



John Griffiths AM
Chair
Equality, Local Government and Communities Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Your ref:
Our ref: EJ/HF

6 September 2018

Dear John,

Voting rights for prisoners

The Wales Act 2017 gave the National Assembly the power to make decisions in relation to the institution's electoral and organisational arrangements. As you know, the Assembly Commission is leading work to explore how these powers might be used to make our legislature a more effective, accessible and diverse legislature.

As part of this work, the Commission is considering potential reforms to the franchise for Assembly elections, and as I announced in July 2018, we intend to lower the minimum voting age for Assembly elections to 16 with effect from the 2021 election. By doing so we hope to raise political awareness, participation and understanding of their national parliament among young people.

My Written Statement to the Assembly also addressed prisoner voting and my intention to write to you to invite the Equality, Local Government and Communities Committee to consider undertaking an inquiry into this issue.

I am mindful of the Assembly's human rights obligations under international law in relation to prisoners' voting rights. At present, most prisoners in the UK are prohibited from voting in all elections, although prisoners on remand may vote.

Croesewir gohebiaeth yn Gymraeg neu Saesneg / We welcome correspondence in Welsh or English

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However, successive judgments of the European Court of Human Rights have found the UK to be in breach of Article 3 of Protocol 1 of the European Convention on Human Rights. The judgments, all of which predate the coming into force of the Assembly's competence on electoral matters under the Wales Act 2017, make clear that compliance with the Convention does not require all prisoners to be able to vote, rather that considered decisions should be taken about the voting rights of prisoners in elections to legislatures.

While the UK Government has taken some steps to address this ruling, the Wales Act 2017 now enables the Assembly and Welsh Government to be in a position to remedy any breach of international human rights obligations relating to prisoner voting in relation to Assembly and local government elections.

As a Commission, our approach is to take steps to legislate in areas where there is cross-party support and where mandated by the Assembly. The issue of prisoners' voting rights is not one which has been considered by the Assembly as yet.

The legal, ethical, democratic, practical and human rights issues relating to prisoner voting are significant, requiring thorough consideration and judgement.

During the consultation period, the *Creating a Parliament for Wales* consultation was brought to the attention of a range of justice, prison, and victim support stakeholders. However, only 12 organisations responded to the questions on prisoner voting, none of which represent prisoners, prisons or victims of crime. This points to the need for thorough, focused stakeholder engagement work and evidence gathering before any conclusions are reached on whether, and, if so, how and when, prisoners should be enfranchised in Wales.

For that reason, I would strongly welcome the Equality, Local Government and Communities Committee holding an inquiry to examine the principle of whether prisoners should be allowed to vote in Assembly elections.

To assist you in your consideration of this request, I enclose a brief note on the current UK Government position, developments in Scotland as a result of the recent devolution of electoral law to the Scottish Parliament, the outcome of the Commission consultation and an overview of legal issues in this area.



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I realise that your Committee's workload is significant, but I hope that your Committee will consider that this is an interesting and important area of work and that time can be found at some point to undertake this work on behalf of the Assembly.

I look forward to your response. I am copying this letter to Alun Davies AM, Cabinet Secretary for Public Services and Local Government.

Yours sincerely,

A handwritten signature in blue ink that reads "Elin Jones".

Elin Jones AM
Llywydd

cc Alun Davies AM, Cabinet Secretary for Public Services and Local Government



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Annex: Prisoners and voting rights

Most prisoners in the UK are prohibited from voting in all elections, although prisoners on remand may vote. However, successive judgments of the European Court of Human Rights have found the UK to be in breach of Article 3 of Protocol 1 of the European Convention on Human Rights. The judgments, all of which predate the coming into force of the Assembly's competence on electoral matters under the Wales Act 2017, make clear that compliance with the Convention does not require all prisoners to be able to vote, rather that considered decisions should be taken about the voting rights of prisoners in elections to legislatures.

UK Government approach

In response to these rulings, in November 2017 the UK Government announced its intention to give prisoners released on temporary licence or on home detention curfew the right to vote in elections in the UK. It will also, in future, be made clearer on sentencing that imprisonment involves losing the right to vote. These changes will be achieved through the introduction and clarification of administrative arrangements and guidance; no legislation is required. The UK Government estimates that these changes will affect up to 100 offenders across the UK at any time; it is not known how many people it would affect in Wales.

The UK Government's approach has been endorsed as a proportionate response by the Council of Europe, which is responsible for overseeing the implementation of judgments from the European Court of Human Rights. The endorsement does not bind the Court, which will not express a legal view on the adequacy of the arrangements unless and until a further case on prisoner voting in the UK is referred to it.

Welsh Government proposals

In 2017, before the UK Government announced its intentions, the Welsh Government consulted on the local government franchise in Wales, including the issue of prisoner voting. Responses to the consultation were finely balanced on the principle of prisoner voting.

In January 2018, as part of its preparation for the Local Government Bill due for introduction during the course of this legislative year, the Welsh Government



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announced that it was exploring proposals to allow prisoners who were due for release within the term of the council to be elected to be able to vote in local government elections in Wales.

