019, Col 5.
- 106 Standards, Procedures and Public Appointments Committee. *Official Report*, 19 September 2019, Col 5.
- 107 Standards, Procedures and Public Appointments Committee. *Official Report*, 19 September 2019, Col 4.
- 108 Standards, Procedures and Public Appointments Committee. *Official Report*, 3 October 2019, Col 5.

- 109 Scottish Prison Service. Written submission.
- 110 Her Majesty's Inspectorate of Prisons Scotland. Written submission.
- 111 Her Majesty's Inspectorate of Prisons Scotland. Written submission.
- 112 Standards, Procedures and Public Appointments Committee. *Official Report*, 3 October 2019, Col 14.
- 113 Standards, Procedures and Public Appointments Committee. *Official Report*, 3 October 2019, Col 14.
- 114 Hannah Graham. Written submission.
- 115 Scottish Prison Service. Written submission.
- 116 Scottish Prison Service. Written submission.
- 117 Standards, Procedures and Public Appointments Committee. *Official Report*, 3 October 2019, Col 14.
- 118 Dr Hannah Graham. Written submission.
- 119 Dr Hannah Graham. Written submission.
- 120 [Written submission to the Finance and Constitution Committee from the Association of Electoral Administration](#); [Written submission to the Finance and Constitution Committee from the Scottish Assessors Association](#); [Written submission to the Finance and Constitution Committee from the Electoral Management Board Scotland](#); [Written submission to the Finance Committee from the Electoral Commission Scotland](#).
- 121 Scottish Elections (Franchise and Representation) Bill. Financial Memorandum, paragraph 28.
- 122 Scottish Refugee Council Written submission.
- 123 Standards, Procedures and Public Appointments Committee. *Official Report*, 3 October 2019, Col 18.
- 124 Scottish Elections (Franchise and Representation) Bill. [Financial Memorandum](#) , paragraph 21.
- 125 [Written submission to the Finance and Constitution Committee from the Scottish Assessors Association.al%20Documents/02\\_Scottish\\_Assessors\\_Association.pdf](#)
- 126 Standards, Procedures and Public Appointments Committee. *Official Report*, 3 October 2019, Col 18.
- 127 Standards, Procedures and Public Appointments Committee. *Official Report*, 3 October 2019, Col 19.
- 128 Standards, Procedures and Public Appointments Committee. *Official Report*, 10 October 2019, Col 13

- 129 [Written submission to the Finance and Constitution Committee from the Scottish Assessors Association.](#)
- 130 [Written submission to the Finance and Constitution Committee from the Scottish Assessors Association.](#)
- 131 [Letter from the Scottish Government](#) on the Financial Memorandum, September 2019.
- 132 Standards, Procedures and Public Appointments Committee. *Official Report*, 10 October 2019, Col 13.
- 133 Delegated Powers and Law Reform Committee. Report on the Scottish Elections (Franchise and Representation ) Bill: Stage 1, 43rd Report, 2019.
- 134 Jamie Halcro Johnston MSP and Tom Mason MSP dissented from this paragraph.

