The Administrative Disenfranchisement of Prisoners in England and Wales

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Introduction

Thousands of prisoners in England and Wales are eligible to vote in elections. Remand prisoners, civil prisoners and those released on temporary licence (ROTL) or home detention curfew are all permitted to vote under certain circumstances. In practice, however, the constraints of imprisonment and the requirements of voter registration pose considerable barriers. In other words, despite having a *legal* right to vote, these prisoners face a significant risk of *administrative disenfranchisement*, also known as 'circumstantial abstentionism' (p.21)[1] and 'jail based disenfranchisement' (p.831).[2] The potential denial of voting rights to thousands of eligible voters is a major democratic concern with significant human rights implications.

Between 2004-17, successive court rulings found that the statutory exclusion of convicted prisoners from the electoral franchise in the United Kingdom (UK) violated the right to free and fair elections, as guaranteed under the Human Rights Act 1998 and the European Convention on Human Rights (ECHR).[3] The rulings were met with protracted opposition from successive UK governments. However, the dispute was resolved in 2018 after the UK Government permitted ROTL prisoners the right to vote while outside of prison. While the voting rights of prisoners were subject to extensive litigation and parliamentary debate throughout this period, the position of prisoners who were already eligible to vote was largely neglected. To the extent that they were considered, it was widely assumed that they are able to exercise their right to vote without any impediments. As a result, the possibility of administrative disenfranchisement was not subject to judicial or political scrutiny.

Despite this neglect, the issue has a long history in the UK. Since 1870, when the first statutory restrictions on prisoner voting were introduced, there have been multiple periods in which prisoners who formally retained their voting rights were prevented from voting by other aspects of electoral law and administration.[4] Between 1983-2000, for example, remand and civil prisoners remained eligible to vote under the Representation of the People Act 1983, but there was no mechanism by which they could register to vote while in prison. The Representation of the People Act 2000 was designed to rectify this problem by enabling these categories to register while detained. Whether it was effective in this regard, however, has been overlooked entirely.

In this paper we underline the need for prison officials and policy-makers in England and Wales to engage once again with the risk of administrative disenfranchisement and take steps to minimise it. Public authorities have an obligation under section 6 of the Human Rights Act 1998 to respect the Convention rights of prisoners, including the right to free and fair elections. Additionally, prison authorities are required to support eligible prisoners in exercising their voting rights.[5]

These obligations are relevant to the entire prison estate, with the categories of prisoner eligible to vote in UK elections also accounting for a substantial minority of the prison population. In 2022, at least 13,719 (remand) prisoners (17 per cent) were eligible to vote in

1. Behan, C. (2012). 'Still Entitled to Our Say': Prisoners' Perspectives on Politics. *The Howard Journal of Crime and Justice, 51*(1), 16-36.
2. Paikowsky, D. (2019). Jails as Polling Places: Living Up to the Obligation to Enfranchise the Voters We Jail. *Harvard Civil Rights-Civil Liberties Law Review, 54*(2), 829-873.
3. *Hirst v United Kingdom (no 2) (2006)* 42 EHRR 41
4. House of Lords and House of Commons - Joint Committee on the Draft Voting Eligibility (Prisoners) Bill (2013). *Draft Voting Eligibility (Prisoners) Bill.* Session 2013-14, HL Paper 103 HC 924. London: Stationary Office. Available at https://publications.parliament.uk/pa/jt201314/jtselect/jtdraftvoting/103/103.pdf; Murray, C. (2013). A Perfect Storm: Parliament and Prisoner Disenfranchisement. *Parliamentary Affairs,* 66(3), 511-539.
5. Ministry of Justice (2020). *Restrictions on Prisoner Voting Policy Framework.* London: Ministry of Justice. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/908514/restrictions-prisoner-voting-policy-framework.pdf

England and Wales.[6] The enfranchisement of ROTL prisoners also means that almost all prisons now deal with eligible categories. In 2019, the year of the most recent general election, 113 out of 117 prisons (97 per cent) in England and Wales held at least one prisoner with the right to vote. It follows that every prison should have arrangements in place to support prisoners with voting. A projected rise in the number of prisoners in England and Wales to 106,000 by March 2027 further underlines the need to understand the extent of administrative disenfranchisement and to consider what changes need to be made to the current system.[7]

Drawing upon our recent empirical research and the wider available evidence, in this paper we explore the various ways in which eligible prisoners can be denied the right to vote. We identify a plethora of issues, including a lack of knowledge of voting rights, low literacy, the absence of data collection, inadequate facilitation and support within prisons, poor communication between services, the disruptive potential of prisoner dispersal, and a lack of clarity within the relevant rules and guidance. In light of these problems, we argue that the 2000 Act failed to deal adequately with the various ways in which administrative disenfranchisement can occur.

