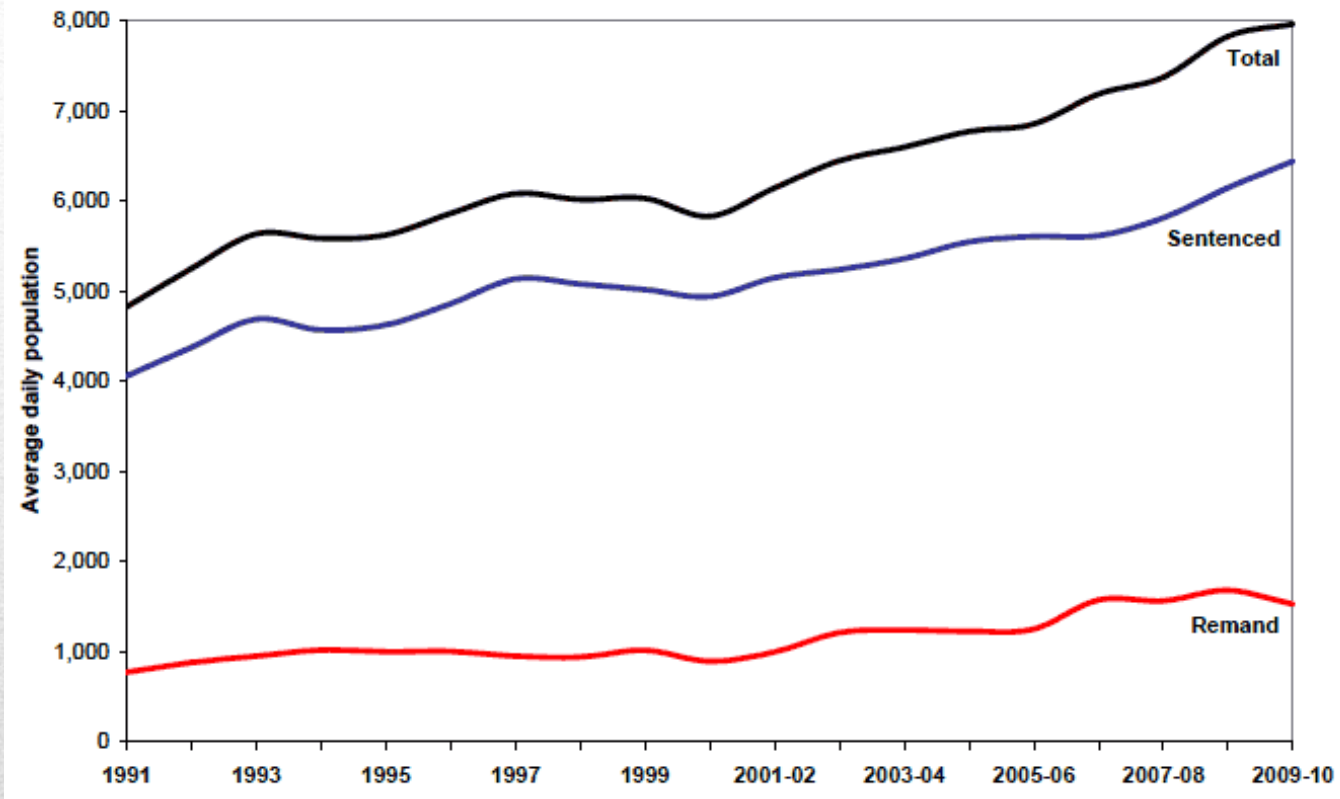




No votes in prisons

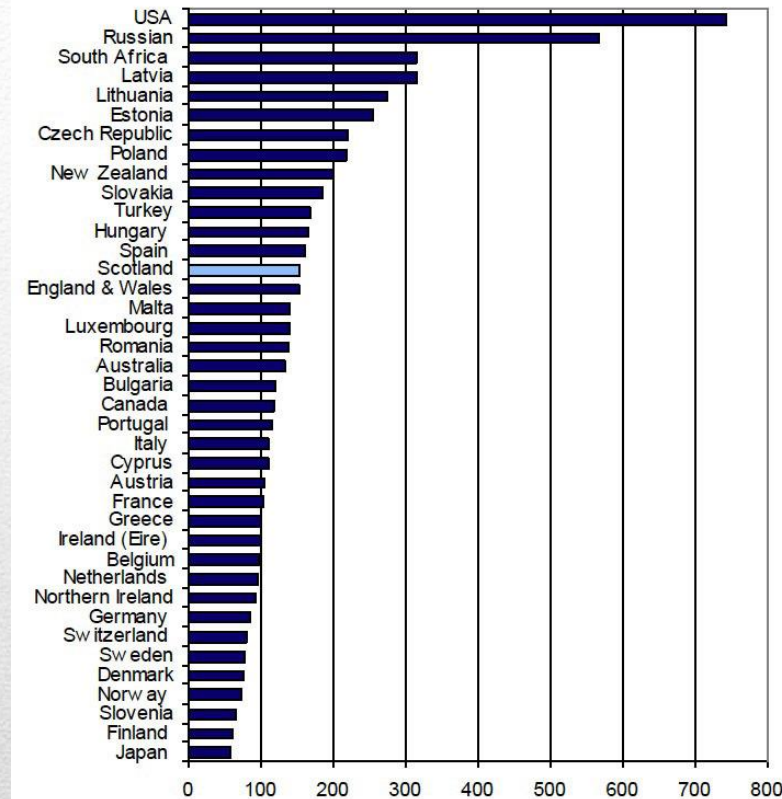
Lucy Blackburn and Lisa Mackenzie
Howard League Scotland

