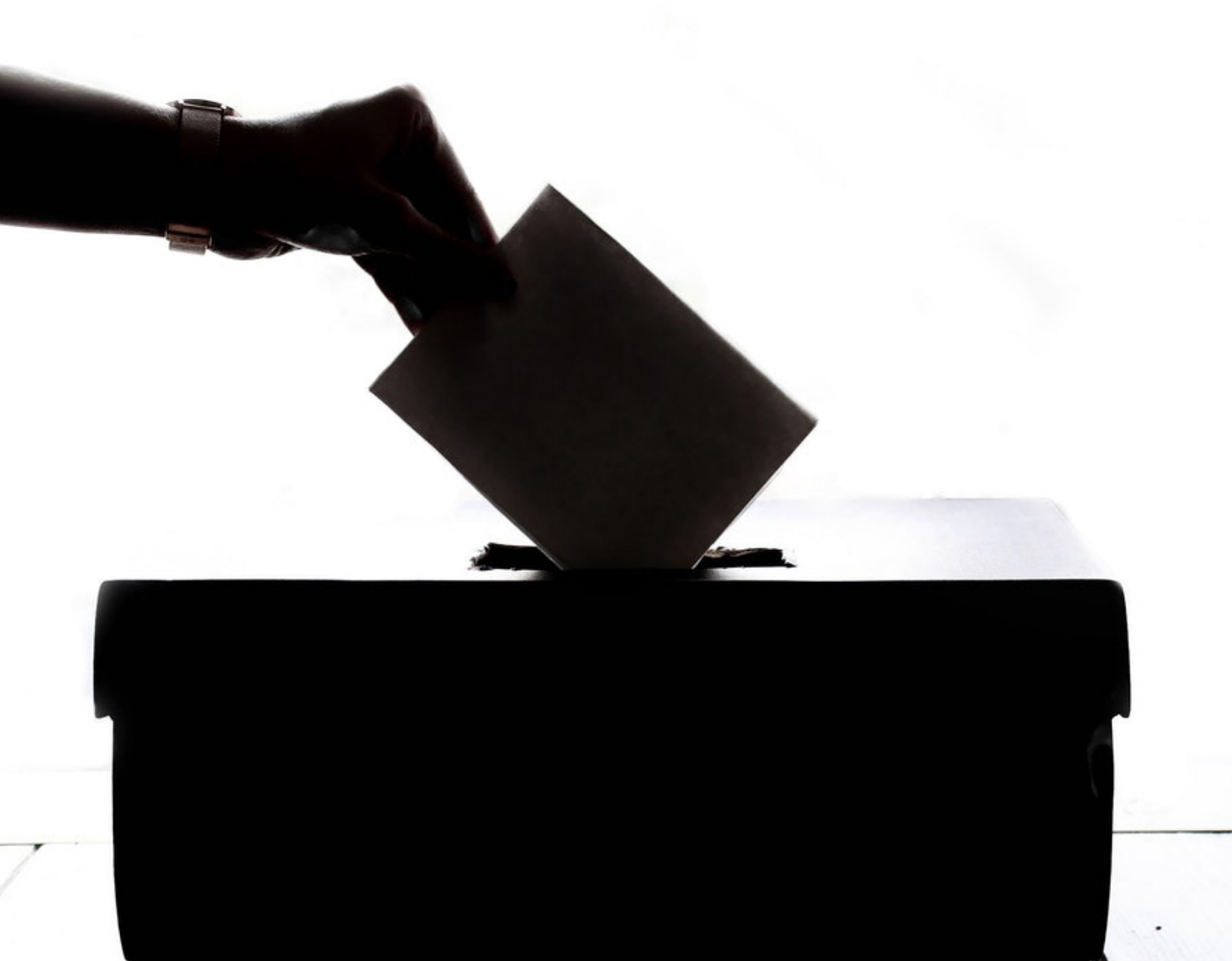


Voting rights for prisoners

June 2019



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

Tel: **0300 200 6565**

Email: **SeneddCommunities@assembly.wales**

Twitter: **[@SeneddELGC](https://twitter.com/SeneddELGC)**

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Voting rights for prisoners

June 2019



About the Committee

The Committee was established on 28 June 2016. Its remit can be found at:
www.assembly.wales/SeneddCommunities

Committee Chair:



John Griffiths AM
Welsh Labour
Newport East

Current Committee membership:



Mohammad Asghar AM
Welsh Conservatives
South Wales East



Huw Irranca-Davies AM
Welsh Labour
Ogmore



Mark Isherwood AM
Welsh Conservatives
North Wales



Carwyn Jones AM
Welsh Labour
Bridgend



Jenny Rathbone AM
Welsh Labour
Cardiff Central



Leanne Wood AM
Plaid Cymru
Rhondda

The following Member was also a member of the Committee during this inquiry.



Gareth Bennett AM
UKIP Wales
South Wales Central

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Chair's foreword

Prisoner voting is an emotive issue. There are strong views for and against. We have strived to ensure all sides are heard and carefully considered. The weight of evidence we received in writing, during prison visits and at committee meetings was clearly in favour of giving prisoners the vote. And in the main it supported extending the franchise to all prisoners.

Our online discussion provided a more varied response, with alternative viewpoints and a wider sense of public opinion. It was conducted in the right spirit with respect for the views of others. The Committee itself held a range of views or displayed different approaches to balancing the complex moral, ethical, legal and practical issues. Members tested the evidence in detailed discussion considering all aspects.

In reaching a compromise we have sought to find an acceptable way forward. No doubt many will believe that giving even one more prisoner the vote is a step too far; whilst those who support full enfranchisement will be disappointed we have not been bolder. In recommending the vote for those sentenced to less than four years we have recognised the evidence to our inquiry, public opinion and the different views of Committee members.

Devolution of powers over Assembly and local elections in Wales is welcome and significant. I trust our report will prove helpful in introducing new electoral arrangements and widening participation in our developing democracy.

John Griffiths AM
Committee Chair

Recommendations

Recommendation 1. We recommend that the Welsh Government and National Assembly for Wales Commission introduce legislation to give all those Welsh prisoners who are serving custodial sentences of less than four years the right to vote in devolved Welsh elections. Mohammad Asghar and Mark Isherwood do not agree with this recommendation..... 38

Recommendation 2. We recommend that if the general franchise is extended to 16 and 17 years old, the Welsh Government and National Assembly for Wales Commission introduce legislation to give 16 and 17 year olds in custody the vote on the same basis as prisoners over 18 years old. Mohammad Asghar and Mark Isherwood do not agree with this recommendation 38

Recommendation 3. We recommend that both the Welsh Government and the Assembly Commission commit to ensuring that any relevant legislation changing the franchise is in place at least six months before any election which is due to occur..... 46

Recommendation 4. We recommend the Electoral Commission extend the membership of the Welsh Electoral Co-ordination Board to include representatives from the Prison Service..... 46

Recommendation 5. We recommend that the Welsh Government discuss and come to agreement with the UK Government to ensure all prisons with Welsh prisoners designate an Election Co-ordinator within the prison staff.....47

Recommendation 6. We recommend that the Welsh Government and Electoral Commission pursue a Memorandum of Understanding with the UK Government and Prison Service to ensure that all eligible prisoners are registered to vote and are supported to take part in any elections for which they are eligible.....47

Recommendation 7. We recommend that the Welsh Government and National Assembly for Wales Commission introduce legislation for prisoners to register either at their last home address, the address they will be released to or via a declaration of local connection. In doing so they should ensure relevant safeguards are put in place to protect victims and potential victims of crimes..... 48

Recommendation 8. We recommend that the Welsh Government and National Assembly introduce legislation to enable prisoners who are eligible to vote to do this either via postal or proxy voting. Discussions should take place with the UK Government to ensure that any logistical barriers are minimised. 48

Recommendation 9. As part of the work in setting up a Memorandum of Understanding detailed in recommendation 6, we recommend that the Welsh Government explores with the UK Government, how registered candidates, elected politicians and participating party representatives could have access to meet with prisoners. 49

Recommendation 10. We recommend that the Welsh Government discuss and seek agreement with the UK Government on providing access to Welsh media, both print and broadcast for those prisons with a sizable Welsh population. 49

Recommendation 11. We recommend that the Electoral Commission work closely with the Prison Service to ensure that all prisoners who are eligible, are registered to vote, and have the right and accessible information to enable them to make an active decision about whether to vote. 49

1. Introduction

Following changes to the devolution settlement, the Assembly now has powers to change the franchise for local government and Assembly elections. With legislation expected on these issues, and following a request from the Llywydd, we decided to explore the issue of voting rights for prisoners.

- 1.** The Assembly now has powers over Welsh elections (Assembly and local government), and could legislate to change the franchise or other electoral arrangements. Any legislation passed by the National Assembly must be compatible with the European Convention on Human Rights. Any changes to the electoral franchise (including enfranchising some or all prisoners) would require primary legislation.
- 2.** In September 2018, the Llywydd wrote to us asking if we would consider undertaking an inquiry into voting rights for prisoners.¹ This followed a consultation by the Assembly Commission on changes to the Assembly's arrangements, including the electoral franchise.² It included questions about prisoner voting - 49% of respondents 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, whilst 36% disagreed. 13% neither agreed or disagreed, and 2% did not know. There were 1,440 responses to this question but, as the Llywydd noted, there was a limited response from groups that represented prisoners, victims of crime or prisons.
- 3.** Before the Commission's consultation in 2018, the Welsh Government consulted on local government electoral reform, including questions on prisoner voting.³ Of the 800 respondents, 50% agreed that prisoners should be allowed to register to vote, and 48% disagreed.⁴

¹ [Letter to Chair, Equality, Local Government and Communities Committee, September 2018](#)

² [Assembly Commission, Consultation on creating a parliament for Wales: Summary of main findings, July 2018](#)

³ [Welsh Government, Consultation Document, Electoral Reform in Local Government in Wales, July 2017](#)

⁴ [Welsh Government, Consultation – Summary of responses, Electoral Reform in Local Government in Wales, April 2018](#)

4. While this may not be an issue that affects a large section of the population, as the Llywydd highlighted, the decision involves significant “legal, ethical, democratic, practical and human rights issues”,⁵ which need detailed consideration. As ours is the Committee most likely to be considering the anticipated forthcoming local government Bill (if introduced), we felt it would be helpful to explore this issue ahead of time, and without the tight timeframes that are placed on legislative scrutiny.

The Committee’s terms of reference were to consider:

- Arguments for and against giving some or all prisoners the right to vote in Welsh elections, and whether distinctions might be drawn between different categories of prisoner on the basis of sentence length, expected date of release, or types of offence;
- Practical issues, such as electoral registration (including address), voting method, prisoner engagement with the political process, the provision of political and citizenship information and education
- Cross-border issues arising from prisoners from Wales being imprisoned in England and vice versa;
- Whether special consideration apply to young offenders in custody if the franchise is extended to 16 and 17 year olds generally, and
- Other countries approaches to prisoner voting.

5. We ran a public written consultation from 12 November 2018 to 7 January 2019. We received 7 responses. Alongside this, we hosted an online discussion forum. We received 53 contributions to the forum, which helped us better understand the wide range of views on this issue.