We then consider ways in which administrative disenfranchisement could be addressed. Given the multi-faceted, systemic nature of this problem, we consider three possible reforms: automatic voter registration for prisoners; formal information-sharing between prison and electoral services; and the introduction of electoral infrastructure within prisons, including election hustings and the 'booth and ballot' system. These wide-ranging proposals would require a mixture of legislative reforms and significant changes to prison and electoral policies. As we shall argue, however, each poses additional challenges, underlining the perniciousness of administrative disenfranchisement in the context of the current functioning of the criminal justice system and electoral politics in the UK.

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Administrative disenfranchisement

The majority of prisoners in England and Wales cannot vote. Section 3 of the Representation of the People Act 1983 states that convicted prisoners are 'legally incapable' of voting while detained in pursuance of a sentence. However, a significant minority of the prison population retain their voting rights. Remand (unconvicted / unsentenced) prisoners and those committed to prison for contempt of court or for defaulting on fines are entitled to vote via post or by proxy. Under the terms of the 2000 Act and official guidance from the Ministry of Justice,[8] these categories of prisoner may register to vote using their home address, the prison address, or a declaration of local connection (based on either their address prior to imprisonment or the address where they would normally be resident). Convicted prisoners released on temporary licence or subject to home detention curfew are also eligible to vote, but only while outside of prison.[9] They cannot be released for the purpose of voting, however, nor can they register to vote using the address of the prison. Taken together, these rules appear to engender a system of partial disenfranchisement, in which the loss of voting rights is conditional upon the imposition of a custodial sentence and confined to the period of detention.

The effects of these rules, however, are more complicated. In practical terms, partial disenfranchisement means that the geographical distribution of prisoners with voting rights is extremely diffuse. Some prisons may have several hundred eligible voters within their custody; others may hold few or

6. Ministry of Justice (2022). *Prison Population 31 December 2022*. Offender Management Statistics Quarterly: July to September 2022. London: Ministry of Justice. Available at: https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-july-to-september-2022
7. Ministry of Justice (2023). *Prison Population Projections 2022 to 2027, England and Wales.* London: Ministry of Justice. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1138135/Prison_Population_Projections_2022_to_2027.pdf
8. Ministry of Justice (2020). *Restrictions on Prisoner Voting Policy Framework*. London: Ministry of Justice. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/908514/restrictions-prisoner-voting-policy-framework.pdf
9. Ministry of Justice (2020). *Restrictions on Prisoner Voting Policy Framework*. London: Ministry of Justice. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/908514/restrictions-prisoner-voting-policy-framework.pdf

even none at all. The rules thus impose uneven responsibilities on prison governors and staff across the prison estate. As a result, it is likely that awareness of prisoner voting rights on the part of prison authorities, and the availability of local arrangements and processes to facilitate prisoner voting, will vary from one institution to the next. Prisons with high remand populations, including local prisons such as HMP Durham and HMP Pentonville,[10] are more likely to be aware of their duties toward prisoners with voting rights than prisons with very few eligible categories of prisoner.

Despite the uneven distribution of eligible prisoners across the prison estate, however, there is no official data collection on voter registration among prisoners. As a result, electoral officials and policy-makers do not know the extent to which eligible prisoners are exercising their right to vote. This contrasts with arrangements in Scotland, where the Electoral Commission now gathers data on voter registration, following the enactment of the Scottish Elections (Franchise and Representation) Act 2020.

