



Ministry of  
**JUSTICE**

# **Voting Eligibility (Prisoners) Draft Bill**

November 2012





## **Voting Eligibility (Prisoners) Draft Bill**

Presented to Parliament  
by the Lord Chancellor and Secretary of State for Justice  
by Command of Her Majesty

November 2012

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**Voting Eligibility (Prisoners) Draft Bill**

## Introduction

1. The European Court of Human Rights (ECtHR) has described the UK's current blanket ban on prisoner voting as "general, automatic and indiscriminate" and found it to be in breach of Article 3 of Protocol 1 of the European Convention on Human Rights (A3P1, ECHR). The ECtHR requires the UK to bring forward legislative proposals to amend our current legislation to be compliant with A3P1 of the Convention.
2. As a signatory to the ECHR, the UK Government is under an international law obligation to implement judgments against the UK, but the decision on changing the law to comply with the judgment is ultimately for Parliament.
3. That is why the Government is putting forward three options to a Committee of both Houses for full Parliamentary scrutiny. These three options are:
  - A ban for prisoners sentenced to 4 years or more.
  - A ban for prisoners sentenced to more than 6 months.
  - A ban for all convicted prisoners – a restatement of the existing ban.
4. There will no doubt be other possible options for the Joint Committee to consider.
5. When the Joint Committee has finished its scrutiny, the Government will reflect on its recommendations. It will continue the legislative process by introducing a Bill, refined following Parliamentary scrutiny, for debate as soon as possible thereafter.

## Prisoner voting rights: the past and current UK position

6. There has been some form of bar on prisoners voting in UK legislation for most of the past 140 years.
7. The Representation of the People Act 1983 consolidated previous legislation to confirm that all prisoners serving a custodial sentence did not have the right to vote.
8. The Representation of the People Act 2000 allowed prisoners on remand to vote, but maintained the position that prisoners serving a custodial sentence still did not have the right to vote.
9. Successive Governments have maintained the position that when an individual breaks their contract with society by committing an offence that leads to imprisonment, they should lose the right to vote while they are incarcerated.

### **International Context: Council of Europe, the ECtHR and the ECHR**

10. Litigation has been brought by prisoners against the UK under A3P1 of the ECHR. This Article guarantees free elections under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.
11. The ECHR entered into force in 1953 and all Council of Europe member states are party to it. The ECtHR is the Strasbourg Court established by – and responsible for making judgments on the application of – the Convention.
12. The Human Rights Act 1998 requires UK judges to interpret domestic legislation in a way which is compatible with the Convention rights wherever possible. In deciding the extent of a Convention right, UK judges must take into account any relevant decisions of the ECtHR. Where a UK court is satisfied that an Act of Parliament is incompatible with the Convention, the court may issue a declaration of incompatibility but the Act remains in force.

### **European Court of Human Rights Litigation: Hirst**

13. John Hirst (a UK prisoner serving a life sentence for manslaughter) took a case to the European Court of Human Rights and in March 2004 the ECtHR judged that the UK blanket ban on prisoner voting violated A3P1 of the Convention. The Government appealed the Court's judgment to the ECtHR's Grand Chamber but in October 2005, in *Hirst v United Kingdom (No.2)*, the Grand Chamber confirmed the decision by a majority of 12 to 5.
14. While the Grand Chamber accepted that section 3 of the RPA 1983 (which imposes the ban) pursued legitimate aims – such as preventing crime by sanctioning the conduct of convicted prisoners and enhancing civic responsibility and respect for the rule of law – and noted the wide margin of appreciation for implementation in this area, the Court nonetheless found the blanket restriction on prisoners voting to be disproportionate and deemed section 3 of the RPA 1983 a 'blunt instrument'.
15. The Court, however, did not provide guidance on what restrictions on UK prisoners voting would be compatible with the Convention and left the UK Government to decide on the choice of means for securing the rights guaranteed in A3P1 of the Convention.

### **UK Domestic Litigation post-Hirst**

16. Since the *Hirst* judgment, there have been a number of prisoner voting rights cases in both the domestic courts and the ECtHR.
17. In *Smith v Scott* (2007), a Scottish court granted a declaration of incompatibility under the Human Rights Act 1998 in respect of section 3 of the RPA 1983. In all subsequent domestic cases, the courts have taken

*Hirst* into account and used the ECtHR's finding that section 3 RPA 1983 is incompatible with the ECHR as the starting point for their judgments but have declined to grant further declarations of incompatibility and, as required by the Human Rights Act, have given effect to the UK legislation.

### **ECtHR case law post-Hirst**

18. From 2005-2010, around 2,500 claims were made to the ECtHR by UK prisoners seeking voting rights. In view of the large number of claims and the time that had elapsed since the original *Hirst* judgment, the ECtHR decided to adopt a "pilot judgment procedure" in dealing with the cases.
19. In *Greens and M.T. v United Kingdom*, in November 2010, the ECtHR again found a violation of A3P1 of the ECHR, and held that the UK must "(a) bring forward, within six months of the date upon which the present judgment becomes final, legislative proposals intended to amend the [RPA 1983] and, if appropriate, the [European Parliamentary Elections Act 2002] in a manner which is Convention-compliant; and (b) enact the required legislation within any such period as may be determined by the Committee of Ministers".
20. Again, the ECtHR did not provide guidance as to what restrictions would be compatible with the Convention, commenting that it was for the UK government in the first instance to decide how to achieve compliance. The 2,500 (now more than 3,000) clone cases were suspended pending implementation of the judgment.
21. In 2011, the UK Government requested an extension to the *Greens & MT* deadline to bring forward legislative proposals to take account of the referral of *Scoppola v. Italy (No.3)*, an Italian prisoner voting case, to the ECtHR Grand Chamber. The Court granted the UK an extension of six months from the date of the *Scoppola* judgment. The UK Government submitted written observations in the *Scoppola* case requesting that the Court revisit their decision in *Hirst*.
22. In November 2011, the Attorney General addressed the Grand Chamber of the ECtHR at the *Scoppola* hearing, reiterating the UK's written observations and stating the Government's firm view that whether incarcerated prisoners should be able to vote should be a policy decision for member states.
23. On 22 May 2012, the Grand Chamber announced its judgment in *Scoppola*, finding that there was no violation of A3P1 and that Mr Scoppola's disenfranchisement was not disproportionate. The ECtHR reaffirmed the decision in *Hirst* that a general and automatic disenfranchisement of all serving prisoners was still incompatible with A3P1, but accepted the UK's argument that member states should have a wide discretion in how they regulate a ban on prisoners voting, and clarified that a decision made by a judge was not an essential criterion for disenfranchisement.