www.howardleaguescotland.org.uk



Scotland's prison population 1991-2010

Source: Scottish Government



Scotland's imprisonment rate in an international perspective
Incarceration rate per 100,000 of the general population, 2010

Source: Scottish Government

Sentence length	One year reconviction rate
3 months or less	58.4%
3-6 months	53.7%
6 months – 2 years	39.9%
2-4 years	28.8%
Over 4 years	16.8%

**One year reconviction rate by sentence length,
2009/10 *(Source: Scottish Government)***

Compared to the general population, prisoners are:

- 13 times more likely to have been in care as a child
- 10 times more likely to have been a regular truant from school
- 13 times more likely to be unemployed
- 2.5 times more likely to have a family member who has been convicted of a criminal offence
- 6 times more likely to have been a young father
- 15 times more likely to be HIV positive

Prisoner characteristics

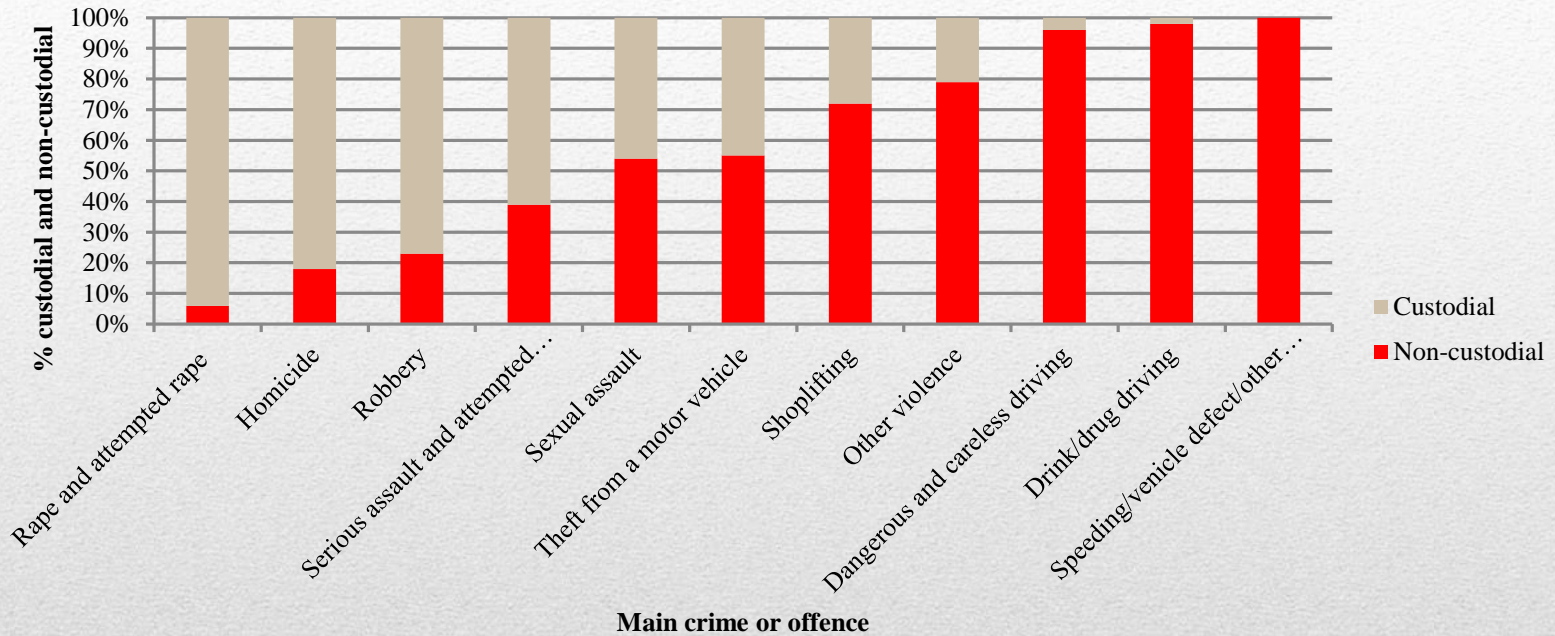
In respect of their basic skills:

- 8 out of 10 have the writing skills of an 11 year old
- 65% have the numeracy skills of an 11 year old
- 5 out of 10 have the reading skills of an 11 year old
- 7 out of 10 have used drugs before coming to prison
- 7 out of 10 have suffered from at least two mental disorders

Half of those held in Scottish prisons come from the poorest 155 council wards (Houchin, 2005).