6. In addition to this written evidence, we visited HMP Parc in January 2018, where we met with prisoners, prison staff and the Prison Governor. We also visited HMP Eastwood Park in February 2019 where we met prisoners and prison staff. One of our Members, Jenny Rathbone AM, also visited HMP Cardiff in March 2019 to discuss current arrangements for remand prisoners to vote.

7. We took oral evidence from:

- The Wales Governance Centre;

⁵ Letter to Chair, Equality, Local Government and Communities Committee, September 2018

- The Prison Reform Trust;
- Safer Wales;
- The Youth Justice Board;
- The Electoral Commission;
- The Association of Electoral Administrators;
- The Victim's Commissioner for England and Wales; and
- The Minister for Housing and Local Government (the Minister).⁶

8. We have drawn on international experience, in particular that of the Republic of Ireland, Canada and New Zealand. We have also taken account of the debate on this issue at a UK level, both in the UK Parliament and the Scottish Parliament.

9. We note that during our consideration of this issue, there were two debates within the Assembly that addressed prisoner voting. On 30 January 2019, a motion was agreed that called for the right for prisoners to vote in Welsh elections.⁷ The relevant part of the motion was “To propose that the National Assembly for Wales:....calls for....e) the right to vote for prisoners in Welsh elections”. Two weeks later, a further motion that prisoners should not be given the right to vote in Welsh elections was not agreed.⁸ The relevant part of the motion was “To propose that the National Assembly for Wales.....2. Resolves that prisoners should not be given the right to vote in Welsh elections”.

10. We note the emphasis placed by the Minister on our work and resulting conclusions and recommendations.⁹ Accordingly we have considered the issues very carefully before finalising our report.

⁶ All of the oral evidence sessions can be accessed on the Committee's [webpage](#).

⁷ The motion was agreed with 36 votes in favour, one abstention and 14 voting against the motion.

⁸ The motion was rejected with 13 votes in favour, one abstention and 34 voting against the motion.

⁹ ELGC Committee, 27 March 2019, RoP [8]

2. Background

In the UK, prisoners serving custodial sentences were banned from voting in 1983. This was challenged in the courts in 2001. A ruling by the European Court of Human Rights stated that the blanket ban contravened the European Convention on Human Rights. The UK Government made some minor changes to its policy, which were endorsed by the Council of Europe as a proportionate response to the ruling.

11. The current ban on prisoner voting has roots in both Greek and Roman law. In ancient Greece, “civic death” resulted in some offenders losing all civil rights, including the right to property and possession, the right to inherit; the right to appear in court and the right to vote. In Roman law, any person declared as “infamous” would also lose a number of rights, including serving in the army, making speeches and voting.¹⁰

12. There has been some form of ban on prisoners voting in the UK since the *Forfeiture Act 1870* denied offenders the rights of citizenship, and the right to vote. The nature of the ban and the persons affected has changed throughout the period since this Act.¹¹ The current franchise, which sees most prisoners barred from voting, was introduced by *the Representation of the People Act 1983* (the 1983 Act).

13. The 1983 Act banned all prisoners serving custodial sentences from voting in parliamentary and local elections. Prisoners on remand (who are awaiting trial or awaiting sentencing) can vote, as can other limited categories of prisoners convicted of offences such as defaulting on fines or contempt of court. One of the unexpected lines of our inquiry related to the effectiveness of the current provisions for remand prisoners, which we explore in chapter 4.

14. In 2001, the ban was challenged in the courts by three prisoners, including a Mr. Hirst. The High Court ruled that that the ban was compatible with the European Convention on Human Rights (the Convention). One of the prisoners (Mr. Hirst) took this case to the European Court of Human Rights (the ECtHR) and,

¹⁰ [Written evidence, VRP06, Dr Cormac Behan, School of Law, University of Sheffield](#)

¹¹ [Written evidence, VRP05, Colin Murray, Newcastle Law School, Newcastle University](#)

in 2005, the Court ruled by 12 votes to five¹² that the ban violated Article 3 of Protocol Number 1 to the Convention.¹³ In this ruling, the ECtHR stated that human rights law allows states a broad degree of discretion in setting electoral law, but that the blanket ban barring all prisoners from voting fell outside of any acceptable “margin of appreciation”. The ECtHR ruled that the ban was indiscriminate and disproportionate. This does not mean that countries cannot have restrictions on prisoner voting, but that any ban must be proportionate.

In this report, we use a number of terms such as margin of appreciation, absolute rights and qualified rights.

Margin of appreciation: Rights Info¹⁴ describes it as “the leeway that the Court grants to states in recognition of the cultural and political differences between them. It allows for a degree of divergence between the states and recognises that the individual states are better placed to make decisions with regard to public morals, for example. The Court gives the state some discretion when making the initial decision as to whether restricting a person’s human rights is necessary to pursue a legitimate aim.

The margin of appreciation aims to give the flexibility required to ensure the member states’ obligations under the Convention are complied with, while respecting individual states’ sovereignty”.

Qualified rights: These are rights which may be interfered by the state within order to protect the rights of another or the wider public interest.¹⁵

Absolute rights: These are rights which can never be breached or interfered with.

15. The Hirst ruling sparked a political debate on the relationship with the ECtHR and parliamentary sovereignty. The Hirst ruling is often cited by those who believe the ECtHR overstepped its role.¹⁶ The debate continued for over a decade, but the

¹² [Grand Chamber Judgement Hirst v the United Kingdom \(No. 2\)](#)

¹³ Article 3 provides that states should “hold free elections...under conditions which will ensure the free expression of the opinion of the people”.

¹⁴ Rights Info is a registered UK charity which “builds knowledge and support for human rights in the UK by producing engaging, accessible and beautifully-presented online human rights content”. www.rightsinfo.org

¹⁵ [Council of Europe: European Convention on Human Rights Toolkit](#)

¹⁶ It is worth highlighting that the European Court of Human Rights is distinct and separate from the European Union bodies, which is a common misconception.

case was not resolved. During this period, various solutions were discussed or consulted upon by various UK Governments, but no changes were made.

16. In November 2017, the then Secretary of State for Justice and Lord Chancellor, David Lidington MP, announced that administrative changes would be introduced to address the Hirst ruling, while maintaining the ban on convicted prisoners voting. This included making it clear as part of the sentencing process that imprisonment results in the loss of a vote, and amending guidance to allow those who are released into the community on temporary licence and home detention curfew (electronic tag) to vote. The UK Government estimated the latter change would affect around 100 offenders at any one time.¹⁷ This approach was endorsed as a proportionate response¹⁸ by the Committee of Ministers of the Council of Europe.¹⁹

17. As a result of the changes, those who can vote in UK elections include:

- Prisoners on remand (both unconvicted and those who are convicted but awaiting sentencing);
- Prisoners on temporary licence or home-detention curfew (electronic tag);
- People in prison for contempt of court; or
- People in prison for defaulting on fines.

18. Although it is not possible to accurately define this, we have estimated that around 17% of prisoners in England and Wales are currently eligible to vote. This means that – as a very rough estimate – approximately 800 out of 4,704 Welsh prisoners could be eligible to vote under the current legal framework.²⁰

19. Last year, the Scottish Parliament’s Equalities and Human Rights Committee recommended by a majority that the Scottish Government legislate to give the vote to all prisoners.²¹ In responding the Scottish Government stated that it would consult on the way forward, but that it did not agree that all prisoners should be

¹⁷ [UK Government, Oral statement to Parliament, Secretary of State’s oral statement on sentencing, 2 November 2017](#)

¹⁸ [Law Gazette, News Article](#), 7 December 2017

¹⁹ This body is responsible for overseeing the implementation of judgements from the European Court of Human Rights.

²⁰ The actual figures will be slightly lower because of the breadth of the statistical categories.

²¹ [Scottish Parliament, Equalities and Human Rights Committee, Prisoner Voting in Scotland](#), May 2018

given the vote. Its preference is to enfranchise prisoners serving “short sentences”, noting that fixing the threshold at 12 months or less would be “consistent with the distinction within the Scottish criminal justice system between the sentencing powers of courts of summary jurisdiction and courts of solemn jurisdiction”.²²

Prisoners in Wales

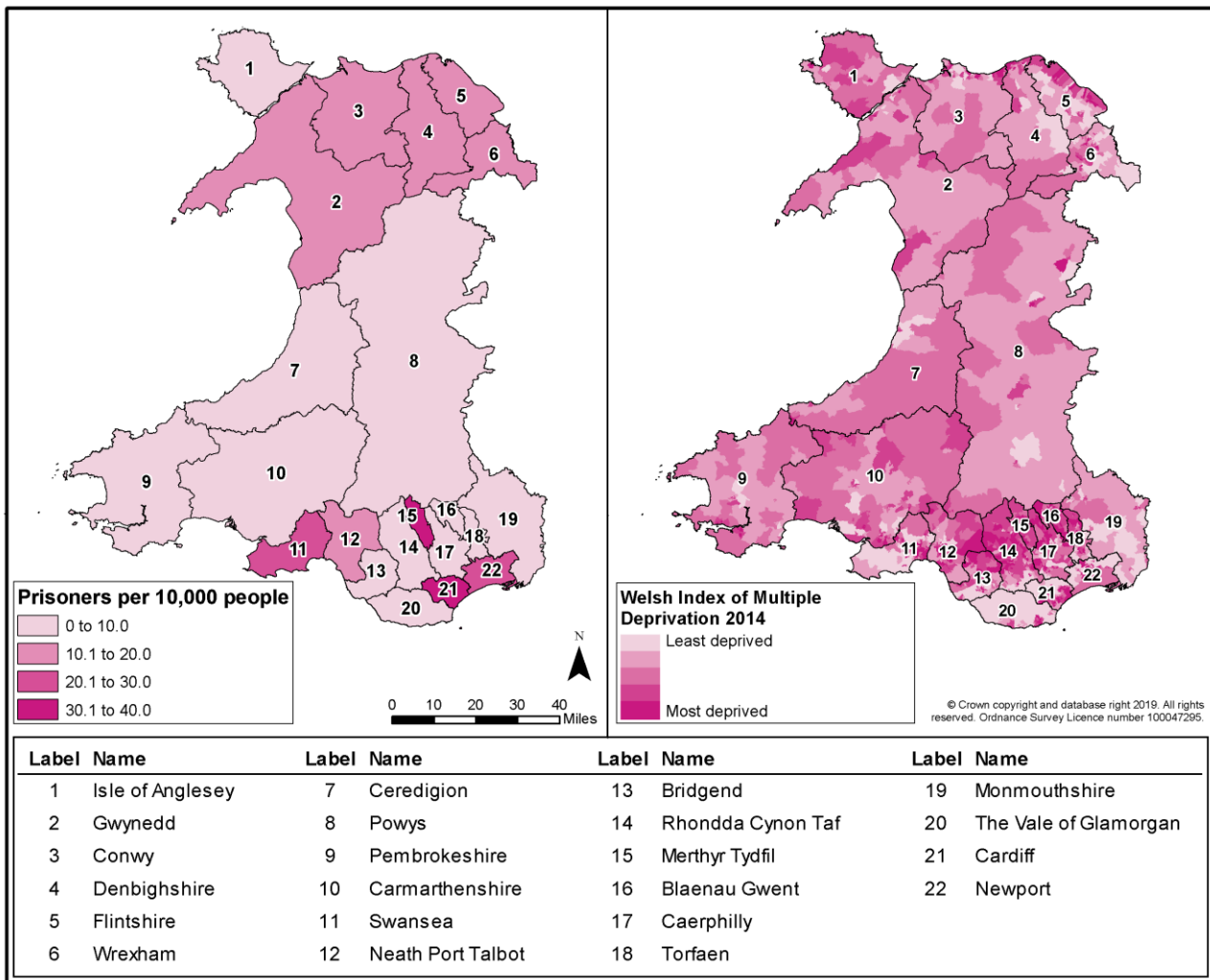
A recent report by the Wales Governance Centre provided the first published set of data on sentencing and custody in Wales. The data shows that as of June 2018:

- Wales has the highest imprisonment rate in Western Europe;
- 4,074 Welsh people (based on home address before entering custody) were in prison;
- 37% of all Welsh prisoners are held in England;
- Wales recorded a higher average custody rate than England at the Magistrates’ and Crown courts between 2010-2017;
- A greater number of short-term custodial sentences were handed out in Wales than England in 2010-2017; and the average custodial sentence length is longer in England than Wales;
- The level of racial disproportionality was higher amongst the Welsh prison population than the English prison population in 2017;
- All female Welsh prisoners (261 in total) are held in prisons outside of Wales;
- Women are more likely to receive short-term custodial sentences than men. One in four women were sentenced to one month or less between 2010 and 2017 in Wales;
- The number of Welsh people in prison serving sentences of four years or more increased by 8% (from 1,615 to 1,745) between September 2017 and September 2018.
- In 2017, 1,624 Welsh people were serving sentences of four years or more. This contrasts with 1,803 serving sentences less than four years.²³

²² Scottish Government, Letter to Equalities and Human Rights Committee, July 2018.

²³ Cardiff University, Wales Governance Centre, Sentencing and Immediate Custody in Wales: A Factfile, January 2019

Map – Prison population by Welsh Local Authority, December 2018²⁴



²⁴ Supplementary Evidence – Wales Governance Centre – Prison Population by Welsh Local Authority

3. Principle of prisoner voting

Members of the Committee hold a range of views on the principle of extending the franchise. We could not come to a consensus view on this, but the majority believe the franchise should be extended to give more Welsh prisoners the right to vote. The majority view is that prisoners serving sentences of less than 4 years should be allowed to vote.

20. In this chapter we outline the evidence we considered on both sides of the argument.

21. Our consideration of this issue is based on two main issues: the principle of prisoner voting, and the practicalities of how prisoners could vote if a decision were taken to enfranchise some or all prisoners. We could not come to a consensus about the principle, and our different views are set out in this chapter.

Victims of crime

22. Throughout our consideration, the impact that any change may have on victims has been at the forefront of our consideration. We struggled to gather evidence from victims or representatives of victims, but Safer Wales (who work with victims and perpetrators of crime) and the Victims' Commissioner for England and Wales both gave oral evidence.

23. We asked all those who gave evidence about the balance between the rights of victims and prisoners. Even the Victims' Commissioner, who does not support giving the prisoners the vote, said that there is "no trade off" between the two groups' rights. She did go on to explain that she had concerns that the rights of victims are not currently fully protected within the wider criminal justice system.²⁵

24. We think that it is a false dichotomy to pitch the rights of prisoners and the rights of victims of crime against each other. Victims of crime are not a homogenous group. Anyone can be a victim of crime. People can be both a victim of crime as well as a perpetrator.

25. None our witnesses had discussed the issue of prisoner voting directly with victims of crime. But a number did say that the overriding priority for many

²⁵ ELGC Committee, 7 March 2019, RoP [177]

victims is ensuring that others do not become victim to the same crime. Safer Wales told us:

“I’ve never heard a victim of crime, when you ask them what they want, talking about the removal of the right to vote, but I have heard them say they don’t want that crime happening again, they don’t want it happening to other people, and I think that’s really important. ...But, actually, the victims that we work with and have worked with previously, they want to stop the bad things happening, they want to stop the crimes from happening again, they want to make the community safer. Yes, they also want punishment, but the biggest thing is not having that crime happening again.”²⁶

26. We note the evidence from Safer Wales that highlights that it is the act of imprisonment, not a criminal conviction, that removes the right to vote:

“... we’re not talking about offending, we’re talking about imprisonment, in that sense. And the reason why I’m making that distinction is because there will be people who are offending who are not in prison, who are still able to vote. So, there will be victims of people who have committed an offence, but they’re in the community. So, straight away, there’s a difference.”²⁷

3. 1. No change in the franchise

27. We will now outline the arguments that were made to support the current arrangements. We received little evidence in support of maintaining the status quo.

28. Each of the heading titles indicate one of the arguments made in support of not changing the franchise, and each section opens with a quote from the evidence we received.

Voting is not a universal or absolute right

“Prisoners forfeit their right to vote the second that they commit a serious enough offence to warrant incarceration, since it detrimentally

²⁶ ELGC Committee, 20 February 2019, RoP [28]

²⁷ ELGC Committee, 20 February 2019, RoP [36]

impacts society, thus they shouldn't have a say in the way that society is run."²⁸

29. The ECtHR made it clear that countries have a margin of appreciation in applying its rulings regarding prisoner voting. This means some limitation on prisoner voting is not in contravention of the Convention. Further rulings by the ECtHR confirm this, such as *Scoppola v. Italy 2012*, which stated that it was not disproportionate to remove the voting rights for a murderer sentenced to life imprisonment.²⁹

30. Academic Colin Murray said:

“Even though the right to vote is a human right, it does not follow that it is an *absolute* right. Foreign nationals and children, for example, can legitimately be denied the vote without violating the UK’s ECHR commitments.”³⁰

The public does not support prisoner voting

31. Tests of public opinion do not currently support further extension of the franchise, but there are some indications that attitudes are changing. YouGov polling in “Wales and the Midlands” indicated that in 2015, 73% of people asked thought no prisoners should be allowed to vote.³¹ In 2017, this had decreased to 60%.³² However, it does not appear that further enfranchisement has the support of the public. Even those in favour noted that they were out of kilter with public opinion.³³

32. Of the consultations conducted in Wales by the Assembly Commission, Welsh Government and our Committee, it is clear that opinion is, at the very best, divided. None of these could be deemed to be representative of the public, as they rely on people choosing to engage with the consultation.

²⁸ Dialogue Web Discussion: “Do you think prisoners should be allowed to vote in Welsh elections?”

²⁹ European Court of Human Rights, Information Note on the Court’s Case-law 152, *Scoppola v. Italy*, May 2012

³⁰ Written evidence, VRP05 Colin Murray, Newcastle Law School, University of Newcastle, paragraph 10

³¹ YouGov, Survey Results, January 2015

³² YouGov, Survey Results, Question 2, 30 October 2017

³³ ELGC Committee, 23 January 2019, RoP [15]

Removing voting rights is a proportionate punishment

“[The loss of voting rights] is an appropriate part of the punishment.”³⁴

33. As a number of respondents to our Dialogue submission noted, imprisonment results in the loss of a number of rights, including privacy and the right to family life, and that losing the right to vote is part of this package of punishment.³⁵

34. The Victim’s Commissioner for England and Wales said:

“I do not support the notion that any serving prisoner should be given the vote. Someone is sent to prison as a punishment for breaking the law, and that is very important for victims to hear that, those directions in court, and to follow through. Because, for them, prison means that, for a fixed period of time, you are deprived of the right to live in a society as a free citizen, and therefore that ought to include the right to participate in elections.”³⁶

Voting is part of the social contract

“Society is governed by agreed rules for the protection of everybody. They, by breaking those rules decided they did not want [to] abide by those rules. They therefore cannot expect to have the positive benefits of society.”³⁷

35. This has been a central thrust of successive UK Governments’ arguments in relation to the challenges to the ban. They argued that convicted prisoners have breached the social contract and it is legitimate to remove their right to have a say in the choice of government for the period they are imprisoned.³⁸

36. In outlining the arguments against enfranchisement (which he himself does not agree with), Dr Cormac Behan said that disenfranchisement can be:

³⁴ Dialogue Web Discussion: “Do you think prisoners should be allowed to vote in Welsh elections?”

³⁵ Dialogue Web Discussion: “Do you think prisoners should be allowed to vote in Welsh elections?”

³⁶ ELGC Committee, 7 March 2019, RoP [179]

³⁷ Dialogue Web Discussion: “Do you think prisoners should be allowed to vote in Welsh elections?”

³⁸ European Court of Human Rights, Case of Hirst v The United Kingdom (No. 2) Judgement, paragraph 50, 6 October 2005

“... the most powerful message, both real and symbolic, to both law abiding and non-law-abiding citizens of the importance society places on obeying the rules created by representatives of the people.”³⁹

Prisoners are unlikely to take up the opportunity to vote

37. Both prisoners and prison staff that we spoke to suggested that even if prisoners were given the vote, it was unlikely that many would use it.⁴⁰ This correlates with the evidence from the Republic of Ireland:

“in the first election in which prisoners were allowed to vote, in 2007, 14 per cent of the prison population registered and 10 per cent overall voted, so 75 per cent of those who had registered actually went out to vote....The take up has been generally under 10 per cent since then.”⁴¹

3. 2. Extending the franchise to additional prisoners

38. We will now outline the arguments and evidence in support of an extension to the franchise.

39. With the exception of the Victims’ Commissioner for England and Wales, all the witnesses who expressed an opinion on the general principles supported further enfranchisement in some form. Most argued for full enfranchisement.

40. Opinion on the online discussion forum was more divided. Out of 53 submissions, 38% of participants suggested that restrictions should be put in place to allow only some prisoners to vote; 38% did not support any prisoners being allowed to vote; and 24% supported all prisoners being able to vote.⁴²

Voting is a right not a privilege

“Democracy is defined as a system of government which includes a whole population; a representation of a whole society from every social class and background. Therefore, I believe prisoners should be included in the process.”⁴³

³⁹ [Written evidence, VRP06, Dr Cormac Behan, School of Law, University of Sheffield](#)

⁴⁰ The note of prison visits is available on the [inquiry webpage](#)

⁴¹ Scottish Parliament, Equalities and Human Rights Committee, Official Report, 25 January 2018

⁴² [Dialogue Web Discussion: “Do you think prisoners should be allowed to vote in Welsh elections?”](#)

⁴³ [Dialogue Web Discussion: “Do you think prisoners should be allowed to vote in Welsh elections?”](#)

41. In the Hirst judgement the ECtHR said that the right to vote is not a privilege, adding that the presumption in a democracy should be for “inclusion”. It noted that, except for the right to liberty, prisoners retain all fundamental rights and freedoms in the Convention during imprisonment.⁴⁴ However, as highlighted earlier, the judgment made clear that voting is not an absolute right.