Nevertheless, there is now consistent evidence to suggest that most eligible prisoners are not registering to vote in England and Wales. In 2019, the Chief Executive of the Association of Electoral Administrators estimated that the numbers were 'very, very small'.[11] In our recent empirical study of prisoner voting rights, which surveyed over 130 electoral administrators from across the UK, we found further evidence of low participation.[12] The research revealed that voter registration applications from prisoners are extremely rare: less than a quarter (23 per cent) of the electoral administrators based in England and Wales reported that they had received an application from a prisoner. Further, all but one (97 per cent) of those respondents had dealt with just 1-5 applications during their careers as electoral administrators. Following extensive Freedom of Information requests to local authorities across the UK, we also identified just one prisoner registered to vote in 2021. These findings unequivocally point towards low levels of prisoner participation.

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Understanding low participation

There are a number of factors which help to explain such low levels of participation. Some prisoners choose not to vote — what Behan calls 'voluntary abstentionism'(p.21)[13] — for a variety of reasons, including political apathy, civic alienation, and a lack of trust in politicians. However, eligible prisoners can also be prevented from voting in different ways. Firstly, although Ministry of Justice policy places the onus on eligible prisoners to express their desire to vote,[14] research has shown that prisoners are generally unaware of their legal rights.[15] Indeed, a lack of knowledge of voting rights among prisoners has been observed by HM Inspectorate of Prisons (HMIP), [16] two parliamentary inquiries[17] and an academic study.[18]

10. 74 per cent and 75 per cent of prisoners held at HMP Durham and HMP Pentonville in September 2023 were on remand respectively. Ministry of Justice (2023). *Offender Management Statistics quarterly: April to June 2023.* London: Ministry of Justice. Available at: https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-april-to-june-2023.
11. National Assembly for Wales' Equality, Local Government and Communities Committee (2019). *Voting Rights for Prisoners Inquiry.* Evidence session on 7 March 2019 Cardiff: National Assembly for Wales. Available at: https://record.assembly.wales/Committee/5302
12. Jones, R., and Davies, G. (2023). Prisoner voting in the United Kingdom: an empirical study of a contested prisoner right. *Modern Law Review,* 86(4), 900-926.
13. Behan, C. (2012). 'Still Entitled to Our Say': Prisoners' Perspectives on Politics. *The Howard Journal of Criminal Justice,* 51(1), 16-36, p.21.
14. Ministry of Justice (2020). *Restrictions on Prisoner Voting Policy Framework.* London: Ministry of Justice. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/908514/restrictions-prisoner-voting-policy-framework.pdf
15. Karamalidou, A. (2017). *Embedding Human Rights in Prison.* London: Palgrave Macmillan.
16. HM Inspectorate of Prisons (HMIP) (2012). *Remand Prisoners: A Thematic Review.* London: HMIP. Available at: https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2012/08/remand-thematic.pdf
17. House of Lords and House of Commons - Joint Committee on the Draft Voting Eligibility (Prisoners) Bill (2013). *Draft Voting Eligibility (Prisoners) Bill.* Session 2013-14, HL Paper 103 HC 924. London: Stationary Office; National Assembly for Wales' Equality, Local Government and Communities Committee (2019). *Voting Rights for Prisoners.* Cardiff: National Assembly for Wales. Available at: https://senedd.wales/laid%20documents/cr-ld12550/cr-ld12550-e.pdf
18. Dhami, M., and Cruise, P. (2013). Prisoner Disenfranchisement: Prisoner and Public Views of an Invisible Punishment. *Analysis of Social Issues and Public Policy,* 13(1). 211-227.

Even when prisoners seek to vote, they can encounter further obstacles. They may lack the necessary information and documentation for the registration process, such as their date of birth, national insurance number, a passport or driver's licence, and a fixed or regular address.[19] Additionally, prisons may fail to provide the necessary support and opportunities for prisoners to register and vote. For instance, although remand prisoners are eligible to vote, a 2012 review by HMIP found that two out of five prisons visited had 'no arrangements to facilitate this entitlement'.[20] These difficulties are compounded by wider pressures facing electoral and prison services. While electoral administrators have had to contend with major cuts to local authority budgets, the loss of experienced staff, and high workloads,[21] HM Prisons and Probation Service (HMPPS) saw its budget reduced by around 20 percent between 2010 and 2015, and its funding in 2022 remained 6 percent lower in real terms than in 2010-11.[22] In these conditions, supporting prisoners to exercise their voting rights is unlikely to be a priority.