Prisoner characteristics

Sentencing in Scotland 2011-12



Sentencing in Scotland

Source: Scottish Government, 2011/12

- Up until 1948, administrative disenfranchisement (absentee voting for civilians introduced in 1948)
- Between 1949 and 1969
 - in England, Wales and Northern Ireland, those convicted of misdemeanours and those serving sentences of less than a year for a felony were entitled to vote
 - in Scotland, all prisoners were entitled to vote
- 1969 Representation of the People Act disenfranchised all prisoners
- 2000 remand prisoners enfranchised
- Civil prisoners and fine defaulters can vote

Brief history of UK's 'blanket ban'

2 Those entitled to vote in an independence referendum

(2) For the purposes of this Act, a person is, on any date, subject to a legal incapacity to vote if the person—

(a) would be legally incapable (whether by virtue of any enactment or any rule of law) of voting at a local government election in Scotland held on that date, or

(b) is legally incapable, by virtue of section 3, of voting in an independence referendum held on that date.

Scottish Independence Referendum (Franchise) Act 2013
Section 2

3 Offenders in prison etc. not to be entitled to vote

(1) A convicted person is legally incapable of voting in an independence referendum for the period during which the person is detained in a penal institution in pursuance of the sentence imposed on the person.

(2) A convicted person who is unlawfully at large at a time when the person would otherwise be detained as mentioned in subsection (1) is to be treated for the purposes of that subsection as being so detained at that time.

**Scottish Independence Referendum (Franchise) Act 2013
Section 3**

“It has been included in the Bill because the UK Parliament is considering proposals to alter section 3 of the 1983 Act and the Scottish Government would not wish any alteration to apply for the purposes of an independence referendum.”

**Scottish Government
Explanatory notes on Scottish Independence Referendum
(Franchise) Bill, paragraph 9**

“The ECHR ruling (and human rights case law) does not relate to referendums, and convicted prisoners will not be able to vote in the referendum irrespective of whether UK electoral law is amended to extend the vote to prisoners for parliamentary elections before the referendum in 2014.”

**Scottish Government
Policy memorandum on Scottish Independence
Referendum (Franchise) Bill, paragraph 13**

- “The creation of a universal franchise is one of the great political achievements of the past 150 years: we should never take it for granted. How much care we exercise when we decide to remove voting rights is a token not just of how we value fellow citizens, but of how much we value voting itself.”
- No evidence of disenfranchisement acting as a deterrent to committing crime
- Postal and proxy voting means there are no public protection issues associated with prisoner enfranchisement
- Potential to contribute to rehabilitation and encourage active citizenship

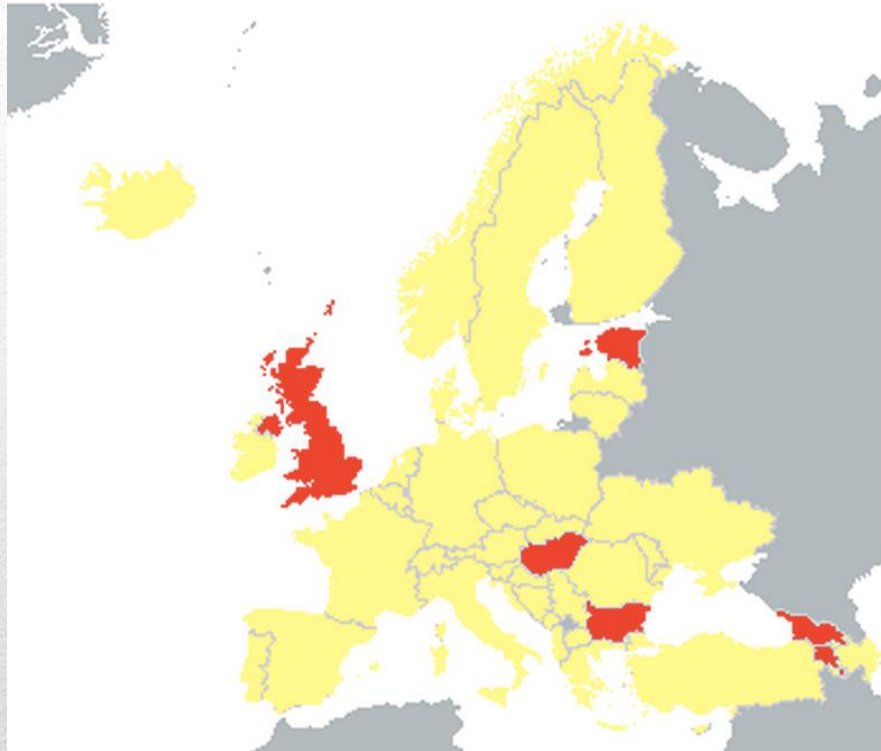
Arguments in support of prisoner voting rights

“The universality of the franchise is important not only for nationhood and democracy. The vote of each and every citizen is a badge of dignity and personhood. Quite literally, it says that everybody counts.”