42. In our discussions with prisoners, the concept of voting as a “fundamental” right was raised more than once.⁴⁵

43. Cormac Behan stated “citizens bring rights with them to prison” before listing the international agreements which underpin these rights. He notes that “unless there are substantive reasons otherwise, imprisonment should not remove the right to vote”⁴⁶ The Prison Reform Trust described voting as a “basic human right” and that it was not “a reward to be granted to those whom the Government has judged morally decent”.⁴⁷

44. The Wales Governance Centre also highlighted the international laws that pointed to a more liberal interpretation of the right to vote. These included the UN Office of the High Commissioner on Human Rights’ Basic Principles for the Treatment of Prisoners which states:

“[e]xcept for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms...”⁴⁸

45. They suggest “on this basis, the fact of imprisonment alone should not deprive individuals of their right to vote in elections”.⁴⁹

Prisoners are still citizens

“People in prison remain citizens of Wales (or wherever) and as such should have a right to vote protected.”⁵⁰

⁴⁴ [European Court of Human Rights, Case of Hirst v The United Kingdom \(No. 2\) Judgement, paragraphs 59 and 69, 6 October 2005](#)

⁴⁵ [The note of prison visits is available on the inquiry webpage](#)

⁴⁶ [Written evidence, VRP06, Dr Cormac Behan, School of Law, University of Sheffield](#)

⁴⁷ [Written evidence, VRP03, Prison Reform Trust](#)

⁴⁸ [United Nations Human Rights Office of the High Commissioner, Basic Principles for the treatment of prisoners, December 1990](#)

⁴⁹ [Written evidence, VRP07, Wales Governance Centre](#)

⁵⁰ [Dialogue Web Discussion: “Do you think prisoners should be allowed to vote in Welsh elections?”](#)

46. This was one of the most commonly cited arguments in favour of an extension of the franchise. It was something that came across particularly strongly during our discussions with prisoners. They talked about the practical side of citizenship, such as staying active in family life, but also the more philosophical notion of citizenship.⁵¹

47. The Prison Reform Trust considered that removal of the vote signals that prisoners are not part of society.⁵² They also said when people go to prison the loss of liberty does not mean they should lose “their identity as citizens”.⁵³

48. Safer Wales supported this:

“There are crimes that are serious enough to warrant imprisonment. However, those people are rightly protected by law and are still citizens. They still pay tax on savings and on earnings et cetera. Imprisonment is a loss of liberty and not a loss of a person’s citizenship. Safer Wales considers that, if we as a nation place a high value on equality and inclusivity, including the active participation of citizens, then indiscriminately disenfranchising a group of citizens who are in prison at a given time undermines these very principles we value.”⁵⁴

49. Cormac Behan described the arbitrary nature of the ban:

“If imprisonment, rather than conviction, is the deciding feature, this is a very arbitrary way of denying citizenship rights as many of those who receive a conviction are not given a custodial sentence. The majority of those convicted in the courts will not automatically receive a custodial sentence.”⁵⁵

50. The Prison Reform Trust told us that “symbols do matter”. The removal of the vote indicates “you’re lowering the bar of their expectations. You’re telling them you don’t want them to behave like members of society; you want them to behave differently”.⁵⁶

⁵¹ The note of prison visits is available on the [inquiry webpage](#)

⁵² ELGC Committee, 23 January 2019, RoP [141]

⁵³ ELGC Committee, 23 January 2019, RoP [133]

⁵⁴ ELGC Committee, 22 February 2019, RoP [5]

⁵⁵ [Written evidence, VRP06, Dr Cormac Behan, School of Law, University of Sheffield](#)

⁵⁶ ELGC Committee, 23 January 2019, RoP [141]

Public opinion

“As we’ve seen in a number of policy areas over the years, public opinion changes. Sometimes, legislation leads the way to that change and sometimes legislation follows a change in public opinion.”⁵⁷

51. In the ruling which sparked this debate, the ECtHR said that disenfranchisement should not be based “purely on what might offend public opinion”.⁵⁸

52. We know that extending the franchise to prisoners is not popular. The polling consistently shows opposition to it. But that does not mean that extending the franchise is not the right thing to do. As the Minister told us, sometimes legislation follows public opinion, and other times public opinion follows legislation.⁵⁹

53. In Wales, we have seen this happen with the ban on smoking in public places for example, which did not have comprehensive public support before introduction. We heard a consistent theme through the evidence about the need for political leadership on this issue. The Prison Reform Trust said politicians had “a responsibility to take a lead in explaining to the public why it’s important to uphold fundamental rights, even when that decision may be unpopular”.⁶⁰

54. The importance of effective communication of any changes was highlighted by a number of witnesses, including Safer Wales:

“I think there is work to be done on what role could voting play in terms of reducing the risk and enabling rehabilitation in the future, so that victims understand the reasoning for why a decision around voting is being taken. And it’s that communication that’s important. The trauma that victims experience as a result of an offence is huge, and can be extremely debilitating, and it’s important that victims are engaged, and are communicated with, and are able to have full understanding of the direction of travel in a case. I mentioned earlier that sentence lengths and sentencing patterns are slightly different across areas.”⁶¹

⁵⁷ ELGC Committee. 27 March 2019, RoP [3]

⁵⁸ European Court of Human Rights, Case of Hirst v The United Kingdom (No. 2) Judgement, paragraphs 70, 6 October 2005

⁵⁹ ELGC Committee. 27 March 2019, RoP [3]

⁶⁰ ELGC Committee, 23 January 2019, RoP [125]

⁶¹ ELGC Committee, 20 February 2019, RoP [37]

55. The Wales Governance Centre cited research from 2004, which showed that the more information the public had about a particular case or sentencing decisions, the “less punitive” they became about that individual case. They argued that the public debate about prisoner voting needs to ensure people have the opportunity to take “full account of the legal, political and reintegrative arguments” and if having done so, people do not support prisoner voting, then that is a “better place” than if these arguments have not been considered. They concluded that “it’s not about convincing people, it’s about making that [the debate] a bit a more informed”.⁶²

56. Prisoners told us that their attitudes to prison and prisoners have changed as a result of their experiences. One told us that before going to prison, they believed all prisoners were “bad people” but now they felt they were often just people who had made bad decisions. Another told us that they would not have supported it before imprisonment, but had now changed their mind.⁶³

Voting aids rehabilitation

“it’s important that prisoners are given the right to vote, and that prison should not only serve as a punishment, but a rehabilitation centre in which to prepare its prisoners to re-engage in society after their release.”⁶⁴

57. It is a persuasive argument that voting will help aid rehabilitation, which was suggested to us by a number of different organisations, including Safer Wales⁶⁵ and the Wales Governance Centre.⁶⁶

58. The Wales Governance Centre argued that a ban was obstructive to rehabilitation.⁶⁷ They cited the views of Lady Hale, now President of the UK Supreme Court, in the case of *R (Chester) v Secretary of State for Justice* [2014] who said:

“Any restriction of fundamental rights has to be a proportionate means of pursuing a legitimate aim. Is it simply an additional punishment, a further mark of society’s disapproval of the criminal offence? Or is it rather to encourage a sense of civic responsibility and respect for

⁶² ELGC Committee, 23 January 2019, RoP [16]

⁶³ The note of prison visits is available on the [inquiry webpage](#)

⁶⁴ Dialogue Web Discussion: “Do you think prisoners should be allowed to vote in Welsh elections?”

⁶⁵ ELGC Committee, 20 February 2019, RoP [7]

⁶⁶ [Written evidence.VRP07.Wales Governance Centre](#)

⁶⁷ [Written evidence.VRP07.Wales Governance Centre](#)

democratic institutions? If so, it could well be argued that this is more likely to be achieved by retaining the vote, as a badge of continuing citizenship, to encourage civic responsibility and reintegration in civil society in due course.”⁶⁸

59. This argument was cited by a significant number of the prisoners and prison staff we spoke to; they supported extending the franchise for this reason.⁶⁹

60. Safer Wales told us:

“Prison needs to play a vital role in reducing the risk of reoffending, the importance of rehabilitation and reintegration back into society. The right to vote has a significant part to play in this.”⁷⁰

61. The Youth Justice Board noted that giving young people in the justice system the vote would be “a really key and powerful element in their rehabilitation”. They believed this would help with social inclusion, and help with a “desistance” approach to rehabilitation. Desistance is focused on “individual empowerment and enhanced social inclusion, instead of simply focusing on risk”.⁷¹

62. While the evidence we received made this case strongly, we note that the empirical evidence to support this theory is limited.⁷² This is something the Prison Reform Trust acknowledged, saying we “simply don’t know” that giving prisoners the vote will change re-offending. They added:

“...if we follow through the principles of rehabilitation and reintegration, surely encouraging people to act responsibly by exercising their civic rights is a good thing...”⁷³

⁶⁸ [UK Supreme Court Judgement, R \(Chester\) v Secretary of State for Justice, 16 October 2013, paragraph 93](#)

⁶⁹ The note of prison visits is available on the [inquiry webpage](#)

⁷⁰ ELGC Committee, 20 February 2019, RoP [7]

⁷¹ ELGC Committee, 20 February 2019, RoP [102]

⁷² There have been two studies that have looked at this issue. A [study in Minnesota](#) found consistent evidence of differences between voters and non-voters in rates of subsequent arrest, incarceration and self-reported criminal behaviour. While [another study](#) found that “disenfranchisement may actually increase criminal activity across the board for all criminal offenders regardless of class or type of offen[c]e”.

⁷³ ELGC Committee, 23 January 2019, RoP [139]

63. This links to the earlier argument around treating prisoners as citizens, and ensuring that they feel connected to the community into which they will be released.

Prisoners receive public services and should be able to hold decision makers to account

“If prisoners are to be affected by the policies of the government...then they should be able to vote on this.”⁷⁴

64. We heard powerful evidence from prisoners about the importance of staying involved with their family and community during their time in prison. One woman talked about how she was in regular contact with her child’s school, which works hard to keep her updated on the child’s education.⁷⁵ It was a stark reminder that offenders’ family responsibilities continue during imprisonment.

65. The Prison Reform Trust also highlighted the continuing role prisoners play as part of wider society during their imprisonment:

“...prisoners do still, in fact, continue to contribute as citizens—as parents, in the work they do in prisons, often working for the good of other prisoners. Also, some on release on temporary licence do pay taxes in jobs. ... these are all aspects of prisoners acting as citizens, which we should encourage. We shouldn’t discourage them from that by taking away their ability to exercise civic responsibility.”⁷⁶

66. Prisoners told us that they had paid taxes prior to prison, and in some cases continue to pay taxes while in prison. We explored with the Prison Reform Trust the impact of prison policy not being devolved, but they told us that many of the services in prison are devolved, such as health and education.⁷⁷

67. The Wales Governance Centre’s evidence supported this. They highlighted recent research which showed that a lot of concerns prisoners had related to areas of devolved policy, such as health and housing. They argued that this showed that there was a “clear relationship between their investment in that

⁷⁴ Dialogue Web Discussion: “Do you think prisoners should be allowed to vote in Welsh elections?”