Our own empirical research revealed further problems in the administration of prisoner voting rights.[23] One is poor communication between electoral and prison services. We discovered that electoral administrators in England and Wales are not routinely informed when someone is placed in custody, nor are they updated following conviction or sentencing. They therefore do not know the whereabouts of eligible prisoners in the prison estate, nor can they easily determine whether a prisoner who applies to register is eligible. Almost half (41 per cent) of electoral administrators in England and Wales with experience of prisoner voting applications surveyed for the study did not know the category of prisoner who had applied. Several also reported that their attempts to contact individual prisons to obtain necessary information ended in failure.

Another problem is establishing where a remand prisoner can be registered. Electoral law in the UK requires a person to be 'resident' at a particular address.[24] For this purpose, remand prisoners can use their home address, the prison address, or a declaration of local connection (based on either their address prior to imprisonment or the address where they would normally be resident). Under the terms of the 1983 Act, they should not normally be considered resident at the prison where they are held. However, a prisoner may be regarded as resident at a prison 'if the length of the period which he is likely to spend at that place is sufficient for him to be regarded as being resident there for the purposes of electoral registration'.[25] What constitutes a 'sufficient' period of detention, however, is not specified in the legislation. Instead, electoral administrators are required to make judgements about how long a person is likely to remain at a particular prison.

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The problem of residency is compounded by the fact that prisoners, including those on remand, are often held in prisons outside of their usual constituency, with some even moved to a different prison during the course of their detention. Although the expectation is that remand prisoners will be held in a local prison while awaiting trial or sentencing, prison places are often (and increasingly) determined based on capacity and levels of overcrowding.[26] A recent surge in the remand population has only added to the 'capacity challenges' and placement problems faced by an 'already overcrowded prison estate'.[27] This situation creates

19. National Assembly for Wales' Equality, Local Government and Communities Committee (2019). *Voting Rights for Prisoners.* Cardiff: National Assembly for Wales. Available at: https://senedd.wales/laid%20documents/cr-ld12550/cr-ld12550-e.pdf
20. HM Inspectorate of Prisons (HMIP) (2012). *Remand Prisoners: A Thematic Review.* London: HMIP. Available at: https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2012/08/remand-thematic.pdf
21. James, S.T. (2019). Better workers, better elections? Electoral management body workforces and electoral integrity worldwide. *International Political Science Review,* 40(3), 370-390.
22. Prison Reform Trust (2022). *Bromley Briefings Prison Factfile: Winter 2022*. London: Prison Reform Trust. Available at: https://prisonreformtrust.org.uk/wp-content/uploads/2022/02/Winter-2022-Factfile.pdf
23. Jones, R., and Davies, G. (2023). Prisoner voting in the United Kingdom: an empirical study of a contested prisoner right. *Modern Law Review,* 86(4), 900-926.
24. Representation of the People Act 1983, s 4
25. Representation of the People Act 1983, s 7A(2)
26. House of Commons Justice Committee (2012). *The Budget and Structure of the Ministry of Justice. Oral Evidence*, Q121. HC 1679-ii. London: Stationary Office. Available at: https://publications.parliament.uk/pa/cm201213/cmselect/cmjust/97/97ii.pdf
27. House of Commons Justice Committee (2023). *The Role of Adult Custodial Remand in the Criminal Justice System.* Seventh Report of Session 2022–23. HC 264. London: Stationary Office, p.20 Available at: https://committees.parliament.uk/publications/33530/documents/182421/default/

considerable uncertainty as to where a prisoner should register to vote. It can disrupt electoral correspondence, cause postal votes to be sent to the wrong addresses, and even lead to applications being rejected.[28]

A further problem is a prevalence of incomplete or erroneous applications. Around a third of electoral administrators (36 per cent) with experience of prisoner voting applications in our study reported rejecting one or more. Although prisons are required to support prisoners with the registration process — an especially important responsibility in light of the low literacy rates among prisoners — the prevalence of rejected applications indicates that prisoners are not receiving the support which they require. [29] [30]

Finally, electoral administrators in England and Wales have expressed that the electoral rules and guidance on prisoner voting are not sufficiently clear to be interpreted and applied consistently. Several respondents questioned how the eligibility rules for ROTL prisoners could be enforced given the limited information made available to electoral administrators about prisoners' status and circumstances. Ministry of Justice policy states that prisons need to have local processes in place to allow eligible prisoners to exercise their vote. However, because individuals on temporary licence or home detention curfew may only vote while outside of prison and become ineligible to vote while in prison, it is unclear whether and to what extent the duty on prisons applies to these categories. This fluctuating eligibility creates considerable uncertainty as to the obligations of both prisons and electoral services. To this extent, it appears that important aspects of the current prisoner franchise are likely to be enforced in unpredictable and arbitrary ways.