24. The *Scoppola* judgment meant that the UK had six months from the date of the judgment to bring forward legislative proposals to amend domestic legislation to bring it in line with the ECHR (i.e. by 23 November 2012).

### **Previous UK Government Responses**

25. In February 2006, following the Grand Chamber's judgment in *Hirst*, the then Lord Chancellor announced a public consultation on prisoner voting rights. The first consultation document was published in December 2006 with a number of potential options.
26. A second consultation document followed in April 2009 alongside a summary of results from the first paper. 88 highly polarised responses had been received - 41 strongly believed in full enfranchisement, 22 wanted the full ban to remain; of the 40 members of the public who responded, the split was exactly 50/50.
27. In December 2010, Mark Harper, the then Minister for Political and Constitutional Reform, announced in a Written Ministerial Statement that the UK stood in breach of international law obligations and prisoners were bringing forward compensation claims. The Minister stated the Government's intention to bring forward legislation, but the introduction of this was subsequently paused, and the Government intervened in *Scoppola*.

### **The proposals**

28. As a signatory to the ECHR, the Government is under an international law obligation to implement ECtHR judgments. The judgment requires the Government to bring forward legislative proposals for Parliament to consider. It will then be for Parliament to scrutinise and to decide on those proposals.
29. That is why the Government is publishing three different options for consideration to a Committee of both Houses for full Parliamentary scrutiny. These three options are:

#### **Option 1) a ban for prisoners sentenced to 4 years or more**

30. This option would replace the current ban on prisoner voting with a ban on voting if a prisoner had been sentenced to 4 years or more, including if they were serving a life sentence.
31. The ban would apply to prisoners serving a sentence imposed by a foreign court in the same way that it applied to a prisoner serving the corresponding domestic sentence. It would not include those committed to prison for default of payment of a fine, or for contempt of court.
32. In order to determine whether a prisoner's sentence was 4 years or more, consecutive or concurrent sentences would be treated as a single term if:
- the sentences were passed on the same occasion, or

- the sentences were passed on different occasions but the offender was not released at any time between the first sentence being passed and the last sentence being passed.
33. Prisoners would vote by post or proxy, and would be entitled to register to vote not at the prison, but at their former address or, if they did not have a former address, the area where they had a local connection.

**Option 2) a ban for all prisoners sentenced to more than 6 months**

34. This option would replace the current ban on prisoner voting with a ban on voting if a prisoner had been sentenced to more than 6 months, including if they were serving a life sentence.
35. The ban would apply to prisoners serving a sentence imposed by a foreign court in the same way that it would apply to a prisoner serving the corresponding domestic sentence. It would not include those in prison for default of payment of a fine, or for contempt of court.
36. In order to determine whether a prisoner's sentence was more than 6 months, consecutive or concurrent sentences would be treated as a single term if:
- the sentences were passed on the same occasion, or
  - the sentences were passed on different occasions but the offender was not released at any time between the first sentence being passed and the last sentence being passed.
37. Prisoners would vote by post or proxy, and would be entitled to register to vote not at the prison, but at their former address or, if they did not have a former address, the area where they had a local connection.
38. Under both options 1 and 2, as drafted, prisoners sentenced to an Indeterminate Sentence for Public Protection (IPP) would be barred from voting.

**Option 3) a ban for all prisoners**

39. This option would re-enact the current general ban on prisoner voting, with some minor changes.
40. All prisoners would be banned from voting if they were serving a custodial sentence.

**Extent**

41. The Bill does not yet deal with extent. When the Bill is introduced in Parliament it will need to extend throughout the UK. This will require some minor changes to the Schedules, which are currently drafted for England and Wales only.

42. The franchise for elections to the UK Parliament, European Parliament, the Devolved Parliament and Assemblies in Scotland, Wales and Northern Ireland and for local Government elections in the UK is reserved to the Westminster Parliament. The Government will engage with the Devolved Administrations during the pre-legislative process to ensure the legislation applies correctly in Scotland and Northern Ireland in recognition of the interaction with devolved policy matters.

### **Conclusion**

43. The draft Bill sets out three different potential approaches for the Committee to consider. However, it will of course be for the Committee to consider whether approaches beyond these should also be considered.
44. When the Joint Committee has finished its scrutiny, the Government will reflect on its recommendations. It will continue the legislative process by introducing a Bill for debate and scrutiny as soon as possible thereafter.

**Draft Bill**

# Voting Eligibility (Prisoners) Bill

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A  
**B I L L**

TO

Make provision about the voting rights of prisoners.

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Options for reform*

**1 Option 1: ban for prisoners sentenced to 4 years or more**

Schedule 1 replaces the current ban on prisoner voting with a ban on voting for prisoners sentenced to 4 years or more.

**2 Option 2: ban for prisoners sentenced to more than 6 months**

Schedule 2 replaces the current ban on prisoner voting with a ban on voting for prisoners sentenced to more than 6 months.

**3 Option 3: ban for all prisoners**

Schedule 3 re-enacts the current general ban on prisoner voting, but with a few minor changes.

**4 Consequential amendments**

Schedule 4 contains consequential amendments.

*Final provisions*

**5 Commencement**

*[Note: this Bill does not yet deal with commencement. The form that the commencement clause needs to take depends on the final form of the Bill.]*

**6 Extent**

*[Note: when this Bill is introduced into Parliament it will need to extend throughout the United Kingdom. This will require some minor changes to the Schedules, which are currently drafted in terms of the law of England and Wales only.]*

**7 Short title**

This Act may be cited as the Voting Eligibility (Prisoners) Act 2012.

## SCHEDULES

### SCHEDULE 1

Section 1

#### BAN FOR PRISONERS SENTENCED TO 4 YEARS OR MORE

##### *Voting ban for prisoners*

- 1 A prisoner serving a custodial sentence for a term of 4 years or more is disqualified from voting at a parliamentary or local government election.
- 2 A prisoner serving a life sentence is disqualified from voting at a parliamentary or local government election.

##### *“Custodial sentence” and “life sentence”*

- 3 (1) In this Schedule “custodial sentence” means a sentence of imprisonment, detention or custody passed in respect of an offence.
- (2) In this Schedule “life sentence” means –
  - (a) a sentence of imprisonment, detention or custody for life, or during Her Majesty’s pleasure, passed in respect of an offence, or
  - (b) a sentence for public protection under section 225 or 226 of the Criminal Justice Act 2003 (including one passed as a result of the Armed Forces Act 2006).
- (3) In sub-paragraph (1) –
  - “offence” includes a service offence within the meaning of the Armed Forces Act 2006;
  - “sentence” does not include a committal –
    - (a) in default of payment of a sum adjudged to be paid by a conviction, or
    - (b) for contempt or any kindred offence.