Scotland

The Scottish Parliament's Equalities and Human Rights Committee published a report in May 2018 on its twelve-month inquiry into prisoners and the franchise in Scotland. It recommended by a majority that: "the Scottish Government [...] legislate to remove the ban on prisoner voting in its entirety". The report also highlighted a need for the Scottish Government to consider the practicalities and how the principle should be given effect, and for wide and detailed consultation with stakeholders, victims of crime and the general public.

The Scottish Government desisted from taking action, including consulting on its own proposals for prisoner voting, while the Scottish Committee undertook its inquiry. Responding to the Committee's report in July 2018, the Scottish Government stated:

"We will bring forward a consultation, setting out options for ensuring compliance with the ECHR. You noted that the Scottish Government should consider a plurality of views when options are under consideration and this should include victims of crime. During the consultation period we will liaise with victim support organisations and members of the public to ensure their views are heard as part of the consultation. We will aim to issue this consultation later in 2018."

"It is our view that the Scottish Parliament should not give the vote to all prisoners. We are not persuaded of the case for enfranchising all prisoners and we do not think that that is required in order for us to comply with the European convention on human rights."

Legislative competence

As noted above, the European Court of Human Rights has ruled on several occasions that the UK is in breach of its international obligations as a result of the blanket ban on prisoner voting. The Assembly and Welsh Government are bound by the UK's international obligations insofar as those obligations are within the

scope of their powers. In particular, section 108A(2)(e) of GoWA 2006 provides that legislating in a manner that is incompatible with Convention rights is outside the Assembly's legislative competence.

The reserved powers model of devolution instituted by the Wales Act 2017 devolved legislative competence over who is able to vote in Assembly elections and local elections in Wales. The result is that the Assembly and Welsh Government may now be in a position to remedy any breach of international human rights obligations relating to prisoner voting, should another case brought before the European Court of Human Rights find that the administrative changes being made by the UK Government were not considered sufficient.

However, the Act also includes some constraints of relevance to whether prisoners should be entitled to vote in Assembly elections. These include reservations relating to: criminal proceedings, including sentencing; and modifications to the law about sentences, including the effect and operation of sentences. In addition, implementing an extension of the franchise to some or all prisoners would require the involvement of the criminal justice system, including the police, court service and the prison service. These bodies are reserved authorities under the Act.

Creating a Parliament for Wales consultation

The Assembly Commission's *Creating a Parliament for Wales* consultation took place between February and April 2018, and included questions on the UK and Welsh Governments' proposals in relation to prisoner voting:

- Of 1,450 responses to a question about the extent to which respondents agreed with the UK Government's proposals, **54 per cent (780)** either strongly agreed or agreed that prisoners released on home detention or temporary licence should be allowed to vote in Assembly elections, and **34 per cent (490)** either strongly disagreed or disagreed.
- Of 1,440 responses to a question about the extent to which respondents agreed with the Welsh Government's proposals, **49 per cent (700)** either strongly agreed or agreed that prisoners should be able to vote in Assembly elections if they were due for release during the period for which Members were being elected to serve, and **36 per cent** either strongly disagreed or disagreed.



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The consultation also invited respondents to identify any issues, risks or benefits which should be considered in relation to prisoners' voting rights in Assembly elections. 510 responses were received to this question, of which:

- 28 per cent (140) were of the view that prisoners should not be allowed to vote. Reasons given included: the loss of rights, including voting rights, being part of prisoners' punishments; and that prisoners should not have a say in who governs the country and makes laws.
- 18 per cent (90) said all prisoners should be allowed to vote. Reasons given included: prisoners being enfranchised in other countries; prisoners being affected by decisions made by the Assembly; and prisoners feeling more a part of society if they were allowed to vote.
- 12 per cent (60) referred to prisoner rehabilitation, arguing that entitlement to vote would help prisoner reintegration into society.

Conclusion

The Commission considered the consultation responses in July 2018 and the Llywydd subsequently issued a Written Statement to the Assembly on this matter stating the Commission's conclusion:

"There is the question of our human rights obligations under international law in relation to votes for prisoners. The legal, ethical, democratic, practical and human rights issues relating to prisoner voting require thorough political consideration and judgement. We believe that further work is needed in this area to consider further evidence and this requires more time than we have to be able to properly consider it for inclusion in the Commission's legislation. As a legislature, we must take our obligations seriously. As such, the Commission believes that the right approach in the first instance is to invite the Equality, Local Government and Communities Committee to consider holding an inquiry to examine the issue of whether prisoners from Wales should be allowed to vote in elections to the National Assembly."

Issues of relevance to such an inquiry might include:



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- Arguments for and against some or all prisoners being enfranchised, for example whether distinctions might be drawn between different categories of prisoner on the basis of sentence length or types of offence;
- Human rights issues to which enfranchising some, all or no prisoners might give rise;
- Practical issues, for example those relating to electoral registration, voting, prisoner engagement with the political process, and the provision of political and citizenship information and education;
- Cross-border issues arising from prisoners from Wales being imprisoned in England, and vice versa.