

Child Rights and Wellbeing Impact Assessment

June 2019

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[CRWIA for legislation](#) (Scottish Government use only)

CRWIA title: Scottish Elections (Franchise and Representation) Bill Date of publication: 21 June 2019	
Executive summary	<p>The Scottish Government is committed to increasing participation in elections both in terms of voter turnout and encouraging citizens to stand for election. Democratic participation challenges the inequalities of power and influence that exist in society. The Bill seeks to ensure an electoral system that supports and empowers the engagement in elections of all those who have chosen to make Scotland their home.</p> <p>The Bill sets out a number of changes to the electoral franchise in respect of Scottish Parliament and local government elections in Scotland. It includes provisions extending the electoral franchise for those elections to include all those with a legal right to live in Scotland and extending the right to vote to prisoners sentenced to 12 months or less. This extension will apply in respect of other devolved elections that rely on the local government franchise (currently, elections for membership of a National Park Authority, but the Referendums (Scotland) Bill makes reference to the local government franchise). It also extends candidacy rights for Scottish Parliament and local government elections to foreign nationals with indefinite leave to remain in Scotland.</p>
Background	<p>The Scotland Act 2016¹ amended the Scotland Act 1998² to devolve further powers to the Scottish Parliament. These additional powers gave the Scottish Parliament and the Scottish Ministers increased autonomy in relation to the operation of Scottish Parliament and local government elections in Scotland.</p> <p>The Scottish Government has held two separate public consultation exercises on electoral reform and prisoner voting in relation to Scottish Parliament and local government elections. The consultation on Electoral Reform³ was undertaken between December 2017 and March 2018 and a</p>

¹ <http://www.legislation.gov.uk/ukpga/2016/11/contents/enacted>

² <http://www.legislation.gov.uk/ukpga/1998/46/contents>

³ <https://www.gov.scot/publications/consultation-electoral-reform/>

further consultation exercise, on Prisoner Voting⁴, took place from 14 December 2018 to 8 March 2019.

Extending the franchise to foreign nationals

The Bill proposes extension of the devolved franchise to citizens of any country who are legally resident in Scotland. It empowers those with the right to reside in Scotland and who may be paying taxes, own or rent a home and/or use public services in Scotland. Up until now, the franchise has been closely based on residence combined with the citizenship of certain countries. The Bill goes beyond the existing arrangement of providing voting rights in devolved elections to EU citizens and qualifying Commonwealth citizens resident in Scotland. The Scottish Government wants Scotland to be a country where every individual who has chosen to live here is equally valued, no matter where they were born. With this in mind, we want to allow all foreign nationals who are legally resident in Scotland to vote at Scottish Parliament and local government elections.

Prisoner Voting

There has been a longstanding⁵ prohibition on convicted prisoners voting in all elections in the UK while they are detained in a penal institution. This ban applies irrespective of the length of the sentence and applies to all UK elections, including Scottish Parliament and Local Government elections.

In 2005 the European Court of Human Rights (ECtHR) found in *Hirst v UK (No 2)*⁶ that the UK blanket ban on prisoner voting was in breach of Article 3 of Protocol 1 of the European Convention on Human Rights (ECHR). This Article provides that member states (of the Council of Europe): “undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.” This has been interpreted by the courts to give individuals the right to vote and to stand for election.

The ECtHR allows member states a wide “margin of appreciation” in relation to the exercise of the franchise by convicted prisoners. This reflects the wide variety of

⁴ <https://consult.gov.scot/elections/prisoner-voting/>

⁵ Historical background on prisoner voting is summarised in this House of Commons Standard Note:

<https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN01764#fullreport> A further paper sets out developments since 2015:

<https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7461>

⁶ <http://www.bailii.org/eu/cases/ECHR/2005/681.html>

approaches on prisoner voting across the member states of the Council of Europe. In Hirst, the UK's blanket prohibition on prisoner voting was deemed to be outwith this margin, as it applied to all convicted prisoners, regardless of the nature of their offence or length of their sentence.

The role of the Scottish Parliament's Equalities and Human Rights Committee includes considering and reporting on human rights issues. In June 2017 the Committee decided to take evidence on the current UK legal position on prisoner voting, the practical issues around voting in prisons and the arguments for and against allowing prisoners to vote. Having taken evidence from a wide range of stakeholders and interested parties, the Committee published a report on Prisoner Voting in Scotland⁷ on 14 May 2018. The Committee recommended that the Scottish Government should "legislate to remove the ban on prisoner voting in its entirety".

The Scottish Government's public consultation on prisoner voting sought views on the favoured proposal to link voting rights to length of sentence: specifically, to prisoners serving 6 or 12 month sentences. The consultation paper also sought views on the practicalities of prisoner voting. Responses were received from 35 organisations and 230 individuals. Respondents were split fairly evenly across three main positions. Around 3 in 10 thought that prisoners' right to vote should be linked to the length of their sentence (Option 1). Of the remaining respondents, those who went on to comment generally preferred one of two approaches: allowing no prisoners to vote (around 1 in 3 of all respondents); or extending the franchise to all prisoners (around 3 in 10 of all respondents).