##### *“Prisoner” etc*

- 4 (1) In this Schedule “prisoner” means –
  - (a) a person detained in, or on temporary release from, prison, or
  - (b) a person who is unlawfully at large but who would otherwise be detained in prison.
- (2) This Schedule applies to a prisoner because of a sentence only if he or she is detained in pursuance of that particular sentence (or would be if not on temporary release or unlawfully at large).
- (3) In sub-paragraph (1) “prison” means an institution to which the Prison Act 1952 applies.

*“Local government election”*

- 5 In this Schedule “local government election” has the meaning given by section 203(1) of the Representation of the People Act 1983.

*Sentence calculations: consecutive and concurrent sentences*

- 6 For the purposes of this Schedule terms that are consecutive or concurrent to any extent are to be treated as a single term if –
- (a) the sentences were passed on the same occasion, or
  - (b) the sentences were passed on different occasions but the offender was not released (other than on temporary release) at any time during the period beginning with the first occasion and ending with the last.

*Foreign sentences*

- 7 (1) This Schedule applies in relation to a prisoner serving a foreign sentence as it applies in relation to a prisoner serving the corresponding domestic sentence.
- (2) In sub-paragraph (1) “foreign sentence” means a sentence imposed by a foreign court; and “domestic sentence” means a sentence imposed by any other court.

*Transition*

- 8 This Schedule applies to people sentenced before, as well as to people sentenced after, this Schedule comes into force.

SCHEDULE 2

Section 2

BAN FOR PRISONERS SENTENCED TO MORE THAN 6 MONTHS

*Voting ban for prisoners*

- 1 A prisoner serving a custodial sentence for a term of more than 6 months is disqualified from voting at a parliamentary or local government election.
- 2 A prisoner serving a life sentence is disqualified from voting at a parliamentary or local government election.

*“Custodial sentence” and “life sentence”*

- 3 (1) In this Schedule “custodial sentence” means a sentence of imprisonment, detention or custody passed in respect of an offence.
- (2) In this Schedule “life sentence” means –
- (a) a sentence of imprisonment, detention or custody for life, or during Her Majesty’s pleasure, passed in respect of an offence, or
  - (b) a sentence for public protection under section 225 or 226 of the Criminal Justice Act 2003 (including one passed as a result of the Armed Forces Act 2006).

- (3) In sub-paragraph (1) –  
“offence” includes a service offence within the meaning of the Armed Forces Act 2006;  
“sentence” does not include a committal –  
(a) in default of payment of a sum adjudged to be paid by a conviction, or  
(b) for contempt or any kindred offence.

*“Prisoner” etc*

- 4 (1) In this Schedule “prisoner” means –  
(a) a person detained in, or on temporary release from, prison, or  
(b) a person who is unlawfully at large but who would otherwise be detained in prison.
- (2) This Schedule applies to a prisoner because of a sentence only if he or she is detained in pursuance of that particular sentence (or would be if not on temporary release or unlawfully at large).
- (3) In sub-paragraph (1) “prison” means an institution to which the Prison Act 1952 applies

*“Local government election”*

- 5 In this Schedule “local government election” has the meaning given by section 203(1) of the Representation of the People Act 1983.

*Sentence calculations: consecutive and concurrent sentences*

- 6 For the purposes of this Schedule terms that are consecutive or concurrent to any extent are to be treated as a single term if –  
(a) the sentences were passed on the same occasion, or  
(b) the sentences were passed on different occasions but the offender was not released (other than on temporary release) at any time during the period beginning with the first occasion and ending with the last.

*Foreign sentences*

- 7 (1) This Schedule applies in relation to a prisoner serving a foreign sentence as it applies in relation to a prisoner serving the corresponding domestic sentence.
- (2) In sub-paragraph (1) “foreign sentence” means a sentence imposed by a foreign court; and “domestic sentence” means a sentence imposed by any other court.

*Transition*

- 8 This Schedule applies to people sentenced before, as well as to people sentenced after, this Schedule comes into force.

## SCHEDULE 3

Section 3

## BAN FOR ALL PRISONERS

*Voting ban for prisoners*

- 1 A prisoner serving a custodial sentence is disqualified from voting at a parliamentary or local government election.

*“Custodial sentence”*

- 2 (1) In this Schedule “custodial sentence” means a sentence of imprisonment, detention or custody passed in respect of an offence (including a corresponding sentence imposed by a foreign court).
- (2) In sub-paragraph (1) –
  - “offence” includes a service offence within the meaning of the Armed Forces Act 2006;
  - “sentence” does not include a committal –
    - (a) in default of payment of a sum adjudged to be paid by a conviction, or
    - (b) for contempt or any kindred offence.

*“Prisoner” etc*

- 3 (1) In this Schedule “prisoner” means –
  - (a) a person detained in, or on temporary release from, prison, or
  - (b) a person who is unlawfully at large but who would otherwise be detained in prison.
- (2) This Schedule applies to a prisoner because of a sentence only if he or she is detained in pursuance of that particular sentence (or would be if not on temporary release or unlawfully at large).
- (3) In sub-paragraph (1) “prison” means an institution to which the Prison Act 1952 applies

*“Local government election”*

- 4 In this Schedule “local government election” has the meaning given by section 203(1) of the Representation of the People Act 1983.

*Transition*

- 5 This Schedule applies to people sentenced before, as well as to people sentenced after, this Schedule comes into force.

SCHEDULE 4

Section 4

CONSEQUENTIAL AMENDMENTS

*Paragraphs that go with each option*

- 1 When one of the options comes into force—
  - (a) the relevant paragraphs of this Schedule (as set out in the table) come into force at the same time, and
  - (b) the other paragraphs of this Schedule are repealed.

| <i>Option</i> | <i>Relevant paragraphs</i>     |
|---------------|--------------------------------|
| Option 1      | Paragraphs 2 to 9 and 11 to 14 |
| Option 2      | Paragraphs 2 to 9 and 11 to 14 |
| Option 3      | Paragraphs 2 to 4, 10 and 12   |

*City of London (Various Powers) Act 1957 (c. x)*

- 2 (1) Section 8 of the City of London (Various Powers) Act 1957 is amended as follows.
  - (2) In subsection (1)—
    - (a) after “provided” insert “the Voting Eligibility (Prisoners) Act 2012 and”;
    - (b) omit “section 3 (disfranchisement of offenders in prison, etc);”.
  - (3) In subsection (5) before “the provisions” insert “the Act of 2012 or”.

*Representation of the People Act 1983 (c. 2)*

3 The Representation of the People Act 1983 is amended as follows.

4 For section 3 substitute—

**“3 Disfranchisement of prisoners**

For provisions about the disfranchisement of prisoners, see the Voting Eligibility (Prisoners) Act 2012.”

