

## SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS  
SECRETARIAT DU COMITE DES MINISTRES



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Meeting: 1324<sup>th</sup> meeting (September 2018) (DH)

Item reference: Action report (02/09/2018)

Communication from the United Kingdom concerning the cases of HIRST (No. 2), MC HUGH AND OTHERS, MILLBANK AND OTHERS, FIRTH AND OTHERS and GREENS v. the United Kingdom (Applications No. 74025/01, 51987/08, 44473/14, 47784/09, 60041/08)

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Réunion : 1324<sup>e</sup> réunion (septembre 2018) (DH)

Référence du point : Bilan d'action

Communication du Royaume-Uni concernant les affaires HIRST (n° 2), MC HUGH ET AUTRES, MILLBANK ET AUTRES, FIRTH ET AUTRES et GREENS c. le Royaume-Uni (Requêtes n° 74025/01, 51987/08, 44473/14, 47784/09, 60041/08) **(anglais uniquement)**

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02 SEP. 2018

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

## Execution of Judgments of the European Court of Human Rights

### Action Report

**Hirst No. 2 (application no. 74025/01; judgment final on 06/10/2005)**  
**Greens and MT (application no. 60041/08+; judgment final on 11/04/2011)**  
**Firth and others (application no. 47784/09+; judgment final on 15/12/2014)**  
**McHugh and others (application no. 51987/08+; judgment final on 10/02/2015)**  
**Millbank and others (application no. 44473/14+; judgment final on 30/06/2016)**

**Information submitted by the United Kingdom Government on 1 September 2018**

#### A. Case description

1. In the *Hirst* group of cases the European Court of Human Rights found that the restrictions on convicted prisoners voting in parliamentary elections violated Article 3 of Protocol No. 1 to the European Convention on Human Rights.
2. The Court reached its conclusion on the basis of what it described as the 'general, automatic and indiscriminate' restriction on voting by convicted prisoners in detention, contained in section 3 of the Representation of the People Act 1983.
3. The United Kingdom Government position is clear: a prisoner cannot lawfully apply to be added to the electoral register while imprisoned and cannot lawfully vote while detained.

#### B. Individual measures

4. The just satisfaction awards (costs and expenses) have been paid, and evidence of this has previously been supplied to the Committee.

#### C. General measures

5. The Committee of Ministers considered the proposals put forward by the United Kingdom to address the *Hirst* judgment (see previous action plan attached) in its December 2017 meeting, attended by the United Kingdom Secretary of State for Justice. It examined the administrative measures proposed to address the *Hirst* judgment, particularly in light of the Court's judgment which acknowledged the wide margin of appreciation to be granted to national legislatures. The Committee noted 'with satisfaction' the proposed measures, concluding that they 'respond[ed]' to the relevant judgments, and 'strongly encouraging' implementation of the plans.
6. This action report outlines how the United Kingdom has completed implementation of the measures outlined in December 2017 and as announced to the United Kingdom Parliament on 2 November 2017.

#### D. Proposals made in action plan of 2 November 2017 and progress with implementation

##### Possibility of voting for prisoners released on temporary licence

7. The United Kingdom Government proposed it would change its policy and guidance to prisons to make clear that prisoners can (if eligible) register to vote, and vote, while released on temporary licence. Most prisoners eligible to vote under this

proposal would likely be on short sentences, and will have been granted temporary release primarily for employment-related reasons.

8. The United Kingdom Government announced this change in Parliament on 2 November 2017. A copy of the statement is attached.
9. HM Prison and Probation Service in England and Wales notified prison governors on 21 June 2018 that prisoners released on temporary licence are no longer disqualified from applying to register to vote. Prisons are devolved to Scotland and Northern Ireland. Prison governors in Northern Ireland were notified on 26 June 2018, and those in Scotland on 22 August 2018.

#### Voting for prisoners released on home detention curfew

10. Although it is established policy that prisoners are permitted to vote if permanently released on licence, it has never been made clear that this includes prisoners released on Home Detention Curfew. The Home Detention Curfew scheme applies to prisoners who are serving short sentences. It allows prisoners to live outside of prison providing they do not breach the rules of their curfew.
11. Clarifying this point in guidance highlights the fact that the disenfranchisement of offenders in prison that is provided for in section 3 of the Representation of the People Act 1983 ends as soon as they are released. This is not the practice in many other Council of Europe member States. As such, this is a further demonstration of the proportionality of the United Kingdom's approach in this regard. It makes clear that those prisoners who are in the process of being reintegrated back into society through the home detention curfew scheme can vote.
12. HM Prison and Probation Service notified prison governors on 21 June 2018 that prisoners who are released early during the custodial element of their sentence on Home Detention Curfew can vote. Prison governors in Northern Ireland were similarly notified about their equivalent schemes on 26 June 2018, and those in Scotland on 22 August 2018.