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Challenging Administrative Disenfranchisement

The many problems outlined above show that the voting rights of eligible prisoners are at risk. Whether or not the current eligibility rules change, there is a pressing need for prison officials and policy-makers in England and Wales to engage with this risk and take active steps to minimise it. Drawing upon examples elsewhere and our own empirical findings, below we explore three possible options.

Automatic registration of prisoners

First, eligible prisoners could be automatically registered to vote upon reception into prison, unless already registered. Defined by James and Bernal as 'the direct enrolment of citizens onto the electoral register by public officials, without the need for pro-active action by citizens'[31] automatic registration has gained support from across the political spectrum in recent years.[32] In contrast to the current approach under UK electoral law, in which the onus is on eligible voters to register themselves in order to be able to vote, automatic registration would require prisoners to be treated more favourably than ordinary electors. This difference of treatment would be justified in light of the additional risks of disenfranchisement faced by prisoners and would help to ensure equality of outcome.

28. Jones, R., and Davies, G. (2023). Prisoner voting in the United Kingdom: an empirical study of a contested prisoner right. *Modern Law Review,* 86(4), 900-926.
29. Ministry of Justice (2020). *Restrictions on Prisoner Voting Policy Framework*. London: Ministry of Justice. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/908514/restrictions-prisoner-voting-policy-framework.pdf
30. HMIP and Ofsted (2022). *Prison education: a review of reading education in prisons.* 22 March 2022. London: HMIP. Available at: https://www.gov.uk/government/publications/prison-education-a-review-of-reading-education-in-prisons/prison-education-a-review-of-reading-education-in-prisons
31. James, T.S., and Bernal, P. (2020). *Is it time for Automatic Voter Registration in the UK?* York: Joseph Rowntree Reform Trust. Available at: https://www.jrrt.org.uk/wp-content/uploads/2020/04/Is_it_time_for_AVR_in_the_UK.pdf
32. Elgot, J. (2019). Labour looks at automatic registration to raise voter turnout. 11 April 2019, The Guardian. Available at: https://www.theguardian.com/politics/2019/apr/11/labour-looks-at-automatic-registration-to-raise-voter-turnout; House of Commons Political and Constitutional Affairs Committee (2014). *Voter Engagement in the UK.* Fourth Report of Session 2014–15, HC 232. London: Stationary Office. Available at: https://publications.parliament.uk/pa/cm201415/cmselect/cmpolcon/232/232.pdf

For those without a fixed address, the prison could be used as the default address for registration. This could operate as an opt out scheme whereby those prisoners without a fixed address would be registered at the address of the prison unless they expressed a desire to be removed from the electoral register. While previous research has shown that prisoners may have objections to using the prison address for registration purposes, an opt out scheme would allow prisoners to avoid this problem.[33]

By placing the responsibility on prison and electoral services instead of individual prisoners, automatic registration would help to address many of the issues facing eligible prisoners, including widespread lack of knowledge of voting rights, the prevalence of low literacy rates, and a lack of access to relevant information and supporting documentation.

A further advantage of automatic registration is that it can 'boost voter registration rates amongst under-registered groups' (p.5).[34] Although it is inevitable that some remand prisoners will be released or sentenced before the next election, it would reduce the risk of disenfranchisement in the context of increasingly uncertain and lengthy periods of remand in England and Wales. It would also help to overcome many of the barriers associated with the transfer and dispersal of eligible prisoners across the prison estate by removing the ambiguities around a prisoner's place of 'residence'.