Judge Albie Sachs

The Constitutional Court of South Africa, 1999
August and Another v. the Electoral Commission and Others

Prisoners' voting rights in Council of Europe countries



Prisoner voting rights in Council of Europe countries

Red: blanket ban on voting by convicted prisoners

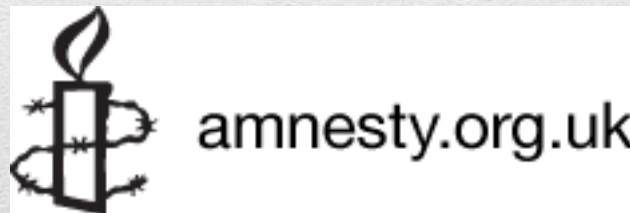
Yellow: some or all convicted prisoners allowed to vote

- To ensure that this decision should not be taken without proper debate and scrutiny.
- To ensure that it was debated in respectful tones – which hasn't always been the case at Westminster.
- To secure a commitment in relation to remand prisoners being assisted to exercise their undisputed rights.
- To remove section 3 of the Bill - the provision to make Scotland explicitly less liberal than the rest of the UK on this issue – to ensure that, at worst, the same rules should apply as would apply to any other election taking place at the same time.
- To secure voting rights for at least some convicted prisoners next year.

Aims of the campaign

- Submitted written evidence to the Referendum Bill Committee (co-signed by SACRO, Positive Prison? Positive Futures, Prison Reform Trust and Professors Fergus McNeill and Mike Nellis)
- Issued briefing material to and met with MSPs
- Placed articles and letters in the press
- Galvanised support amongst a wide range of civil society organisations

The campaign







Lucy Blackburn

What happened when we took the campaign to the Scottish Parliament?

“The Scottish Government does not agree that convicted prisoners should be entitled to vote while they are serving a prison sentence...

“I cannot believe that, back in 1997 when there was blanket signing up to the ECHR, those of us who argued very strongly that human rights should be observed across the European continent thought that one of the key issues would be to give convicted prisoners the right to vote. For most people, that does not seem to be what we would consider to be an important human right.”

First Minister, September 2010

“It does seem to us that the ECHR encapsulates fundamental values. it is the responsibility of good government to look after even hard-to-reach groups... it is up to us to try and encourage good citizens,.... encouraging people in civic democracies, civic participation.”

Kenny MacAskill MSP
Cabinet Secretary for Justice
Statement to UK Joint Committee on Human Rights
10 March 2008

“Many of you may have noticed a contradiction ... where the UK is seen to be at the forefront of championing human rights issues internationally but takes a rather more negative approach to applying them domestically... In Scotland, we are having a very different debate. [There is] a shared acceptance here that human rights are a good thing, and that we should discuss how to build on existing protections and make them a reality for all the citizens of Scotland. ... Scotland seeks to be a model of best practice on the international stage.”

Roseanna Cunningham MSP
Minister for Community Safety and Legal Affairs
Speech to Scottish Human Rights Commission conference
10 December 2012

“..a tendency in some quarters ...to draw a false distinction between those who are thought to be ‘deserving’ of rights and those who are somehow deemed to have a lesser claim to fundamental rights. An attitude which leads the public to form the view that human rights are somehow harmful or dangerous or contingent in nature is unacceptable and conversely, puts these very rights - which are fundamental to a healthy democratic society - at risk...”

Roseanna Cunningham MSP

Minister for Community Safety and Legal Affairs

Submission to UK Government’s Commission on a UK Bill of Rights, 2012

“We will provide a secure, stable and inclusive society.... An independent Scotland could be a beacon for progressive opinion south of the border and further afield.”

First Minister, Hugo Young lecture, 24 January 2012

“The UK Government is out of step with civilised people across the continent. Its attitude towards human rights is parochial and regressive. The European convention on human rights fulfils a valuable role in Scottish society.”

First Minister, FMQs, 7 March 2013

First Minister quotes

“The Government opposes these amendments on principle. The principle that a convicted prisoner loses certain rights for the duration of their custodial sentence is a fundamental and long-standing part of the prison process.”

Deputy First Minister
Stage 3 debate
27 June 2013

“In my view, that is because, if somebody commits a crime that lands them in prison, they break their contract with society and therefore lose some of the rights that the rest of us take for granted.”