5 In section 5(6) for “sections 7 and 7A” substitute “section 7”.

6 For section 7A substitute—

**“7A Prisoners etc: residence and registration applications**

- (1) A person who is a prisoner or on remand in a mental hospital is entitled to be treated for the purposes of section 4 as resident at—
  - (a) an address in the United Kingdom where the person resided immediately before becoming a prisoner or on remand in a mental hospital,
  - (b) in the absence of an address within paragraph (a), an address in the United Kingdom where the person has resided when not a prisoner or on remand in a mental hospital, or

- 
- (c) in the absence of an address within paragraph (a) or (b), the address of a place in the United Kingdom where the person has spent a substantial amount of time when not a prisoner or on remand in a mental hospital (or the nearest address to such a place).
- (2) A person who is a prisoner or on remand in a mental hospital is not to be treated as resident at an address other than one mentioned in subsection (1).
- (3) A person registered in a register of electors in pursuance of an application for registration made by virtue of subsection (1) may not, while remaining a prisoner or on remand in a mental hospital, make another application in respect of a different address.
- (4) An application by a prisoner for registration in a register of electors must be accompanied by a statement by an authorised person that the prisoner is not disqualified from voting by the Voting Eligibility (Prisoners) Act 2012.
- (5) In subsection (4) “authorised person” means –
- (a) the governor or director of the prison, or
  - (b) a person authorised by the governor or director to make a statement in relation to the prisoner.
- (6) A person registered in a register of electors in pursuance of an application for registration made by virtue of subsection (1) is entitled to remain so registered until whichever of the following occurs first –
- (a) the end of the period of 12 months beginning with the date when the entry in the register first takes effect,
  - (b) the registration officer determines in accordance with regulations that the person was not entitled to be registered or has ceased to satisfy the conditions for registration in section 4, and
  - (c) another entry made in respect of the person in any register of electors takes effect.
- (7) Where the entitlement of a person to remain registered terminates by virtue of subsection (6), the registration officer concerned must remove the person’s entry from the register, unless the person is entitled to remain registered in pursuance of a further application for registration made by virtue of subsection (1).
- (8) For the purposes of this section –
- (a) “prisoner” means a person who is detained in, or on temporary release from, prison, and
  - (b) a person is “on remand in a mental hospital” if the person is remanded or removed to a hospital under section 35, 36 or 48 of the Mental Health Act 1983 otherwise than following conviction or a finding in criminal proceedings that the person did the act or made the omission charged.”
- 7 (1) Section 7B is amended as follows.
- (2) In subsection (2) –
- (a) omit paragraph (b);

- (b) in paragraph (c) omit “or (b)”.
- (3) In subsection (3)(c)(ii) –
  - (a) omit “or (b)”;
  - (b) omit “or (as the case may be) of the place at which he is detained”.
- (4) In subsection (4)(a) –
  - (a) omit “or (b)”;
  - (b) in sub-paragraph (i) omit “, or detained,”.
- 8 In section 7C(4) –
  - (a) omit “or (b)”;
  - (b) omit “or 7A(2)”.
- 9 In section 10(3) for paragraph (a) substitute –
  - “(a) the registration of persons in respect of residence in mental hospitals (within the meaning of section 7);
  - (aa) the registration of persons in pursuance of applications for registration made by virtue of section 7A(1);”.
- 10 In section 10(3)(a) for “penal institutions (within the meaning of section 3 above)” substitute “prison”.
- 11 (1) Section 10A is amended as follows.
  - (2) In subsection (5), after paragraph (b) insert “, or
    - (c) determines that the elector was a prisoner or on remand in a mental hospital when entered in the register (but note subsection (8)(a)).”
  - (3) In subsection (8)(a) for “7A(2)” substitute “7A”.
  - (4) In subsection (9) at the appropriate place insert –
    - ““prisoner” and “on remand in a mental hospital” have the same meaning as in section 7A;”.
- 12 In section 202(1) at the appropriate place insert –
  - ““prison” means an institution to which the Prison Act 1952 applies.”
- 13 In paragraph 3A of Schedule 2 after “declarations” insert “or statements”.

*Representation of the People Act 2000 (c. 2)*

- 14 In paragraph 2 of Schedule 4 to the Representation of the People Act 2000, for sub-paragraph (6) substitute –
  - “(6) A prisoner or person on remand in a mental hospital may only vote by post or by proxy (and only if entitled as an elector to vote by post or by proxy at the election); and the preceding sub-paragraphs do not apply to a prisoner or person on remand in a mental hospital.
  - “Prisoner” and “on remand in a mental hospital” have the same meaning as in section 7A of the 1983 Act.”

## VOTING ELIGIBILITY (PRISONERS) DRAFT BILL

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### EXPLANATORY NOTES

#### INTRODUCTION

1. These Explanatory Notes relate to the Voting Eligibility (Prisoners) Draft Bill published for Pre-Legislative Scrutiny on 22 November 2012. They have been prepared by the Cabinet Office and the Ministry of Justice in order to assist the reader of the Bill and to help inform debate on it.
2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a part of a Clause or Schedule does not seem to require any explanation or comment, none is given.

#### SUMMARY

3. This Bill sets out three options, which are as follows:
  - a) Option 1: Replaces the current ban on prisoner voting with a ban on voting for prisoners sentenced to 4 years or more.
  - b) Option 2: Replaces the current ban on prisoner voting with a ban on voting for prisoners sentenced to more than 6 months.
  - c) Option 3: Re-enacts the current general ban on prisoner voting, but with a few minor changes.

#### BACKGROUND

4. Section 3 of the Representation of the People Act 1983 currently bars convicted and sentenced prisoners from voting at elections.
5. A summary of the relevant judgments of the European Court of Human Rights is provided below. Most recently, on 22 May 2012, the Grand Chamber of the European Court of Human Rights announced its final judgment in *Scoppola v Italy (No 3)*. It reaffirmed its judgment in *Hirst v United Kingdom (No.2)* that a general and automatic disenfranchisement of all serving prisoners was incompatible with Article 3 of Protocol No 1 of the European Convention on Human Rights. As a result the UK Government is legally obliged to bring forward legislative proposals that will amend domestic law and lift the blanket ban on prisoners voting.

## TERRITORIAL EXTENT AND APPLICATION

6. The Bill does not yet deal with extent. When this Bill is introduced in Parliament it will need to extend throughout the UK. This will require some minor changes to the Schedules, which are currently drafted for England and Wales only.
7. The franchise for elections to the UK Parliament, European Parliament, the Devolved Parliament and Assemblies in Scotland, Wales and Northern Ireland and for local Government elections in the UK is reserved to the Westminster Parliament. The Government will engage with the Devolved Administrations during the pre-legislative process to ensure the legislation applies correctly in Scotland and Northern Ireland in recognition of the interaction with devolved policy matters.