Notwithstanding the possible benefits of automatic registration, it may prompt concerns over privacy and information safeguarding. Since automatic registration usually involves information-sharing between government departments without express consent from citizens, this could have particular implications for prisoners, who may be distrustful of prison authorities and the handling of their personal details and information.[35]

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Establishing formal information-sharing

Another option would be to establish information-sharing systems and effective channels of communication between HMPPS and electoral services. There have been repeated calls for this reform from electoral administrators in recent years.[36]

Under such a scheme, prisons would need to record the reception of eligible voters into their custody and communicate that information to electoral administrators. They would also need to provide regular updates regarding changes to prisoners' status and placement. As the Senedd's Equality Local Government and Communities Committee proposed, a Memorandum of Understanding could be used to this effect. In Scotland, such a system has been introduced using a Service Level Agreement. As one electoral administrator explained in our empirical study,

> *"… the Scottish Prison Service provides monthly lists to EROs [Electoral Registration Officers] of all prisoners either on remand or sentenced to less than 12 months in prison who provided a connection address and this information is used to send registration forms to the elector at their place of detention."*

Such a system could be developed without the introduction of automatic registration, but the two combined may offer a stronger guarantee that eligible voters held in the prison estate are able to exercise their right to vote.

There is also precedent in attempting to tackle the impact that prisoner transfer has on eligible prisoners elsewhere. In Los Angeles County, for example, officials have devised a system to 'use a resident's booking number to distribute absentee ballots if voters are transferred to another jail facility' (p.9).[37] In the context of budget pressures facing electoral services, such a

33. Behan, C. (2012). 'Still Entitled to Our Say': Prisoners' Perspectives on Politics. *The Howard Journal of Criminal Justice,* 51(1), 16-36.
34. James, T.S., and Bernal, P. (2020). *Is it time for Automatic Voter Registration in the UK? York:* Joseph Rowntree Reform Trust. Available at: https://www.jrrt.org.uk/wp-content/uploads/2020/04/Is_it_time_for_AVR_in_the_UK.pdf
35. Behan, C. (2012). 'Still Entitled to Our Say': Prisoners' Perspectives on Politics. *The Howard Journal of Criminal Justice,* 51(1), 16-36.
36. Jones, R., and Davies, G. (2023). Prisoner voting in the United Kingdom: an empirical study of a contested prisoner right. *Modern Law Review,* 86(4), 900-926 National Assembly for Wales' Equality, Local Government and Communities Committee (2019). *Voting Rights for Prisoners.* Cardiff: National Assembly for Wales. Available at: https://senedd.wales/laid%20documents/cr-ld12550/cr-ld12550-e.pdf.
37. Porter, N. (2020). *Voting in Jails.* Washington, DC: The Sentencing Project, p.9 Available at: https://www.sentencingproject.org/app/uploads/2022/08/Voting-in-Jails.pdf

system would help administrators to target their resources more effectively and support initiatives to increase voter participation, including voter registration drives.

Electoral infrastructure

A third option would be to facilitate election infrastructure inside prisons across England and Wales. In other European jurisdictions, including Poland, the Netherlands, Denmark, and France, concerted efforts have been made to 'place prisoners in the same contexts as ordinary citizens' by allowing prisoners to cast their vote in a 'Booth and Ballot' system.[38] At the 2019 European elections, Herzog-Evans and Thomas found that this system, in enabling prisoners to be treated the same as ordinary citizens, contributed to 'significantly greater numbers of prisoners voting'.[39] Similarly, in Canada, which boasts some of the highest participation rates amongst prisoners, prisons host polling days 12 days before an election. Replicating this approach in England and Wales could help to enhance prisoner awareness of their voting rights and increase voter interest and engagement. This approach would also enable targeted political campaigning, such as hustings, which provide voters with further information on key campaign pledges and the policies that each candidate or party is promising to pursue. This would be particularly helpful in local prisons where a significant proportion of the population are eligible to vote.

The infrastructure within the prison could also include a designated link officer to work with prisoners and electoral administrators. Here, prison officials in England and Wales can draw upon evidence of best practice taken from elsewhere. Examples might include the United States city of Philadelphia, where responsibility for promoting 'jail voting education and registration efforts' has been handed to a designated member of staff who helps to distribute voter information to eligible prisoners.[40] In Washington DC, the establishment of a registration programme with the support of jail staff has been used to address some of the barriers presented by poor information sharing between services. The programme has helped 'to establish an ongoing relationship between local election officials and jail staff' with the DC Board of Electors providing voter registration information and documentation to be distributed to eligible prisoners by prison staff.[41]

The current system of partial disenfranchisement in England and Wales may present challenges, however. Prison officials may be reluctant to take on such measures for the sake of a minority of prisoners. Further, there is little incentive for prisons with few eligible prisoners to commit the necessary resources. The extent of statutory disenfranchisement inevitably constrains how the risk of administrative disenfranchisement within prisons can be addressed.