Deputy First Minister
June 2013

“The Government refuses to believe that the Scottish people are inherently bad or that there is any genetic reason why we should be locking up twice as many offenders as Ireland or Norway. And Scotland is undoubtedly a civilised society, but perhaps it relies on prison to do too much with too many.”

Kenny MacAskill MSP
Cabinet Secretary for Justice
September 2007

“It is the view of the Commission that prison should be used for those whose crimes are serious and violent, and for those who present a real risk to our safety. And yet this breakdown of data shows we use prison for a very different purpose. Instead of investing in a system that can secure stronger, safer communities, **a series of problematic and largely unnecessary uses of prison are revealed** [including] The short sentences problem - people who are more troubling than dangerous [**and**] The warehousing problem - a place to hold the damaged and traumatised.”

Scottish Prisons Commission
July 2008

“It is important that we give victims of crime a voice in the debate. They would not applaud MSPs for granting prisoners a vote in the referendum.”

James Kelly MSP, Stage 3 debate, 27 June 2013

“Different victims will feel differently on this issue – there is no one single viewpoint.”

Victim Support, Submission to Joint Committee, June 2013

The views of victims

“As a constituency MSP with a busy main street office, I am quickly made aware of differences in opinions and the real issues that affect constituents’ lives. **I have to say that no constituent has expressed any opinion on prisoners voting.** Regardless of whether they have been prisoners, they are more concerned about the bread and butter issues, such as housing, education, jobs and putting food on the table. **I suspect that most constituents support the exclusion of prisoners. Allowing prisoners to vote is not a major issue in my constituency, and I doubt that it would even be an issue for many prisoners.”**