## COMMENTARY ON CLAUSES

### **Clause 1- Option 1: ban for prisoners sentenced to 4 years or more**

8. *Clause 1* introduces *Schedule 1*, which replaces the current ban on prisoner voting with a ban on voting for prisoners sentenced to 4 years or more.

### **Clause 2 - Option 2: ban for prisoners sentenced to more than 6 months**

9. *Clause 2* introduces *Schedule 2*, which replaces the current ban on prisoner voting with a ban on voting for prisoners sentenced to more than 6 months.

### **Clause 3 - Option 3: ban for all prisoners**

10. *Clause 3* introduces *Schedule 3*, which re-enacts the current general ban on prisoner voting, but with a few minor changes.

### **Clause 4 - Consequential amendments**

11. *Clause 4* introduces *Schedule 4*, which contains consequential amendments.

### **Clause 5 - Commencement**

12. This Bill does not yet deal with commencement. The form that the commencement clause will take depends on whether the final form of the Bill contains more than one option.

### **Schedule 1 – Ban for prisoners sentenced to 4 years or more**

13. *Schedule 1* replaces the current ban on prisoner voting with a ban on voting for prisoners sentenced to 4 years or more.
14. *Paragraph 1* disqualifies a prisoner from voting at a UK Parliamentary or local government election if they are serving a custodial sentence for a term of 4 years or more.

15. *Paragraph 2* disqualifies prisoners from voting at a parliamentary or local election if they are serving a life sentence.
16. These disqualifications will also have effect at other types of election, for example elections to the European Parliament. The right to vote at elections to the European Parliament is dependent on the right to vote at parliamentary or local government elections – see section 8 of the European Parliamentary Elections Act 2002.
17. *Paragraph 3* provides various definitions. “Life sentence” includes a sentence for public protection under section 225 or 226 of the Criminal Justice Act 2003. This means that a prisoner serving a sentence for public protection will be disqualified from voting. “Sentence” does not include a committal in default of payment of a sum adjudged to be paid by a conviction, or for contempt or any kindred offence. This means that a person committed to prison for these reasons will retain the right to vote.
18. *Paragraph 4* defines “prison” and “prisoner”. “Prisoner” includes those on temporary release or unlawfully at large. “Prison” is defined by reference to the Prison Act 1952 and includes young offender institutions and secure training centres.
19. *Paragraph 4(2)* provides that this Schedule will apply to a prisoner because of a sentence only if he or she is detained in pursuance of that particular sentence (or would be detained if not on temporary release or unlawfully at large). This means that a person imprisoned under a sentence of less than 4 years will retain the vote even if they are simultaneously on licence under a sentence of 4 years or more.
20. *Paragraph 5* provides that “local government election” has the meaning given by section 203(1) of the Representation of the People Act 1983. That provision defines “local government election” to include elections of councillors to district, county, parish and community councils as well as elections of the Mayor of London and members of the London Assembly.
21. *Paragraph 6* sets out the circumstances in which consecutive or concurrent terms should be treated as a single term when calculating the length of a sentence for the purposes of the 4-year threshold. These are if the sentences were passed on the same occasion, or the sentences were passed on different occasions but the offender was not released (other than on temporary release) at any time during the period beginning with the first occasion and ending with the last. For example, a prisoner who while serving a sentence of 3 years is given another sentence of 2 years to run consecutively would lose the right to vote when given the second sentence.
22. *Paragraph 7* provides for the Schedule to apply to a prisoner serving a foreign sentence in the same way that it applies to a prisoner serving the corresponding domestic sentence.

23. *Paragraph 8* says that the Schedule applies to people sentenced before, as well as to people sentenced after, the Schedule comes into force.

## **Schedule 2 – Ban for all prisoners sentenced to more than 6 months**

24. *Schedule 2* replaces the current ban on prisoner voting with a ban on voting for prisoners sentenced to more than 6 months.
25. *Paragraph 1* disqualifies a prisoner from voting at a parliamentary or local government election if they are serving a custodial sentence for a term of 6 months or more.
26. *Paragraph 2* disqualifies prisoners from voting at a parliamentary or local election if they are serving a life sentence.
27. These disqualifications will also have effect at other types of election, for example elections to the European Parliament. The right to vote at elections to the European Parliament is dependent on the right to vote at parliamentary or local government elections – see section 8 of the European Parliamentary Elections Act 2002.
28. *Paragraph 3* provides various definitions. “Life sentence” includes a sentence for public protection under section 225 or 226 of the Criminal Justice Act 2003. This means that a prisoner serving a sentence for public protection will be disqualified from voting. “Sentence” does not include a committal in default of payment of a sum adjudged to be paid by a conviction, or for contempt or any kindred offence. This means that a person committed to prison for these reasons will retain the right to vote.
29. *Paragraph 4* defines “prison” and “prisoner”. “Prisoner” includes those on temporary release or unlawfully at large. “Prison” is defined by reference to the Prison Act 1952 and includes young offender institutions and secure training centres.
30. *Paragraph 4(2)* provides for this Schedule to apply to a prisoner because of a sentence only if he or she is detained in pursuance of that particular sentence (or would be if not on temporary release or unlawfully at large). This means that a person imprisoned under a sentence of 6 months or less will retain the vote even if they are simultaneously on licence under a sentence of more than 6 months.
31. *Paragraph 5* provides that “local government election” has the meaning given by section 203(1) of the Representation of the People Act 1983. That provision defines “local government election” to include elections of councillors to district, county, parish and community councils as well as elections of the Mayor of London and members of the London Assembly.
32. *Paragraph 6* sets out the circumstances in which consecutive or concurrent terms should be treated as a single term when calculating the length of a sentence for the purposes of the 6-month threshold. These are

if the sentences were passed on the same occasion, or the sentences were passed on different occasions but the offender was not released (other than on temporary release) at any time during the period beginning with the first occasion and ending with the last. For example, a prisoner who while serving a sentence of 5 months is given another sentence of 2 months to run consecutively would lose the right to vote when given the second sentence.

33. *Paragraph 7* provides for the Schedule to apply to a prisoner serving a foreign sentence in the same way that it applies to a prisoner serving the corresponding domestic sentence.
34. *Paragraph 8* says that the Schedule applies to people sentenced before, as well as to people sentenced after, the Schedule comes into force.