Candidacy Rights

In general, only Commonwealth Citizens (including UK citizens), citizens of the Irish Republic and EU citizens are allowed to stand as candidates in Scottish Parliament and local government elections. The main exception to this concerns persons aged 16 or 17, who are unable to stand as candidates. Individuals are disqualified from standing in local government elections, from being elected, or from continuing to serve as a councillor if they have been sentenced to a prison term of three months or more at the time of their nomination or on polling day. They are then barred from seeking office as a councillor for 5 years. For elections to the Scottish Parliament, people are disqualified from standing or

⁷<https://digitalpublications.parliament.scot/Committees/Report/EHRiC/2018/5/14/Prisoner-Voting-in-Scotland#Introduction>

	<p>continuing to serve as an MSP if they have been convicted of an offence and have been sentenced to be imprisoned or detained for more than a year and are detained anywhere in the UK, the Republic of Ireland, the Channel Islands or the Isle of Man, or are unlawfully at large.</p> <p>Candidacy rights were not a feature of either Government consultation exercise, and the Bill's proposals are limited to one change to the law on candidacy: to allow all foreign nationals with an indefinite right to live in Scotland to stand as candidates in devolved elections and hold office following those elections. Although foreign nationals with a limited right of residence will be able to vote in devolved elections, a person with a limited right of residence will not be permitted to stand as a candidate.</p>
<p>Scope of the CRWIA, identifying the children and young people affected by the policy, and summarising the evidence base</p>	<p><i>Extending the Franchise</i></p> <p>Young people aged 16 or 17 are already able to vote in devolved elections if they are EU or Commonwealth nationals. Extending the franchise to all those legally resident in Scotland will enfranchise young people aged 16 or 17 from countries other than the EU and the Commonwealth. This is likely to positively impact upon those young people as empowered and valued members of the community.</p> <p>This extension will include those whose claim for asylum has been allowed and have been granted refugee status and leave to remain in the UK (usually for an initial period of 5 years). It would also include asylum seekers who have been granted temporary protection or humanitarian protection or other forms of leave to remain in the UK.</p> <p><i>Prisoner Voting</i></p> <p>The Bill will also enfranchise 16 and 17 year olds detained in a young offenders institution for sentences of 12 months or less.</p> <p>In terms of compliance with the ECHR, this policy pursues the legitimate aim of preventing crime by sanctioning the conduct of convicted prisoners and enhancing civic responsibility and respect for the rule of law. This approach, based on the length of sentence, strikes the correct balance between the need to ensure that serious offenders are punished, that respect for the law and responsible citizenship are promoted, and the wider objectives of ensuring that prisoners are rehabilitated into society. This approach would ensure that there is no longer a blanket restriction on voting in devolved elections for all prisoners in Scotland, irrespective of the</p>

	<p>length of their sentence or the nature and gravity of their offence.</p> <p>Candidacy Rights</p> <p>The Bill proposes no change which affects children and young people.</p>
<p>Children and young people’s views and experiences</p>	<p>As part of the Scottish Government’s consultation on Electoral Reform, consultation responses were received from a number of children and young people’s organisations with views on the proposed changes to electoral reform – including extending the franchise. A Ministerial roundtable with Children and Young People’s representative organisations was also held. Organisations were in agreement with the proposals on extending the franchise – “Whether someone comes to Scotland to work, live or study they should have a fundamental right to have a say in how the country and their local communities are being run. Young people are more likely to migrate to Scotland on a temporary basis, but their voice is no less important”.</p> <p>A public consultation on prisoner voting was also held. No responses from children and young people’s organisations were received.</p>
<p>Key Findings, including an assessment of the impact on children’s rights, and how the measure will contribute to children’s wellbeing</p>	<p>The Bill will not impact children’s rights directly but the proposed provisions within the Bill in regard to extending the franchise rights would allow 16 and 17 year olds legally resident in Scotland to vote in Scottish Parliament and local government Elections. This is in line with the Scottish Government’s position in relation to immigration, its desire to demonstrate that Scotland is a welcoming place for all, and the New Scots refugee integration strategy⁸.</p> <p>The intention is to ensure that citizens of all countries who are legally resident here are able to vote and stand in the elections which affect them.</p> <p>Whether someone comes to Scotland to work, live or study they should have a fundamental right to have a say in how the country and their local communities are being run.</p> <p>Awareness</p> <p>The Scottish Government understands the importance of ensuring that voters are aware of how to register to vote and how to cast their vote, whether in a polling station or by post.</p>

⁸ <https://www.gov.scot/publications/new-scots-refugee-integration-strategy-2018-2022/>

	<p>The Electoral Commission is considering how best to promote public awareness amongst those enfranchised by the Bill. This will cover how and when to register and how and when to vote.</p> <p>Human Rights</p> <p>The proposal within the Bill to restrict the right to vote in devolved elections to only those prisoners who have been sentenced to a term of imprisonment of more than 12 months is in line with the ECtHR's ruling that a blanket ban on prisoner voting is unlawful. This will ensure that the Scottish Ministers and Scottish Parliament is not in breach of Article 3 of Protocol 1 of the ECHR.</p>			
<p>Monitoring and review</p>				
<p>Bill - Clause</p>	<p>Aims of measure</p>	<p>Likely to impact on . . .</p>	<p>Compliance with UNCRC requirements</p>	<p>Contribution to local duties to safeguard, support and promote child wellbeing</p>
<p>1</p>	<p>Section 1 of the Bill makes a number of amendments to the franchise for local government elections in Scotland. The overall effect is to extend the category of those able to register to vote as a local government elector in Scotland to citizens of all countries with a legal right to reside in Scotland. Registered local government electors are also able to vote in Scottish</p>	<p>16 and 17 year olds legally resident in Scotland and who are not EU or Commonwealth nationals</p>	<p>Article 2 Non-discrimination</p> <p>Article 12 Respect for the views of the child</p> <p>- allowing 16 and 17 year olds of any nationality to vote, providing they are legally resident. Also enfranchisement of any 16 and 17 year olds serving sentences of 12 months or less in a penal institution.</p>	<p>Voting rights for 16 and 17 year olds promote civic engagement</p>

	Parliament elections.			

CRWIA Declaration

Authorisation

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Date
17 June 2019

Deputy Director or equivalent
Penny Curtis, Elections and FOI Division

Date
17 June 2019



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