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Administrative Disenfranchisement in Wider Context

We have shown that prisoners with voting rights face a risk of administrative disenfranchisement in a multitude of ways. Prisoners' lack of knowledge of their voting rights, inadequate facilitation and support within prisons, poor communication between services, the disruptive potential of prisoner placement and transfers, and a lack of clarity within the relevant rules and guidance all present obstacles to effective voting rights. These problems were not anticipated prior to the enactment of the Representation of the People Act 2000 — the last concerted attempt by the UK Government to address the administrative disenfranchisement of prisoners. To this extent, the legislation failed in one of its principal aims. Imprisonment, it transpires, is not conducive to the 'free expression of the opinion of the people'.[42]

38. Herzog-Evans, M., and Jérôme Thomas, J. (2020). French Prisoners Cast Their Vote in the 2019 European Elections: An Ad Hoc Analysis of Their Electoral Choices and Political Attitudes. *The Howard Journal of Crime and Justice,* 59(4): 505-530.
39. ibid, p.521
40. Porter, N. (2020). Voting in Jails. Washington, DC: The Sentencing Project. Available at: https://www.sentencingproject.org/app/uploads/2022/08/Voting-in-Jails.pdf
41. Porter, N. (2020). *Voting in Jails. Washington,* DC: The Sentencing Project. Available at: https://www.sentencingproject.org/app/uploads/2022/08/Voting-in-Jails.pdf
42. European Convention on Human Rights, Protocol 1, Article 3.

The problem of administrative disenfranchisement can be understood as a by-product of the present system of partial disenfranchisement. Since the majority of prisoners are still not allowed to vote, functional, system-wide administrative arrangements to facilitate prisoner voting rights remain woefully undeveloped. The threats to prisoners' voting rights also flow from a criminal justice system stymied by budget cuts, surging prisoner numbers, and staff losses. More broadly, they demonstrate the profound weaknesses of existing legal protections for prisoners.[43]

The fragility of prisoners' voting rights is also symptomatic of a deeper democratic malaise afflicting the UK. While voter turnout is in decline and trust in politicians is at a historic low,[44] recent UK government interventions have prioritised new restrictions on voting rights and curtailed the rights of assembly and protest.[45] [46] In this climate, administrative disenfranchisement — not only of prisoners, but the wider population — is unlikely to be regarded as a priority for government ministers and officials.

But despite the pessimistic picture painted here, prisoner voting rights remain firmly on the political agenda. The Welsh Government has plans to extend the franchise to some convicted prisoners during the current Senedd term. Meanwhile, the Scottish Government has a statutory obligation to keep its laws in this area under review.[47] The roll-out of UK-wide voter identification requirements and new electoral boundaries will also have direct implications for the voting rights of prisoners. The regulatory framework in this area therefore remains in flux.

There are also crucial steps which prison authorities can take in the short to medium term. Prison governors and designated staff can cultivate better relationships and lines of communication with their local election services. They can facilitate access to prisons for third sector organisations which can assist with voter registration processes. In particular, local prisons with a high number of remand prisoners can work with groups outside of the prison to increase awareness of voting rights and the registration process. Ahead of the general election in 2024, these prisons can also liaise with local authorities and politicians to arrange hustings and other events inside the prison, both as a means to enhance awareness of voting rights and to promote civic engagement. In the absence of further policy interventions, prisoner voting rights will remain a dead letter.

43. Armstrong, S. (2020). At Risk of Rights: Rehabilitation, Sentence Management and the Structural Violence of Prison. *Critical Criminology,* 28, 85-105; Scott, D. (2013). 'The Politics of Prisoner Legal Rights'. *The Howard Journal of Criminal Justice,* 52(3), 233-250.
44. Quilter-Pinner, H., Statham, R., Jennings, W. and Valgarðsson, V. (2021). Trust Issues: Dealing with Distrust in Politics. London: Institute for Public Policy Research. Available at: https://www.ippr.org/files/2021-12/trust-issues-dec-21.pdf
45. Elections Act 2022.
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