### **Schedule 3 – Ban for all prisoners**

35. *Schedule 3* re-enacts the current general ban on prisoner voting, but with a few minor changes. For example, the Schedule makes clear that a prisoner remains disqualified from voting when on temporary release from prison.
36. *Paragraph 1* disqualifies prisoners from voting at a parliamentary or local government election if they are serving a custodial sentence. This disqualification will also have effect at other types of election, for example elections to the European Parliament. The right to vote at elections to the European Parliament is dependent on the right to vote at parliamentary or local government elections – see section 8 of the European Parliamentary Elections Act 2002.
37. *Paragraph 2* provides various definitions. “Custodial sentence” means a sentence of imprisonment, detention or custody passed in respect of an offence (including a corresponding sentence imposed by a foreign court). “Sentence” does not include a committal in default of payment of a sum adjudged to be paid by a conviction, or for contempt or any kindred offence. This means that a person committed to prison for these reasons will retain the right to vote.
38. *Paragraph 3* defines “prison” and “prisoner”. “Prisoner” includes those on temporary release or unlawfully at large. “Prison” is defined by reference to the Prison Act 1952 and includes young offender institutions and secure training centres.
39. *Paragraph 3(2)* provides for this Schedule to apply to a prisoner because of a sentence only if he or she is detained in pursuance of that particular sentence (or would be if not on temporary release or unlawfully at large). This means, for example, that a person who is held in prison on remand will retain the vote even if they are simultaneously on licence under a prison sentence.

40. *Paragraph 4* provides that “local government election” has the meaning given by section 203(1) of the Representation of the People Act 1983. That provision defines “local government election” to include elections of councillors to district, county, parish and community councils as well as elections of the Mayor of London and members of the London Assembly.
41. *Paragraph 5* says that the Schedule applies to people sentenced before, as well as to people sentenced after, the Schedule comes into force.

#### **Schedule 4 – Consequential amendments**

42. *Schedule 4* contains consequential amendments. Different consequential amendments are needed depending on which of *Schedules 1, 2 or 3* comes into force. *Paragraph 1* states which consequential amendments apply to each of these Schedules and, once one of these Schedules comes into force, brings into force only those amendments that are relevant.
43. *Paragraph 2* amends the City of London (Various Powers) Act 1957. This Act makes provision about elections to municipal offices in the City of London. It applies section 3 of the Representation of the People Act 1983 to those elections. The amendment replaces the application of section 3 with the application of the Voting Eligibility (Prisoners) Act 2012.
44. *Paragraphs 3 to 13* make amendments to the Representation of the People Act 1983.
45. *Paragraph 6* inserts a new section, *section 7A*, which deals with the residence and registration of prisoners and people on remand in a mental hospital. It is only relevant to Options 1 and 2.
46. *New section 7A(1)* provides that, for registration purposes, prisoners and those on remand in a mental hospital are to be treated as resident at the address in the United Kingdom where they resided immediately before being detained. If there is no such address (because for example they lived abroad immediately before being detained), then they are treated as resident at any address in the United Kingdom where they have previously resided at any time. In the absence of such an address (for example in the case of a prisoner who was previously homeless), they are treated as resident at any place in the United Kingdom where they have spent a substantial amount of time.
47. The address at which the prisoner or person on remand in a mental hospital is treated as residing by virtue of *subsection (1)* is the only address at which they are entitled to be treated as resident for registration purposes (*subsection (2)*) and if a registration application is made by virtue of this deemed residency, no other application may be made in respect of another address while the applicant remains a prisoner or on remand in a mental hospital (*subsection (3)*).

48. *New section 7A(4) and (5)* provide that prisoners who make an application for registration must send together with their application a statement from the prisoner governor (or his delegate) that the applicant is not disqualified from voting under the Voting Eligibility (Prisoners) Act 2012.
49. *New section 7A(6) and (7)* state when a registration made by virtue of the deemed residency provisions is to be removed by the registration officer. The registration must be removed after 12 months, or if earlier, when the registration officer determines that it was incorrectly made or the conditions for registration are no longer satisfied, or if another entry in the register is made for the same person. However if another successful application is made by virtue of the deemed residency provisions, the registration need not be removed.
50. *New section 7A(8)(a)* defines “prisoner” for the purposes of *section 7A*. This is any person who is detained in, or on temporary release from, prison, and therefore includes all convicted prisoners, whether or not sentenced, people who have been committed for contempt of court or failure to pay a fine, and those on remand in custody.
51. *New section 7A(8)(b)* defines who is a person “on remand in a mental hospital” for the purposes of *section 7A*. This is any person who has been detained in a hospital under various provisions of the Mental Health Act 1983 but who has not been convicted of an offence or subject to an adverse finding in criminal proceedings
52. *Paragraph 11* amends section 10A of the Representation of the People Act 1983. This section deals with the maintenance of the electoral registers. The amendment provides that a registration officer must remove an entry in a register if he determines that it was made by a prisoner or person on remand in a mental hospital unless the entry was made as a result of an application made by virtue of *new section 7A(1)*. This means that if a person is already on the register when they are sent to prison and their sentence is such that they are not disenfranchised, their existing registration will remain in place so long as their period of detention is so short that they are regarded as remaining resident at their registered address. However if they want to make a new application for registration while they are in prison, they must do so by virtue of *new section 7A*. This paragraph is only relevant for Options 1 and 2.
53. *Paragraph 12* inserts a definition of “prison” into the Representation of the People Act 1983. The effect of *paragraph 13* is that regulations made under the Representation of the People Act 1983 may make provision about the form and content of the statement from the prison governor which a prisoner must provide with their application. This is only relevant to Options 1 and 2.
54. *Paragraph 14* amends Schedule 4 to the Representation of the People Act 2000. Schedule 4 deals with absent voting. The effect of this amendment is that a prisoner or person on remand in a mental hospital is

not entitled to vote in person, but, if entitled to do so, may vote by post or by proxy. It is relevant only to Options 1 and 2.

## **FINANCIAL EFFECTS OF THE BILL**

55. Work on costs is still taking place and will be dependent on the final Bill introduced into Parliament, but the Government would of course seek to minimise any new burdens that these provisions would impose.

## **EFFECT OF THE BILL ON PUBLIC SERVICE MANPOWER**

56. With regard to elections staff in local authorities, the Government envisages the burden to be minimal, and spread between local authorities since prisoners would register in their 'home' constituency and not at the constituency in which their prison is situated. Similarly, with the options presented in this draft Bill, the burden on the National Offender Management Service would be minimal.

## **IMPACT ASSESSMENT**

57. An Impact Assessment will be published alongside the Bill when introduced into Parliament.

## **EUROPEAN CONVENTION ON HUMAN RIGHTS**

58. Since the Bill is a draft Bill, it is not necessary for a Minister to make a statement under section 19 of the Human Rights Act 1998 in respect of it. However, to the extent that Options 1 and 2 (Clauses 1 and 2 and Schedules 1 and 2) engage rights set out in the European Convention on Human Rights ("the ECHR"), the Government is of the view that the provisions are, on balance, compatible with those rights. To the extent that Option 3 (Clause 3 and Schedule 3) engages rights set out in the ECHR, the Government is unable to say that the provisions are compatible with those rights.
59. Section 3 of the Representation of the People Act 1983 ("the RPA 1983") bars all convicted and sentenced prisoners from voting at parliamentary and local government elections and, indirectly, other types of election.
60. The Bill is a response to court judgments in which section 3 of the RPA 1983 has been found to be incompatible with Article 3 of Protocol No.1 to the ECHR (the right to free and fair elections) ("A3P1"). These judgments are summarised below.