⁷⁵ The note of prison visits is available on the [inquiry webpage](#)

⁷⁶ ELGC Committee, 23 January 2019, RoP [128]

⁷⁷ ELGC Committee, 23 January 2019, RoP [118]

political process and the impact that decisions made by that accountable body have on them throughout the course of their sentence”.⁷⁸

68. A related issue is the prominence that prison and prisoners receive in policy or political debates. One prisoner we spoke to cited the Scottish referendum, and that extending the franchise to 16-17 year olds meant that politicians and political parties then had to engage with that groups’ issues. Another told us if politicians set up surgeries in prison “they would be full”.⁷⁹

69. The Prison Reform Trust cited this:

“Engaging prisoners in the political process would have the advantage of forcing politicians to take account of the political views of prisoners and to actively engage with issues of penal policy.”⁸⁰

70. While we would not expect any political party to refocus its policy commitments based on securing the votes of prisoners (and this has not happened in countries where prisoners’ are permitted to vote) placing prisons and prisoners higher up the political agenda would be a constructive development.

71. We recall the words of a former Conservative Home Secretary Lord Hurd, “if prisoners had the vote then MPs would take a good deal more interest in conditions in prisons”.⁸¹

International precedent

“International law clearly supports prisoners’ rights of democratic participation, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.”⁸²

72. The majority of the Member States of the Council of Europe allow either all or some prisoners to vote. 21 Member States allow all prisoners to vote with no restrictions. 18 Member States allow some prisoners to vote. The UK is included in this, because some prisoners are allowed to vote.

73. We note that Wales has often sought to lead the way on legislation in relation to human rights, in particular with the *Rights of Children and Young People (Wales) Measure 2011*. The Wales Governance Centre said

⁷⁸ ELGC Committee, 23 January 2019, RoP [23]

⁷⁹ The note of prison visits is available on the [inquiry webpage](#)

⁸⁰ [Written evidence, VRP03, Prison Reform Trust](#)

⁸¹ Leech & Shepherd (2003) *Prisons Handbook 2003/04* Manchester: MLA press

⁸² [Written evidence, VRP07, Wales Governance Centre](#)

enfranchisement would be “consistent” with the Welsh Government’s approach to promoting rights already recognised in international law. As well as citing the children’s rights Measure, they also highlighted the *Welsh Language (Wales) Measure 2011*, and the *Well-Being of Future Generations (Wales) Act 2015*. They said that while it was a “radical step” within the UK context, the picture across Europe should “embolden” the Welsh Government.⁸³

74. Both the Wales Governance Centre⁸⁴ and Colin Murray⁸⁵ argued that enfranchising prisoners would be a strong sign to the international community of the value placed on human rights in Wales. The Wales Governance Centre also suggested that changes would “enhance” the international reputation of Wales and “help mitigate the damage” resulting from what they argue to be the UK Government’s “refusal to comply with its legal obligation”. They argued that it would “by extension” enhance the UK’s international standing too. They said that it was “widely recognised” that the UK’s non-compliance has “lent legitimacy” to “systematic noncompliance” by Russia with the Convention.⁸⁶

75. Colin Murray reminded us that the European Convention is a “living instrument”, and that while minimum compliance is acceptable today, it may not be in the future.⁸⁷

76. As noted in the first paragraph of this report, we need to take account of the requirement on the Assembly to ensure laws that are passed are compliant with the Convention. An issue that was raised by stakeholders including Colin Murray:

“...the Assembly must recognise that any attempt to maintain the current restrictions on prisoner voting will amount to a legislative action in breach of its ECHR obligations. As such, it would be acting beyond its competences, and such an action will inevitably attract legal challenge.”⁸⁸

77. He said it was “incumbent upon the Assembly to fulfil its duty as a rights-respecting institution and introduce measures to tackle this breach of rights”.⁸⁹

⁸³ [Written evidence, VRP07, Wales Governance Centre](#)

⁸⁴ [Written evidence, VRP07, Wales Governance Centre](#)

⁸⁵ [Written evidence, VRP05 Colin Murray, Newcastle Law School, University of Newcastle,](#)

⁸⁶ [Written evidence, VRP07, Wales Governance Centre](#)

⁸⁷ [Written evidence, VRP05 Colin Murray, Newcastle Law School, University of Newcastle,](#)

⁸⁸ [Written evidence, VRP05 Colin Murray, Newcastle Law School, University of Newcastle,](#)

⁸⁹ [Written evidence, VRP05 Colin Murray, Newcastle Law School, University of Newcastle,](#)

Disproportionally affects certain groups

“If imprisonment, rather than conviction, is the deciding feature, this is a very arbitrary way of denying citizenship rights as many of those who receive a conviction are not given a custodial sentence. The majority of those convicted in the courts will not automatically receive a custodial sentence. If imprisonment is a deciding factor, this will only include those who have a custodial sentence at the time of elections.”⁹⁰

78. It is argued that disenfranchising prisoners disproportionately affects certain groups. These are groups that historically have lower levels of democratic engagement.

79. The Wales Governance Centre recently identified that Wales has a higher level of imprisonment than any other country in the UK. It also states that members of the Welsh BME community are over-represented in prisons.⁹¹ Safer Wales highlighted that these higher levels of imprisonment are the result of a complex range of factors, including the types of crimes committed and which result in custodial sentences.⁹²

80. The Prison Reform Trust said:

“Let’s not forget that many of the people in prison come from those communities, disproportionately from black and ethnic minority communities, disproportionately from disadvantaged communities as well. They’re not a separate community, they are part of our community. So, I think overall, if we are clear and we want to follow through on really engaging with these hard-to-reach communities, prisoners ought to be a part of that.”⁹³

81. This leads on to an issue of wide range of variance and inconsistencies in sentencing. We know that people receive different types of sentences dependent on the particular circumstances of the individual crime and the person found guilty. But we heard that there can be inconsistencies in sentencing for reasons other than the particular circumstances of the case.⁹⁴

⁹⁰ [Written evidence, VRP06, Dr Cormac Behan, School of Law, University of Sheffield](#)

⁹¹ [Cardiff University, Wales Governance Centre, Sentencing and Immediate Custody in Wales: A Factfile, January 2019](#)

⁹² ELGC Committee, 20 February 2019, RoP [40]

⁹³ ELGC Committee, 23 January 2019, RoP [180]

⁹⁴ [Written evidence, VRP07, Wales Governance Centre](#)

82. Safer Wales said:

“In terms of particular offence categories, what we do see across England and Wales is different patterns in terms of sentencing patterns. Therefore, you’re not equating one equal set with another equal set, even on the same offence type. So, it can be quite arbitrary if you look at it from that view. Similarly, when you’re looking at length of sentence, again, the same applies.”⁹⁵

83. Prisoners in particular highlighted geographical variations in sentencing as a particular cause for concern.⁹⁶ The Prison Reform Trust described it as “a sentencing lottery”.⁹⁷

3.3.16 and 17 year olds

84. The Senedd and Elections (Wales) Bill (which is currently being considered by the Assembly) seeks to extend the franchise for Assembly elections to 16 and 17 year olds, we therefore thought it was appropriate to consider whether 16 and 17 year olds in custody should be allowed to vote.

85. There are only a very small number of children in custody in Wales. In October 2018, the figures stood at 27, 25 of whom were over 16. Of these 27, 30% were on remand awaiting sentence.⁹⁸

86. The core principle of the Welsh Government and Youth Justice Board’s youth justice strategy is that “young people are children first, offenders second”, and stresses that “young people in the youth justice system have the same access to their rights and entitlements as any other young person”.⁹⁹

87. If 16 and 17 year olds in Wales are given the right to vote in Welsh elections, and if young people in the youth justice system have the same access to their rights and entitlements as any other young person, this would mean 16 and 17 year olds in custody would be entitled to vote regardless of whether adults offenders are allowed to vote.

88. In line with the other evidence we received, which was strongly in support of enfranchisement of prisoners, there was a consensus that 16 and 17 year olds in

⁹⁵ ELGC Committee, 20 February 2019, RoP [16]

⁹⁶ The note of prison visits is available on the [inquiry webpage](#)

⁹⁷ ELGC Committee, 23 January 2019, RoP [125]

⁹⁸ [Written evidence, VRPO4 Youth Justice Board](#)

⁹⁹ [Welsh Government and the Youth Justice Board, Youth Justice Strategy for Wales, July 2014](#)

custody should have the same rights as those of the same age not in custody. In particular the Youth Justice Board supported this:

“When considering voting rights for children in the Youth Justice System (YJS), the Committee should recognise in line with a Children’s Rights Approach, promoting equality and non-discrimination should be a primary consideration in policy development. All young people are entitled to their rights and involvement in the YJS should not preclude this. While the full breadth of children’s rights set out to enable participation, provide for, and protect children, Article 12 of the United Nations Convention on the Rights of the Child states that Children have a right to have a say in the decisions that affect them. Any proposal to extend voting rights to all children of 16-17 should equally apply to children who are in, or at risk of entering the YJS; whether they are serving community or custodial sentences.”¹⁰⁰

89. They made it clear that a lot of the arguments in support of enfranchising prisoners were also particularly relevant to young people in custody, particularly in relation to their inclusion in wider society, removal of the label of “otherness” and helping with reintegration and rehabilitation. They highlighted the particular vulnerability and need of additional support of these young people.¹⁰¹

3. 4. The franchise

90. Much of the evidence we received suggested that the “maximal” approach where all prisoners, regardless of offence or sentence length would be given the vote, would be the most practical option. This was not just for administrative reasons, but also because it would not leave the decision open to further challenge through the courts.

91. The ECtHR itself has ruled that banning some prisoners from voting because of the nature of the crimes was not itself in contravention of the European Charter.¹⁰²

Offence type

92. Most of those who gave formal evidence in support of enfranchisement felt that full enfranchisement was the best approach. The Wales Governance Centre

¹⁰⁰ [Written evidence, VRP04 Youth Justice Board](#)

¹⁰¹ [ELGC Committee, 20 February 2019, RoP \[96 and 125\]](#)

¹⁰² [European Court of Human Rights, Information Note on the Court’s Case-law 152, Scoppola v. Italy, May 2012](#)

said that if restrictions on prisoner voting were to be retained, using offence type would be “logically problematic”, as due to “political expediency” they would be more likely to ban those convicted of the most serious crimes, resulting in the ban being “largely divorced” from the aims of imprisonment. If this approach were to be used the only “logical exception” would be a ban for those convicted of “offences of a political nature”.¹⁰³

93. The Prison Reform Trust, while not supporting this approach could “see the argument” for the vote being removed when someone has committed crimes against the state. Yet they had concerns that “any serious or violent offence” automatically led to the loss of the vote, as that would not “meet the test of proportionality” and could lead to “arbitrariness”.¹⁰⁴

94. We explored with a number of witnesses where the line could be drawn between types of offences. Some crimes which may be considered inexcusable, such as those involving violence, could also in some cases be viewed as crimes of poverty.