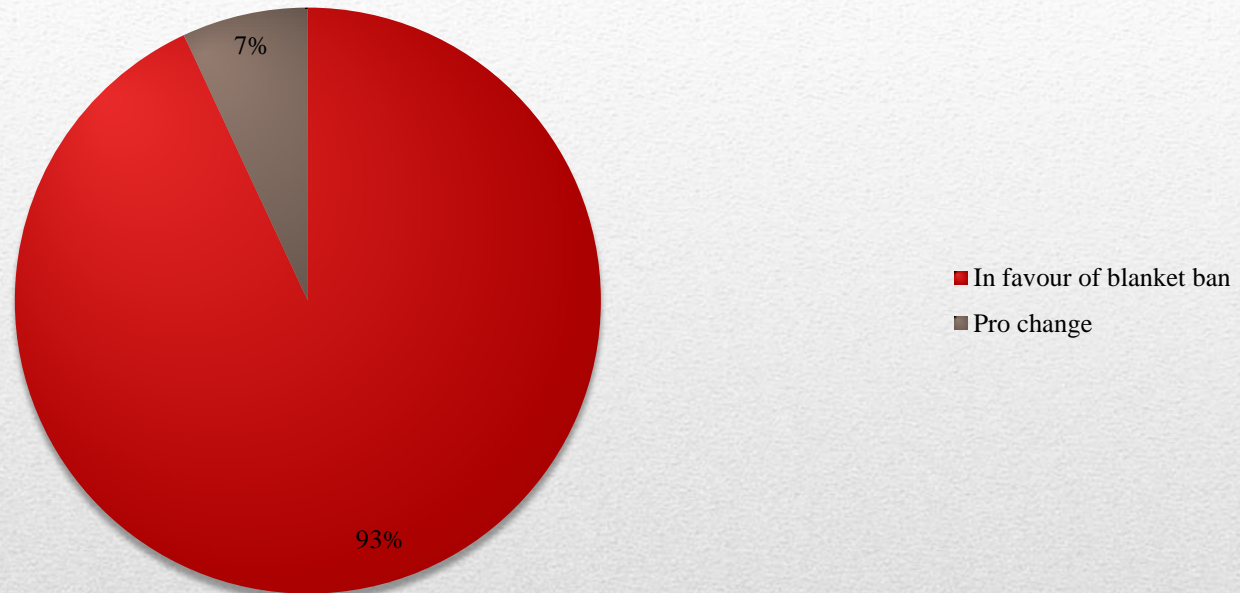
John Pentland MSP

Stage 3 debate of Scottish Independence

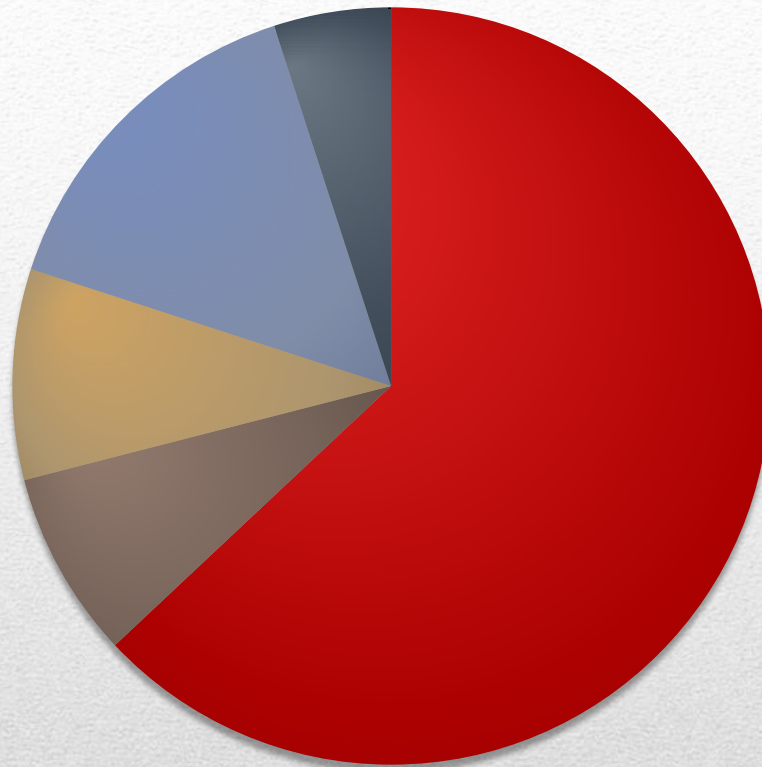
Referendum (Franchise) Bill

27 June 2013

Voting by MSPs, 27 June 2013



**Voting by MSPs at Stage 3 debate of Scottish
Independence Referendum (Franchise) Bill
107 MSPs voted to extend the blanket ban
8 MSPs voted in favour of change**



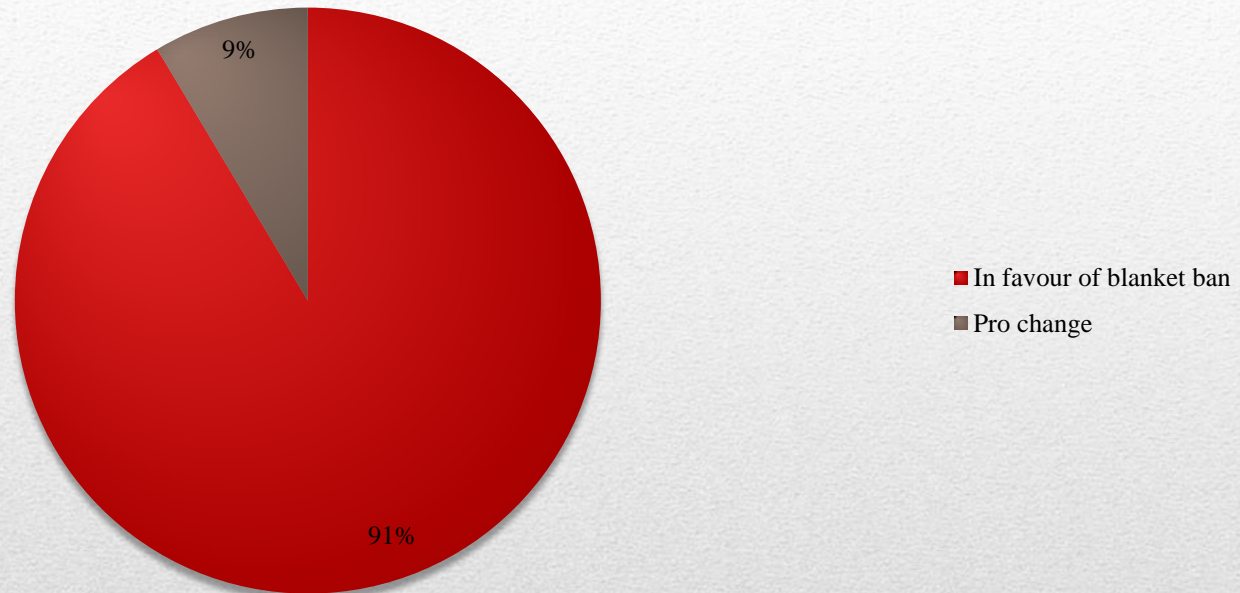
- No prisoners should vote
- All prisoners should vote
- Serving up to 4 years should vote
- Serving up to 6 months should vote
- Don't know

YouGov Poll, November 2012 (1,812 adults)