### *Hirst v UK (No.2) (2005)*

61. The claimant brought domestic proceedings seeking a declaration that section 3 RPA 1983 was incompatible with the ECHR. His claim was dismissed and leave to appeal was refused – see *Pearson and Martinez v Secretary of State for the Home Department* [2001] EWHC (Admin) 239. He then issued proceedings in Strasbourg. In March 2004, the Fourth Section of the European Court of Human Rights ("the ECtHR") declared the UK's blanket restriction on prisoners voting to be incompatible with

A3P1. In October 2005 the ECtHR's Grand Chamber upheld this decision – see *Hirst v UK (No 2)* (6 Oct 2005, application no. 74025/01).

62. The Grand Chamber considered that:

“Article 3 of Protocol No. 1, which enshrines the individual’s capacity to influence the composition of the law-making power, does not ... exclude that restrictions on electoral rights are imposed on an individual who has, for example, seriously abused a public position or whose conduct threatened to undermine the rule of law or democratic foundations.... The severe measure of disenfranchisement must, however, not be undertaken lightly and the principle of proportionality requires a discernible and sufficient link between the sanction and the conduct and circumstances of the individual concerned. The Court notes in this regard the recommendation of the Venice Commission that the withdrawal of political rights should only be carried out by express judicial decision... As in other contexts, an independent court, applying an adversarial procedure, provides a strong safeguard against arbitrariness.” (para 71)

63. The Court accepted that the Government's stated aims (preventing crime by sanctioning the conduct of convicted prisoners, and enhancing civic responsibility and respect for the rule of law) were legitimate (paras 74 - 75), but rejected the blanket ban as disproportionate because:

"... while the Court reiterates that the margin of appreciation is wide, it is not all-embracing. ... It strips of their Convention right to vote a significant category of persons and it does so in a way which is indiscriminate. The provision imposes a blanket restriction on all convicted prisoners in prison. It applies automatically to such prisoners, irrespective of the length of their sentence and irrespective of the nature or gravity of their offence and their individual circumstances. Such a general, automatic and indiscriminate restriction on a vitally important Convention right must be seen as falling outside any acceptable margin of appreciation, however wide that margin might be, and as being incompatible with Article 3 of Protocol No. 1.” (para 82)

64. However, the Grand Chamber did not provide detailed guidance on what restrictions on prisoners voting would be compatible with the Convention:

“In a case such as the present, where Contracting States have adopted a number of different ways of addressing the question of the right of convicted prisoners to vote, the Court must confine itself to determining whether the restriction affecting all convicted prisoners in custody exceeds any acceptable margin of appreciation, leaving it to the legislature to decide on the choice of means for securing the rights guaranteed by Article 3 of Protocol No. 1...” (para 84)

*Smith v Scott (2007)*

65. In *Smith v Scott* [2007] CSIH 9 the Secretary of State conceded that in light of the judgment in *Hirst*, section 3(1) of the RPA 1983 was incompatible with A3P1 and that the appellant's rights under A3P1 had been violated. The Registration Appeal Court made a declaration of incompatibility under section 4 Human Rights Act 1998 in respect of section 3(1) of the RPA 1983.

*Greens and M.T. v UK (2010)*

66. In *Greens and M.T. v UK* (23 Nov 2010, application nos. 60041/08 and 60054/08) the Fourth Section of the ECtHR found a violation of A3P1 and, in view of the delay in implementing *Hirst* and the number of claimants who had made similar applications against the UK, the Court adopted its "pilot judgment procedure". It held that the UK must (a) bring forward, within six months of the date upon which the judgment became final, legislative proposals intended to amend the law on prisoner voting in a manner which is Convention-compliant; and (b) enact the required legislation within any such period as may be determined by the Committee of Ministers.
67. The Court suspended its consideration of approximately 2,500 (now over 3,000) similar applications and proposed to strike them out in the event of the UK's compliance with the judgment.
68. Following unsuccessful requests by both the Government and the applicants to have the case referred to the Grand Chamber, the judgment became final on 11 April 2011. The deadline for bringing forward legislative proposals was therefore October 2011.

*Scoppola v Italy (No 3) (2012)*

69. In *Scoppola v Italy (No.3)* (22 May 2012, application no. 126/05), the Grand Chamber of the ECtHR considered Italy's prisoner voting regime. The UK submitted Observations and was granted an extension to the *Greens and M.T.* deadline until 6 months after the judgment in *Scoppola* became final.
70. In Italian law, a person who has been sentenced to imprisonment for five years or more is permanently banned from public office and unable to vote for life. A person who has been sentenced to imprisonment for three years or more is barred from public office for five years and unable to vote for that period. It is possible to regain the vote if granted "rehabilitation", which can be applied for three years after serving the sentence and is conditional on "a consistent and genuine display of good conduct."
71. The Court reaffirmed the principles in *Hirst*, "in particular the fact that when disenfranchisement affects a group of people generally, automatically and indiscriminately, based solely on the fact that they are serving a prison sentence, irrespective of the length of the sentence and irrespective of the nature or gravity of their offence and their individual

circumstances, it is not compatible with Article 3 of Protocol No. 1.” (para 96)

72. However, the Court made clear that A3P1 did not mean that the right to vote could only be taken away by a judicial decision; states could decide to incorporate provisions into their laws defining when a prisoner would lose the right to vote. (see para 102)
73. The Court found no violation in the case of the claimant, who was sentenced to 30 years imprisonment and therefore lost the vote for life. The Court considered that the Italian system was not excessively rigid because of the possibility of rehabilitation and of early release.
74. *Scoppola* was decided on 22 May 2012. The Secretariat to the Committee of Ministers of the Council of Europe has indicated that they will take the *Greens and M.T.* deadline to expire on 23 November 2012.