95. It is also important to understand the context of each individual crime. During our prison visits we heard that there was a thin line between the public at large and those who have been imprisoned. Prisoners talked about how they had viewed prisons and prisoners before they were incarcerated, and how this changed when they were imprisoned.¹⁰⁵

96. We are also aware that sentencing can vary, and that therefore you can be sentenced for a similar crime but not receive an custodial sentence. On the other hand, if disenfranchisement depends on the offence, rather than the sentence, the result may be that different, but not necessarily fewer, criminals are disenfranchised.

Giving judges the power to remove voting rights as part of sentencing

97. The practice of providing judges with the power to remove voting rights as part of sentencing (as used in some countries) did not have widespread support from those who gave evidence. We also note that in evidence to the Scottish Parliament’s Equalities and Human Rights Committee, the Scottish judiciary opposed the suggestion, stating that enfranchisement is a matter for the

¹⁰³ [Written evidence, VRP07, Wales Governance Centre](#)

¹⁰⁴ [ELGC Committee, 23 January 2019, RoP \[125\]](#)

¹⁰⁵ [The note of prison visits is available on the inquiry webpage](#)

legislature, not the judiciary and that the Parliament should “determine such a matter of fundamental principle”.¹⁰⁶

98. The Minister, while making it clear that it was a personal opinion and not that of the Welsh Government, said this is the approach she personally would favour. However, due to the single legal jurisdiction, it is outside of the Assembly’s competence.¹⁰⁷ The Assembly therefore could not legislate to give judges such powers.

Release date

99. This idea of giving prisoners the vote according to their release date was favoured by the prisoners we met, who felt that being given the vote as prisoners approached the end of their sentence would help with reintegration.¹⁰⁸ We could also see the attraction of the argument that if a prisoner is being released during the term of office of the government (or council) being elected, they should have a say in who is elected.

100. This was a suggestion that the previous Cabinet Secretary for Local Government and Public Services, Alun Davies AM agreed to explore further, and he commissioned research into how it could work. This found a number of practical challenges, particularly in respect of how release dates are determined.¹⁰⁹

101. This chimed with the evidence we heard that it would be so administratively complex as to be unworkable. The Minister told us:

“We think that’s very complex indeed. Because of the way that parole works, you’d have to have individualised circumstances for each prisoner. It would be an awful lot of administrative work to make sure that you kept up to date with the particular circumstances of each prisoner: their release day, their parole arrangements and so on. I’m not saying we shouldn’t do it, I’m just saying that that’s quite a very difficult way of doing it. I think there are a lot easier ways to do it than to do that.”¹¹⁰

¹⁰⁶ [Letter to the Scottish Parliament Equalities and Human Rights Committee from the Lord President of the Court of Session, September 2017](#)

¹⁰⁷ ELGC Committee, 27 March 2019, RoP [5]. See paragraph 4(3)(d) of Schedule 7B to the Government of Wales Act 2006.

¹⁰⁸ The note of prison visits is available on the [inquiry webpage](#)

¹⁰⁹ [Welsh Government, Extending the franchise: Prisoner voting, February 2019](#)

¹¹⁰ ELGC Committee, 27 March 2019, RoP [63]

Sentence length

102. A number of people on our online forum suggested linking the right to vote with sentence length. The suggested length of sentences varied, although most suggested sentences of 12 months or less.¹¹¹

103. Colin Murray said that the length of imprisonment is “in proportion to the seriousness” of the act they have committed. This means that sentence length “potentially serves as a measure by which to divide criminality so serious it warrants removal of the vote from lesser criminality”. But, the difficulty is deciding where to draw the line. He suggested that removing the vote from those serving more than four years “would be more clearly justifiable in light of the level of criminality of such individuals”. While using sentence length would be likely to be considered as a “proportionate response”, he concluded that anything short of full enfranchisement is likely to “give rise to litigation”.¹¹²

104. The Wales Governance Centre also said that using sentence length “can be justified in law”. But they felt such a system would mean that the loss of voting rights was more related to arbitrary factors such as when someone was sentenced, timing of elections and where they are sentenced.¹¹³

105. Safer Wales highlighted that due to the “vast, vast majority” of prisoners serving sentences under five years, this means:

“...when we are looking at our cycle in terms of voting, then there will be people who will miss out purely because of the timing that they’ve come into prison, and some may miss out more than others. There’s evidence that, if you look at patterns of when there are opportunities to vote on different matters, in some years we’ve had more opportunities to vote than others. So, when you balance all that out, you’re actually denying someone’s participation even further.”¹¹⁴

106. The Prison Reform Trust also expressed concerns about basing the franchise on sentence length. They highlighted that prisoners remain citizens whether they are serving long or short sentences. They also foresaw some practical issues:

“... it begins to bring in problems of arbitrariness around the impact. So, whether or not the right to vote is taken away will depend upon the

¹¹¹ Dialogue Web Discussion: “Do you think prisoners should be allowed to vote in Welsh elections?”

¹¹² Written evidence, VRP05, Colin Murray, Newcastle Law School, Newcastle University

¹¹³ Written evidence, VRP07, Wales Governance Centre

¹¹⁴ ELGC Committee, 20 February 2019, RoP [18]

date of sentencing and also the timing of elections, and this is a particular problem for people on a short sentence who may be sentenced just across an electoral cycle and therefore miss the right to vote.”¹¹⁵

3. 5. Our view

107. Prisoner voting is an emotive issue, on which people hold strong opinions. The polling suggests that the public does not support it. In this inquiry, we strived to consider all perspectives. Inevitably, not everybody will agree with our final conclusions.

108. It is the majority view of the Committee that the franchise should be extended to Welsh prisoners in Welsh local and Assembly elections. Two Members (Mohammad Asghar, and Mark Isherwood) disagree. They believe that the current provisions, and the UK Government’s response to the Hirst ruling, are sufficient.

109. After detailed consideration of the evidence and arguments on both sides, we believe the case has been made to allow prisoners convicted of less serious crimes the right to vote.

110. Voting is not an absolute right. A number of rulings by the ECtHR have made it clear that countries can have some form of restriction on prisoner voting. We are not proposing giving the vote to all prisoners. Those of us who support a broadening of the franchise hold different views as to how this should be done. The majority, John Griffiths, Huw Irranca-Davies, Jenny Rathbone and Leanne Wood, support full enfranchisement, based on the strength of the evidence that we have heard. We note this would be in line with the 21 Member States of the Council of Europe that allow all prisoners to vote without any restrictions. Carwyn Jones supports partial enfranchisement.

111. We heard that the public does not appear to support further change, but there is evidence that this is slowly changing. The recent consultations conducted by the Welsh Government and Assembly Commission also chimed with discussions on our online forum, possibly evidencing a change in opinions.

112. Public opinion is important to politicians but sometimes it is necessary to show leadership, and support change that we believe is right. We agree with the Minister that sometimes public opinion leads to legislative change, and at other

¹¹⁵ ELGC Committee, 23 January 2019, RoP [124]

times legislation leads to a change in public opinion. On this, we believe legislation should lead the way.

113. Some argued that removing the right to vote is a part of punishment through imprisonment. Those Members who support enfranchisement consider that the removal of liberty is the punishment, and the loss of the right to vote is an additional sanction. As a prisoner in HMP Parc told us: “we’re here as a punishment, not for a punishment”.

114. Voting is part of the “social contract”, which can arguably be removed if the contract is broken. Taking this argument to its logical conclusion would mean anyone convicted of any crime would have the vote removed, not just those who are imprisoned. The majority of the Committee believe that they have not heard any persuasive arguments in the evidence about why being imprisoned should be the factor leading to the loss of the vote.

115. The strongest argument we heard is that voting is a right not a privilege. But the state should not remove these rights unless there are exceptional circumstances, such as committing serious offences resulting in long prison sentences. To remove the right to vote upon any imprisonment is unnecessary and disproportionate.

116. Disenfranchising prisoners tells them they are outside of society, or somehow “other”. It is important that they remain connected to their local communities and wider society while in prison to reduce the chance of them reoffending on their release. Retaining the vote would be an important way of signalling this. The divide between prison and the outside world is already too wide. Such division does not help with the prevention of crime, social cohesion or rehabilitation.

117. While the empirical evidence as to whether voting aids rehabilitation is sketchy, we believe that it could play a role as part of a broader package to support reintegration on release. We note that for those who work in this field rehabilitation is at the centre of the support they provide in working to reduce re-offending. While imprisonment removes freedom, it does not remove citizenship.

118. We also think that extending the franchise could raise the profile of issues affecting prisoners. Everyone’s story is different, and the reasons they end up in prison will vary. But it is clear that for some, it is a complex set of factors, which may include family breakdown, substance misuse, adverse childhood experiences or ill-health. We need to ensure a humane prison system that supports offenders to reintegrate back into society and reduces the risk of further criminal activity.

Allowing prisoners to vote may help place issues affecting some of the most vulnerable groups of society higher up the political agenda.

119. We know that people in Wales are more likely to be imprisoned than people in England. We also know that people from already disadvantaged groups are more likely to be in prison. These are often people that do not traditionally participate in the democratic process. We do not want to create additional barriers to democratic engagement. It is possible that enfranchising prisoners, combined with appropriate support within prisons, will help people who have not previously voted to start a habit that will continue once they are released.

120. A critical argument in support of extending the franchise is to ensure that legislation on Assembly and local elections in Wales is compatible with the European Convention on Human Rights as required of the Assembly. We cannot take lightly the concerns raised that the current approach by the UK Government of minimal compliance may not continue to be sufficient in the future. As legislators, we have to take very seriously the risk of failing to pass legislation that would be within competence.

121. Finally, we think it is important to reflect on the fact that the overriding evidence we received (although not all), was strongly in support of extending the franchise. Most witnesses supported full enfranchisement, and we acknowledge that they may be disappointed that we have not gone that far. But we believe our position balances the complex legal, moral, political and practical factors.

122. We are recommending that prisoners serving sentences of less than four years should be permitted to vote in Welsh elections. We believe this strikes an appropriate balance by widening the franchise in a way that excludes those sentenced for the most serious crimes. It also acknowledges sentencing policy in England and Wales, which considers sentences of four years or more as “long-term”.¹¹⁶

123. We acknowledge some will think we have gone too far, and others that we have not gone far enough. However, we believe this is a compromise that will help with reintegration and the inclusion of prisoners as part of our wider society, ensure compliance with the ECtHR ruling, both by the letter and spirit of the decision, will not be unduly complex to administer and recognise public concern by not proposing every prisoner is entitled to vote.

¹¹⁶ [Written evidence, Welsh Government, paragraph 1.13](#)

124. While we can see the argument for using offence type as a factor in deciding on the franchise, we believe it is too difficult, and in some cases could be considered arbitrary, other than in those cases including electoral fraud.

125. The suggestion that judges be given the power to decide whether the vote should be removed is outside devolved competence. Even if it were not, the core principle of who should have the vote, is a matter for the relevant legislature and not for individual judges.

126. The proposal that the vote should be linked to the release date has its merits. However, we believe that for any form of enfranchisement to work, simplicity, both in principle and delivery, is essential. Administratively this would be too difficult for prison and electoral staff to co-ordinate and deliver successfully. It would also be difficult for prisoners themselves to understand at what point they may regain the right to vote.