63% no prisoners should be allowed to vote

32% some or all prisoners should be allowed to vote

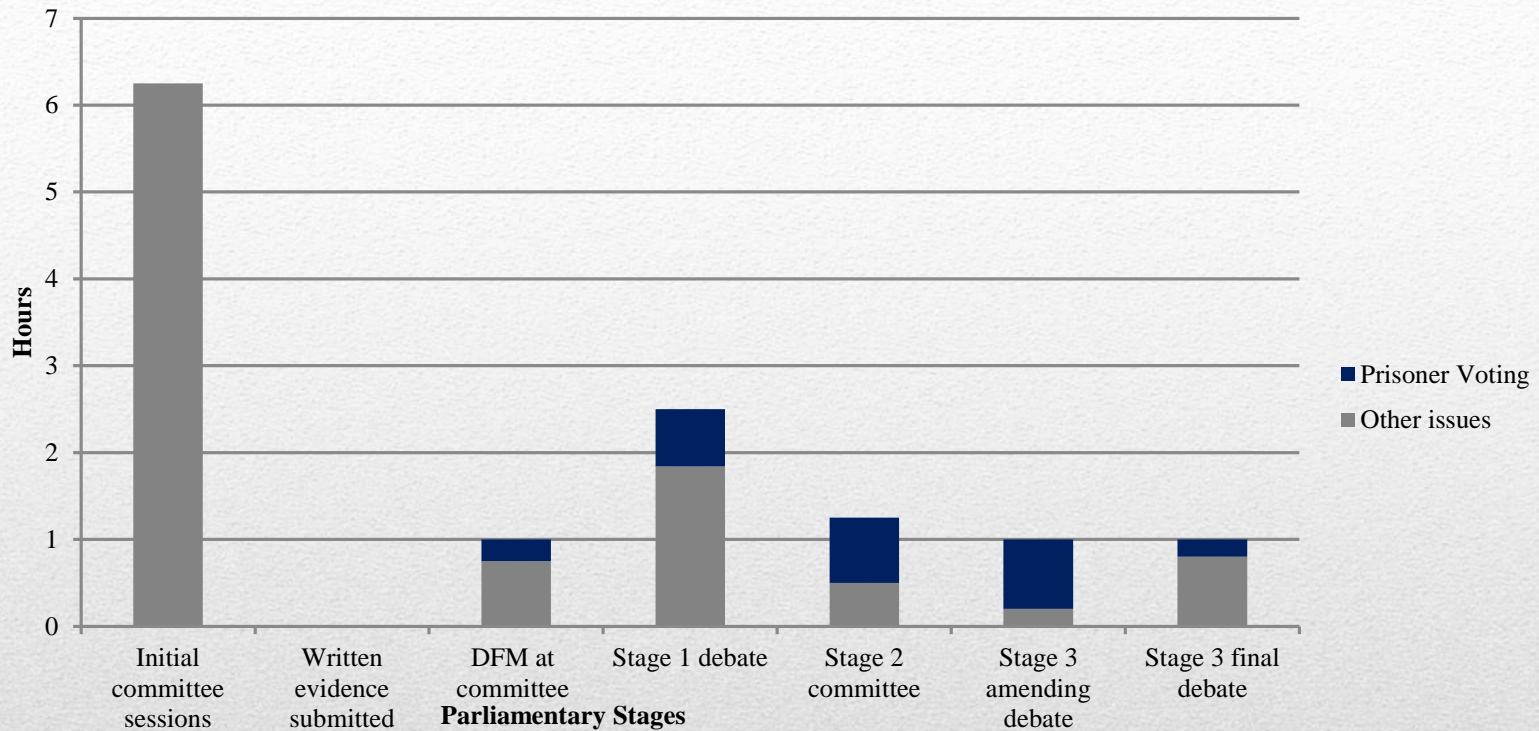
Voting by MPs on prisoner voting, February 2011



Voting by MPs following Westminster debate on prisoner voting rights in February 2011

234 MPs voted to retain the blanket ban

22 MPs voted to overturn the blanket ban



Hours spent debating prisoner voting throughout parliamentary passage of Franchise Bill 2013

“The best way to preserve that entitlement [to vote] is to stay out of prison.”

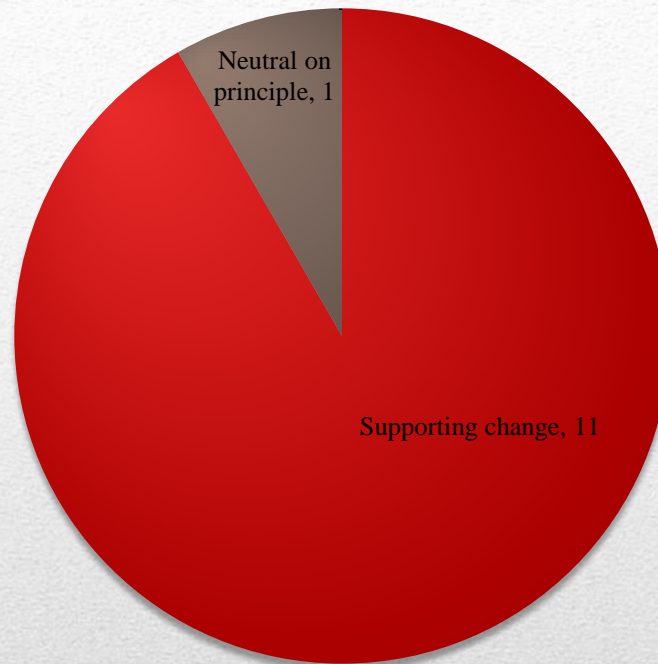
“We take away a number of rights from individuals when we sentence them to a custodial sentence: we remove the right to liberty, the right to a family life and the right to vote, to name but a few.”