#### *Article 3 of Protocol 1*

##### *Option 1 (Schedule 1)*

75. Under this Option, a new prisoner voting regime is established under which only prisoners sentenced to four years or more are disqualified from voting. Other sentenced prisoners will no longer be disqualified and provisions are put in place to enable them to register to vote. As with the current law, those in prison on remand, for contempt of court or for defaulting on another type of sentence are entitled to vote.
76. A3P1 is engaged by these provisions since they continue to bar certain prisoners from voting.
77. The aims of these disqualification provisions are to prevent crime by sanctioning the conduct of convicted prisoners, and to enhance civic responsibility and respect for the rule of law. These aims were found to be legitimate in *Hirst*.
78. The Government considers it more likely than not that the provisions for Option 1 would be found to be proportionate and therefore compatible with A3P1. In *Scoppola*, the ECtHR found the Italian system, which disenfranchises prisoners sentenced to more than three years (as well as those convicted of offences against the State), compatible. The Court noted that this showed the legislature’s concern to apply the ban only in connection with offences which the courts consider to warrant a particularly harsh sentence, which itself would reflect the offender’s personal situation and any mitigating or aggravating circumstances (para 106).
79. There are arguments that a ban determined by sentence length only remains “general, automatic and indiscriminate”, and as such incompatible with A3P1. However the Government does not think that such arguments would prevail. Two key issues were noted by the ECtHR in *Scoppola*. The first is that under the Italian Criminal Code, sentence

length reflects the offender's personal situation and any mitigating or aggravating circumstances in which the offence was committed. A ban based on sentence length did not therefore have a general, automatic and indiscriminate character (para 108). The same points would hold true in relation to a UK ban based on sentence length. Secondly, the Italian three-year sentence threshold resulted in a large number of convicted prisoners not being deprived of the right to vote (para 108). That point can be made with even greater force in relation to the four year threshold in Option 1.

80. Some prisoners serving an immediate custodial sentence are not eligible to vote on the grounds of their age or nationality. Of those however who are aged 18 or over and of UK, Irish and Commonwealth nationalities, 89% were sentenced to less than 4 years in the 12 months to June 2012. Of those serving custodial sentences in prison in June 2012 in England and Wales, 38% (27,500) were serving sentences of less than 4 years and would meet the age and nationality requirements for voting in a UK Parliamentary election.
81. *Option 2 (Schedule 2)*
82. Option 2 establishes a new prisoner voting regime under which only prisoners sentenced to more than six months are disqualified from voting. Prisoners sentenced to six months or less will no longer be disqualified and provisions are put in place to enable them to register to vote. As with the current law, those in prison on remand, for contempt of court or for defaulting on another type of sentence are entitled to vote.
83. A3P1 is engaged by these provisions since they continue to bar certain prisoners from voting.
84. The aims of these disqualification provisions are to prevent crime by sanctioning the conduct of convicted prisoners, and to enhance civic responsibility and respect for the rule of law.
85. The Government considers that it is more likely than not that the provisions for Option 2 would be found to be proportionate and therefore compatible with A3P1. In particular, it is the Government's view that such a system would demonstrate the legislature's concern to adjust the application of the ban to the particular circumstances of the offender, taking into account such factors as the gravity of the offence committed and the conduct of the offender. It is noted that a system which disenfranchised all prisoners serving over a specified threshold and extended the ban post release to offenders given long sentences was found to be legitimate in *Scoppola*.
86. Only prisoners serving sentences of more than six months would be disqualified from voting. In *Scoppola* the ECtHR noted that the Italian ban based on sentence length (in that case three years) would take into account the seriousness of the offence, the offender's personal situation, and the circumstances in which the offence was committed. In addition,

the Court noted that a “large number” of convicted prisoners were not deprived of the right to vote (para 108). The Government is of the opinion that the same arguments apply in relation to Option 2. A ban based on sentence length would not be general, automatic or indiscriminate because the length of any sentence imposed takes into account the nature and seriousness of the offence committed and the personal circumstances of the offender.

87. Some prisoners serving an immediate custodial sentence are not eligible to vote on the grounds of their age or nationality. Of those however who are aged 18 or over and of UK, Irish and Commonwealth nationalities, 48% were sentenced to 6 months or less in the 12 months to June 2012. Of those serving custodial sentences in prison in June 2012 in England and Wales, 6% (4,500) were serving sentences of 6 months or less and would meet the age and nationality requirements for voting in a general election.

*Option 3 (Schedule 3)*

88. This Option reformulates the current general ban on prisoner voting. While it makes minor changes, crucially it does not permit sentenced prisoners to vote. A3P1 is therefore engaged. The ECtHR affirmed in *Scoppola* its judgment in *Hirst* that “when disenfranchisement affects a group of people generally, automatically and indiscriminately, based solely on the fact that they are serving a prison sentence, irrespective of the length of the sentence and irrespective of the nature or gravity of their offence and their individual circumstances, it is not compatible with Article 3 of Protocol No. 1”. The Government is therefore unable to say that the Option 3 provisions are compatible with A3P1.

*Other Articles*

*Article 14*

89. In *Clift v UK* (13 July 2010, application no. 7205/07) the ECtHR (Fourth Section) found that the different treatment of different categories of prisoners depending on sentences imposed was based on “other status” within the meaning of Article 14 of the ECHR. In that case, the different treatment complained of – the requirement that the Secretary of State must approve a recommendation for release by the Parole Board in the case of those serving determinate sentences of 15 years or more but no such approval was necessary in the case of those serving shorter determinate sentences or life sentences – was found to lack objective justification. Accordingly there was a breach of Article 5 taken together with Article 14.
90. In the light of this decision, the Government has considered whether Options 1 and 2 – which disenfranchise prisoners depending on the length of their sentence - might constitute a breach of A3P1 when taken together with Article 14.

91. The ECtHR has frequently stated that a difference in treatment is only discriminatory if it has no legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. In assessing whether and to what extent differences in otherwise similar situations justify a different treatment the Contracting States enjoy a margin of appreciation, and a wide margin is usually allowed when it comes to general measures of social policy.
92. The ban on prisoner voting pursues the legitimate aims of preventing crime by punishing offenders, and enhancing civic responsibility and respect for the rule of law. The Government is of the view that the different voting rights accorded to prisoners by reference to their sentence length in Options 1 and 2 are justifiable in pursuit of these aims and therefore not discriminatory. The imposition of a harsher sanction for those serving longer sentences reflects the seriousness of the nature of the offence and the circumstances in which it was committed.

*Article 10*

93. In *Hirst* the applicant complained that the prisoner voting ban prevented him from exercising his right to freedom of expression through voting and was therefore in breach of Article 10. The Court dismissed this argument, finding that A3P1 was the *lex specialis* as regards the right to vote and that no separate issue arose under Article 10 (para 89). The Government is accordingly of the view that the provisions of the Bill do not violate Article 10 ECHR.

**COMMENCEMENT**

94. The Bill does not yet deal with commencement. The manner in which the Bill will be commenced depends on the final form of the Bill.





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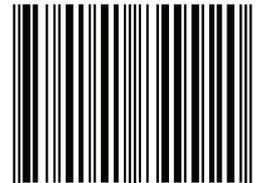
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