127. The majority of the Committee also believes the franchise should include 16 and 17 year olds in custody if the Assembly decides to extend the franchise to 16 and 17 years old not in custody. This should be on the same basis as the franchise for prisoners who are 18 years and older.

Recommendation 1. We recommend that the Welsh Government and National Assembly for Wales Commission introduce legislation to give all those Welsh prisoners who are serving custodial sentences of less than four years the right to vote in devolved Welsh elections. Mohammad Asghar and Mark Isherwood do not agree with this recommendation.

Recommendation 2. We recommend that if the general franchise is extended to 16 and 17 years old, the Welsh Government and National Assembly for Wales Commission introduce legislation to give 16 and 17 year olds in custody the vote on the same basis as prisoners over 18 years old. Mohammad Asghar and Mark Isherwood do not agree with this recommendation

4. Practicalities

An important aspect of our work has been looking at how any changes in the franchise could be implemented. We considered where and how prisoners could vote, and how they might engage with the political process. We were broadly reassured that both electoral and prison officials were committed to making any change work.

128. Most of the evidence we took about the practicalities resulted from the discussions we had with prison staff as part of our visits, and the evidence we took from the Electoral Commission and the Association of Electoral Administrators (AEA).

129. One of the main areas of consideration was the additional complexities arising from a sizable minority of the Welsh male population and all Welsh female prisoners being held in prisons outside Wales. According to Wales Governance Centre research, 37% of Welsh prisoners are held in 104 prisons across England.¹¹⁷

130. We were reassured by the attitude of the relevant staff who were clear that while it could be challenging, everything would be done to make it work. However, we are concerned that the evidence of very few remand prisoners voting suggests that systems may not be currently fit for purpose and more work is needed. We consider this issue as part of our final section of the report.

131. We think it is important to highlight the views of both the AEA and the Electoral Commission who spoke with one voice on the need for any changes of electoral law to be made well in advance of any elections. The AEA called for legislation changing electoral registration to be in place 12 months before an election. It also pressed for legislation changing electoral arrangements to be in place six months before the election in question.¹¹⁸ The Electoral Commission called for any changes to be passed at least six months before the beginning of the annual canvass.¹¹⁹

¹¹⁷ [Cardiff University, Wales Governance Centre, Sentencing and Immediate Custody in Wales: A Factfile, January 2019](#)

¹¹⁸ [Written evidence, VRP01, Association of Electoral Administrators](#)

¹¹⁹ [Written evidence, VRP02, Electoral Commission](#)

4. 1. Determining eligibility

132. As we recommend enfranchisement only for prisoners who are serving sentences of less than four years, it is important that we consider how eligibility to vote would be determined. The Electoral Commission said it was important that the eligibility criteria could be easily understood,¹²⁰ and we took this partly into account when coming to our recommendation. They also highlighted that the “simpler” the criteria is, “the easier it is to administer”.¹²¹ We believe the less than four years criterion can be easily understood, and more so than release date or offence type.

133. Clearly there are other factors that have to be considered in determining eligibility, including age, nationality and residency. We consider the issue of residency further in the next section.

134. The Electoral Commission believed the “application to register” form similar to those forms used for those who have to register as an anonymous elector or when someone has to declare a local connection could be used.¹²²

135. They also suggested that there may need to be a role for prison staff to “attest” the length of the prisoner’s sentence; or for those prisoners who may not have access to the documentary proof that they are eligible to vote. They stated that legislation would need to prescribe the level of prison staff who could provide this attestation:

“[It] should be low enough that the registration process is not reliant on too few people but high enough that the attester will be aware of who can and cannot register, and would carry sufficient authority.”¹²³

136. The Electoral Commission and the AEA emphasised the importance of effective liaison between the prison and electoral staff. The Commission suggested that each prison could have a liaison officer, who has primary responsibility for all matters relating to electoral registration and voting.¹²⁴ They stressed this would not be a full time role. In particular, it could help with attestation:

¹²⁰ ELGC Committee, 7 March 2019, RoP [7]

¹²¹ ELGC Committee, 7 March 2019, RoP [12]

¹²² Written evidence, VRP02, Electoral Commission

¹²³ Written evidence, VRP02, Electoral Commission

¹²⁴ ELGC Committee, 7 March 2019, RoP [13]

“...we think it’s really important to have that liaison officer within the prison, who’ll be able to support the prisoner in finding this type of information, to verify their identity and, even if there was an attestation or something included in the new form, that they could complete that attestation or assist in completing that attestation.”¹²⁵

137. The AEA explained why it was important that the prison service can act as “a very, very strong partner” in electoral registration:

“... 1, to facilitate the registration; 2, to ensure that those who are registered are fully aware of the choices available to them at ballots if this is where it goes; and 3, that the secrecy of their choice isn’t corrupted by other processes that may well end up affecting that ability to have the free and fair ballots in that way. So, they’re the elements that we are primarily concerned with.”¹²⁶

138. To help facilitate effective working relationships, the Electoral Commission proposed “some memorandum of understanding with the prisons themselves, with the Prison Governors Association” and noted “there has to be some central information fed back to the electoral registration officers. Otherwise, it’s an impossible task for them”.¹²⁷

139. We heard different views from prison staff about the complexities of supporting prisoner voting, but the clear message from all, was that if a decision is made to give some or all prisoners the vote, prison staff will do everything practicable to facilitate it, and make it work.¹²⁸

4. 2. Registration

140. There was very clear evidence that prisoners should not be registered at the address of the prison. This was for two main reasons: it could have a disproportionate effect on a small number of wards and constituencies where prisoners would make up a significant proportion of the electorate and it would immediately disenfranchise many prisoners from Wales, including all Welsh women prisoners.

141. Cormac Behan explained the approach taken in Ireland:

¹²⁵ ELGC Committee, 7 March 2019, RoP [66]

¹²⁶ ELGC Committee, 7 March 2019, RoP [20]

¹²⁷ ELGC Committee, 7 March 2019, RoP [118]

¹²⁸ The note of prison visits is available on the [inquiry webpage](#)

“Registration in the home constituency reduces the potential of a ‘voting bloc’, i.e. all voters in the same prison casting their ballot for a single candidate in the constituency of the prison. If registration is in the home constituency by postal voting, this will dilute the opportunity for prisoners to skew the outcome of a particular constituency, even if they all voted (although there is no evidence that this is the case) for the same candidate. Therefore it should not have an impact on particular constituencies that contain prison/s.”¹²⁹

142. The Electoral Commission told us that using a “previous or intended address” would be an “option” for registration. They suggested this because “prisoners are only present at the prison address as a result of their sentence...”¹³⁰

143. The Wales Governance Centre highlighted that “declaration of local connection” is already in use for Welsh prisoners seeking housing after prison.¹³¹ Such a system enables prisoners to register using an address where they had previously lived, or where they had family. Safer Wales also felt this was “the most sensible way”, and that this would also be appropriate for those who have no fixed abode.¹³²

144. The Electoral Commission also agreed this would be the simplest route. This would not involve someone returning to the previous address on release but that it “is simply a mechanism to vote rather than a declaration of intent of going back”.¹³³

145. Such an approach would also avoid a situation where all Welsh women prisoners were automatically disenfranchised simply because they are imprisoned outside Wales.

4. 3. Voting

146. The evidence we received was very clear in terms of the options available for the method of voting. Setting up polling stations in prisons would be impractical for a whole range of reasons, including security, confidentiality, and general logistics.¹³⁴

¹²⁹ [Written evidence, VRP06, Dr Cormac Behan, School of Law, University of Sheffield](#)

¹³⁰ [Written evidence, VRP02, Electoral Commission](#)

¹³¹ ELGC Committee, 23 January 2019, RoP [59]

¹³² ELGC Committee, 20 February 2019, RoP [69]

¹³³ ELGC Committee, 7 March 2019, RoP [43] and [64]

¹³⁴ [Written evidence, VRP02, Electoral Commission](#)

147. We heard from prison staff that there are already arrangements in place for prisoners to receive mail from their solicitors confidentially.¹³⁵ Similar arrangements would need to be put in place to maintain the integrity of the ballot.

148. The AEA and Electoral Commission emphasised that there would need to be consideration given to processing postal votes to ensure that prisoners had sufficient time to receive their vote and return it in time. The AEA in particular highlighted issues arising from prisoners moving around the prison estate:

“From the research that I’ve looked at, when prisoners are coming near to being released, they’re very often brought back to a prison near to where they live or the area that they’ve last come from. So, it might be that they were in Liverpool and they come back down to Bridgend. It’s at what point and whether we’re informed of that, because if they’re voting by post and we’ve sent that postal vote up to Liverpool, then by the relevant date they’ve come back to, say, Bridgend, you’re into that situation where we didn’t know. Somebody needs to inform us as administrators that that person—we need to redirect that postal vote. And of course, there is a cut off of 11 days before a change of address for a postal vote, So, all that would need to be addressed—the relevant timings.”¹³⁶

149. The Electoral Commission highlighted that there is a “short window” from postal votes being issued and having to return it in time for the count.¹³⁷

4. 4. Political campaigning and information

150. Prisoners told us that being in prison has given them more time to think about political issues. We heard how they keep up to date with political events through the television and print media. They also have publications designed for the prison population such as Inside Times and prison radio stations.¹³⁸ All of these could provide a mechanism to share information about upcoming Welsh elections.

¹³⁵ The note of prison visits is available on the [inquiry webpage](#)

¹³⁶ ELGC Committee, 7 March 2019, RoP [151]

¹³⁷ [Written evidence, VRP02, Electoral Commission](#)

¹³⁸ The note of prison visits is available on the [inquiry webpage](#)

151. We were pleased to have a commitment from the Electoral Commission that they would propose to run an information campaign for prisoners about how to register and vote, if the franchise is extended:

“We would certainly look to run a public information campaign with new prisoners, and that would normally—. If you look at service voters, for instance, which is another special category of electors that comprises individuals who are based away from their home in a barracks or a base somewhere in other parts of the UK, we have run campaigns previously that have targeted service voters and lets them know, through posters, mailings, through a liaison officer within the barracks, what they can do, what election’s coming up, how they can register, how they can vote. We would certainly look to do something similar with prisoners, not just based across the bridge but also in Wales—run a campaign specifically targeting them.”¹³⁹

152. The AEA also highlighted that when there were recent changes to anonymous registration, electoral professionals worked closely with “partner organisations, particularly Women’s Aid”.¹⁴⁰

153. Candidates are able to disseminate leaflets to all electors on the electoral register, and we believe that prisoners should have the same access to this sort of material. This is of particular importance for local elections, where prisoners may be resident in prison outside their home area, and will not necessarily have access to local newspapers, which would provide them with an opportunity to keep updated with political developments at home.

154. Prisoners raised concerns with us about levels of literacy of many prisoners.¹⁴¹ Clearly this is something that would need to be taken account of in any material drawn up by public bodies such as the Electoral Commission. Prisons would need to consider what additional support could be given to those prisoners who have low levels of literacy in understanding any written material sent to them.