“The court does not impose prison sentences in ignorance of the consequences ... [including] loss of the franchise—the vote. I do not think that any prisoner is either unaware of that or surprised by it.”

“When a person re-enters society, they regain that right to vote, along with other rights.”

“As Mr Harvie is aware, the SNP Government, supported by others, has ended custodial sentences of three months or less. No one goes to prison for days or weeks, so that is not a valid example.”

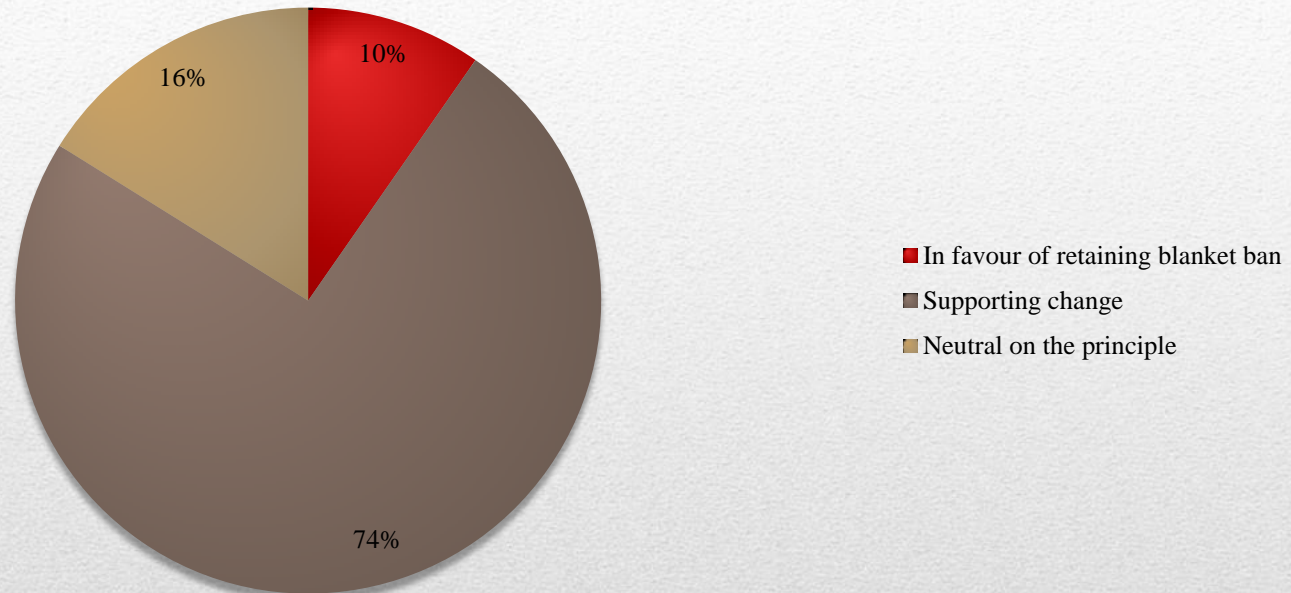
Quotes from MSPs during debate



Submissions on Scottish Independence Referendum (Franchise) Bill

Of the 22 submissions, 12 related to prisoner voting rights: 11 supported change, one was neutral on the principle (Law Society of Scotland)

Submissions to UK Joint Committee



Submissions to UK Joint Committee on Draft Voting Eligibility (Prisoners) Bill 2013

Total of 31 submissions: 3 in favour of retaining ban, 23 supporting change, 5 neutral on the principle

“This is another day when we will pass into law a bill that shows Scotland standing out from the crowd as a progressive and forward-looking nation—not necessarily unique or better than anyone else but, more important, prepared to do things our own way and to make a clear statement on our values and how we value our most important resource: our people.”

Bruce Crawford MSP
Stage 3 debate, 27 June 2013

"I have often been reminded of an old leaflet that I came across recently. ... That comes from the vote no campaign against votes for women. The reason why I quote that is that it often strikes me that every progressive campaign in history has been met with the kind of dreary, can't - do, it's all too risky, let's just stay as we are arguments that we heard earlier ... all progressive campaigns have faced these kinds of voices. The fact of the matter is that... those who said no to votes for women were wrong."

Deputy First Minister
18 September 2013

Prisoners banned in referendum vote



Image courtesy of Richard Thomson