155. While some suggested the idea of political hustings within prisons, we also heard that this could pose significant security issues.¹⁴² While we think the idea of getting more politicians into prisons and directly engaging with prisoners has a benefit (as we have ourselves experienced through our own contact and visits to

¹³⁹ ELGC Committee, 7 March 2019, RoP [54]

¹⁴⁰ ELGC Committee, 7 March 2019, RoP [134]

¹⁴¹ The note of prison visits is available on the [inquiry webpage](#)

¹⁴² The note of prison visits is available on the [inquiry webpage](#)

prisons), we acknowledge that the logistics of getting the relevant politicians in front of prisoners, combined with issues around security mean that this would not be the most effective way to ensure prisoners were suitably informed.

156. We also heard concerns about education within prisons to help prisoners better understand the political system, which would be more important if the franchise is to be extended. We heard that this work is already underway in prisons, but would most probably need a renewed focus to ensure prisoners had the relevant information about democratic processes.

157. Finally, we have specific concerns about Welsh prisoners held in English prisons. Welsh prisoners at HMP Eastwood Park have no access to any Welsh broadcast or print media. Prisoners we spoke to had no idea of the change in First Minister or other political developments since they had been imprisoned. We raised this with prison staff, who advised that they had a limited number of television channels and that they could tune to Welsh channels but only if this had the support of the majority of prisoners.¹⁴³ At the very least, we would like to see Welsh newspapers available in the library at Eastwood Park and other prisons where there is a sizeable Welsh population.

4. 5. Current system for remand prisoners

158. The evidence to this inquiry highlighted issues with the effectiveness of the voting system for prisoners who are currently eligible. We spoke to a number of prisoners who were eligible but did not know that.¹⁴⁴ It is not acceptable that those who retain the right to vote are not aware of their rights.

159. Jenny Rathbone AM visited Cardiff Prison to discuss the arrangements for remand prisoners. They outlined what steps had been taken at the last election which included adverts and notices being put up, and staff talking to prisoners. Prisoners who were interested were asked to give their names to staff, who would then pass this onto Electoral Registration Officers. However, no-one took up this opportunity to register.

160. It was an issue that we explored with the Electoral Commission, who admitted that they could “certainly do more, and maybe look at public information and what we can put out there to at least ensure that they do know what their rights are”.¹⁴⁵ We would strongly encourage the Electoral Commission to

¹⁴³ The note of prison visits is available on the [inquiry webpage](#)

¹⁴⁴ The note of prison visits is available on the [inquiry webpage](#)

¹⁴⁵ ELGC Committee, 7 March 2019, RoP [113]

work closely with the Prison Service to ensure that prisoners who are eligible to vote are on the electoral register. The Prison Service should ensure that those who are not, are registered. Prisoners should be subject to the same requirement to register to vote as the rest of the population.

161. Cardiff Prison staff also highlighted that, due to the constant admission, movement, and release of prisoners, they often find that the prison population can change significantly in the space of a few weeks. However, we believe that by checking whether a prisoner has registered to vote at induction, and helping them to register, if they are not, will help minimise the risk of prisoners not being registered as a result of movement around different prisons.

4. 6. Our view

162. It is essential that we respond to the clear calls from the Electoral Commission and the Association of Electoral Administrators to ensure that any changes to electoral law are introduced with sufficient time to enable the necessary arrangements to be put in place. We support these calls, it is essential that the integrity of the electoral process is maintained.

Recommendation 3. We recommend that both the Welsh Government and the Assembly Commission commit to ensuring that any relevant legislation changing the franchise is in place at least six months before any election which is due to occur.

Eligibility

163. It is clear to us, particularly when learning from the experience of remand prisoners registering to vote, that there is a need for a designated lead officer on electoral matters (an Election Co-ordinator) in every prison. The Electoral Commission was very keen to engage with the Prison Service and even suggested that membership of the Welsh Electoral Co-ordination Board be extended to include representatives from the Prison Service.¹⁴⁶

Recommendation 4. We recommend the Electoral Commission extend the membership of the Welsh Electoral Co-ordination Board to include representatives from the Prison Service.

164. We appreciate having an Election Co-ordinator may become more difficult outside of the Welsh penal estate. However, this does not mean it should not be done, we believe the Welsh Government should have discussions with the UK

¹⁴⁶ ELGC Committee, 7 March 2019, RoP [36]

Government to ensure that prisons holding Welsh prisoners designate an official as the liaison with the Electoral Commission and relevant Electoral Registration Officers in Wales. This should apply to all prisons with Welsh prisoners, even if the number is small.

Recommendation 5. We recommend that the Welsh Government discuss and come to agreement with the UK Government to ensure all prisons with Welsh prisoners designate an Election Co-ordinator within the prison staff.

165. It is important that prisons outside Wales facilitate and support prisoner registration and voting in Welsh elections. This could be done through a Memorandum of Understanding between the Welsh and UK Governments.

Recommendation 6. We recommend that the Welsh Government and Electoral Commission pursue a Memorandum of Understanding with the UK Government and Prison Service to ensure that all eligible prisoners are registered to vote and are supported to take part in any elections for which they are eligible.

Registration

166. The most sensible way forward would be for prisoners to register either at their address prior to imprisonment or at an address they intend to go to when they are released. In cases where people do not have an intended address, a declaration of local connection could be used.

167. The Electoral Commission highlighted that there is already a template that could be used for armed services personnel who register at their usual address when overseas. We note that an important aspect of this approach is that each armed forces unit has a designated member of staff who is responsible for promoting participation.¹⁴⁷ It underlines the importance of ensuring effective liaison with prison staff.

168. One of the aspects needing further consideration is in those instances where the home address is also the home of the victim of the crime. This is particularly relevant for crimes such as domestic abuse. The Minister in oral evidence gave a clear commitment to us that safeguards would be put in place to take account of issues relating to victims of crimes resident in the registered home address of the prisoner.¹⁴⁸ Both she and the Electoral Commission highlighted that registering at this address would not necessarily mean the prisoner would return to that address

¹⁴⁷ [Written evidence, VRP02, Electoral Commission](#)

¹⁴⁸ ELGC Committee, 27 March 2019, RoP [38]

but that it is simply a way of enabling them to vote.¹⁴⁹ We note that similar arrangements exist for homeless persons to register.

Recommendation 7. We recommend that the Welsh Government and National Assembly for Wales Commission introduce legislation for prisoners to register either at their last home address, the address they will be released to or via a declaration of local connection. In doing so they should ensure relevant safeguards are put in place to protect victims and potential victims of crimes..

Voting

169. We believe the most sensible approach would be for sentenced prisoners to vote in the same way as any other absent voter (including remand prisoners), either by post or by proxy. This can be a decision for each individual prisoner and does not need to be prescribed in legislation, other than providing prisoners with the choice.

Recommendation 8. We recommend that the Welsh Government and National Assembly introduce legislation to enable prisoners who are eligible to vote to do this either via postal or proxy voting. Discussions should take place with the UK Government to ensure that any logistical barriers are minimised.

170. The logistical issues highlighted, include important matters which will need to be addressed in drawing up implementation plans, and the Memorandum of Understanding which we recommended earlier. However, we do not believe any of these are insurmountable.

Political campaigning and education

171. It is essential that everybody who is eligible to vote has access to relevant information to help them make an informed decision. Prisoners do not have free access to all sources, such as the internet, which plays an increasingly important role in political campaigning.

172. This means that additional effort will be needed to ensure that information is made available to prisoners who register to vote. We explored this with all our witnesses, and especially as part of our visits to prisons.

173. We think it is important that there are opportunities for registered candidates, elected politicians and participating party representatives to have access to visit prisons where practical during an election campaign. We

¹⁴⁹ ELGC Committee, 27 March 2019, RoP [38] and ELGC Committee, 7 March 2019, RoP [64]

appreciate that hustings would not be appropriate, but believe there are opportunities to explore how we can help prisoners directly engage with those involved in the campaign.

Recommendation 9. As part of the work in setting up a Memorandum of Understanding detailed in recommendation 6, we recommend that the Welsh Government explores with the UK Government, how registered candidates, elected politicians and participating party representatives could have access to meet with prisoners.

174. Notwithstanding all the points we have made above, we note that issues of ensuring people have access to high quality political information is as relevant for the general public, as it is for those in prison. The difference is that the information is widely available to the general public, and they can choose to engage or not, whereas at the moment the information is much more limited for those in prison.

175. We were particularly concerned about the lack of access to any Welsh media for prisoners in Eastwood Park. While we understand that there may be some technological limitations, we believe that further work should be undertaken to try and overcome these issues to ensure prisoners can stay in touch with news and issues affecting their local communities.

Recommendation 10. We recommend that the Welsh Government discuss and seek agreement with the UK Government on providing access to Welsh media, both print and broadcast for those prisons with a sizable Welsh population.

Current system for remand prisoners

176. We are concerned about the low levels of numbers of remand prisoners taking up opportunities to register to vote and that this may be the case for other categories of prisoners who may become eligible. While we acknowledge that some may make an active decision not to take part, we heard directly from them that they were unaware they were able to vote. We think there is more that could be done to ensure all those in prison who retain the right to vote are aware of these rights. It was encouraging to hear the Electoral Commission commit to look at the issue in more detail.

Recommendation 11. We recommend that the Electoral Commission work closely with the Prison Service to ensure that all prisoners who are eligible, are registered to vote, and have the right and accessible information to enable them to make an active decision about whether to vote.

Annex A: Consultation responses

The following responses were submitted and are published on the website.

Reference	Organisation
VRP 01	Association of Electoral Administrators (joint response from (National and Wales branches)
VRP 02	Electoral Commission
VRP 03	Prison Reform Trust
VRP 04	Youth Justice Board
VRP 05	Colin Murray, Newcastle Law School, Newcastle University
VRP 06	Dr Cormac Behan, School of Law, University of Sheffield
VRP 07	Wales Governance Centre

Annex B: Schedule of oral evidence

The following witnesses provided oral evidence to the Committee on the dates noted below. [Transcripts](#) of all oral evidence sessions are available.

Date	Name and organisation
23 January 2019	<p>Dr Robert Jones, Research Associate, Wales Governance Centre</p> <p>Dr Greg Davies, Research Associate, Wales Governance Centre</p> <p>Mark Day, Head of Policy and Communications, Prison Reform Trust</p>
20 February 2019	<p>Bernie Bowen-Thompson, Chief Executive, Safer Wales</p> <p>Darren Trollope, Head of Planning and Advice Cymru, Youth Justice Board</p>
7 March 2019	<p>Elan Closs Stephens CBE, Electoral Commissioner, Electoral Commission in Wales</p> <p>Rhydian Thomas, Head of Electoral Commission, Electoral Commission in Wales</p> <p>Rhys George, Chair of the Wales Branch of the Association of Electoral Administrators</p> <p>Amanda Bebb, Deputy Chair of the Wales Branch of the Association of Electoral Administrators</p> <p>Peter Stanyon, Chief Executive, Association of Electoral Administrators</p> <p>Baroness Newlove, Victims' Commissioner</p>
27 March 2019	<p>Julie James, Minister for Housing and Local Government</p> <p>Lisa James, Deputy Director, Local Government Democracy Division</p> <p>Gareth Thomas, Policy Adviser, Electoral Reform (Local Government Division)</p>