#### Clarity for prisoners at the point of sentencing

13. The Court in *Hirst* noted that "in sentencing, the criminal courts in England and Wales make no reference to disenfranchisement". We proposed amending the standard warrant of committal to prison to make clear at the point of sentence that prisoners are disenfranchised. This further amendment emphasises the United Kingdom's commitment to transparency and clarity in individual prisoners' cases.
14. The Warrant of Committal was amended in England and Wales on 21 July 2018 and in Northern Ireland on 5 July 2018 to make clear at the point of sentence that prisoners are disenfranchised. Taking into account the different legal and courts system in Scotland, the information was made available in the areas where prisoners are first received into prisons on 22 August 2018 to ensure that prisoners are notified of their disenfranchisement.

## **E. Conclusion of the authorities**

15. In summary, the implementation of these measures means that:
  - a. prisoners on remand can vote;
  - b. prisoners committed to prison for contempt of court can vote;
  - c. prisoners committed to prison for default in paying fines can vote;
  - d. eligible prisoners released on temporary licence can vote;
  - e. prisoners released on home detention curfew can vote; and
  - f. prisoners are notified of their disenfranchisement at the time of sentence.
16. The United Kingdom has therefore implemented all the proposals approved by the Committee of Ministers in December 2017, and the *Hirst* group of cases can now be closed.

## **Annex: Action Plan of 2 November 2017**

### **Execution of Judgments of the European Court of Human Rights**

#### **Action Plan**

**Hirst No. 2 (application no. 74025/01; judgment final on 06/10/2005)**  
**Greens and MT (application no. 60041/08+; judgment final on 11/04/2011)**  
**Firth and others (application no. 47784/09+; judgment final on 15/12/2014)**  
**McHugh and others (application no. 51987/08+; judgment final on 10/02/2015)**  
**Millbank and others (application no. 44473/14+; judgment final on 30/06/2016)**  
**Information submitted by the United Kingdom Government on 2 November 2017**

#### **A. Case description**

1. In the *Hirst* group of cases the European Court of Human Rights found that the restrictions on convicted prisoners voting in parliamentary elections violated Article 3 of Protocol No. 1 to the European Convention on Human Rights.
2. The Court noted that section 3 of the Representation of the People Act 1983 imposes a blanket restriction on all convicted prisoners, and that it applies automatically to such prisoners.
3. The Court concluded that such a general, automatic and indiscriminate restriction on a vitally important Convention right must be seen as falling outside any acceptable margin of appreciation, and was therefore incompatible with Article 3 of Protocol No. 1.

#### **B. Individual measures**

4. The just satisfaction awards (costs and expenses) have been paid and the evidence previously supplied.

#### **C. General measures**

5. As agreed with the Committee of Ministers in December 2016, this action plan sets out the United Kingdom's concrete proposals to address the *Hirst* judgment. The measures we are proposing have been developed to address the judgment and bring us within the margin of appreciation. The proposals arise from the fruitful dialogue we have had on this issue with other member States and the Secretariat, to understand the varied approaches others have taken. For example, we have considered allowing judges a role in deciding whether the right to vote should be withdrawn, whether disenfranchisement should be permanent, or whether it should be linked to the number of times an offender has been imprisoned.
6. The United Kingdom Government position is that, given the custodial threshold in the UK is such that a custodial sentence is only given in the most serious offences and where it is appropriate and proportionate to do so, prisoners who reach that custodial

threshold should not in general vote. However, the UK Government remains committed to the principle (enshrined in section 3 of the Representation of the People Act 1983) that disqualification from voting should not last beyond the period in which a person remains in custody.

7. Considerable efforts have been made in the UK to ensure the voting ban is proportionate. In the UK, most prisoners given a determinate prison term are released on licence halfway through their sentence of imprisonment: they are then able to vote.
8. This action plan outlines the UK Government's proposals to make a policy change. Our proposals will bring the UK's policy framework within the margin of appreciation envisaged by the European Convention on Human Rights. These proposals are set out in detail below. In particular, we are proposing to allow prisoners being prepared for release through a temporary licence, and are registered, to vote. Such prisoners are primarily, as in other countries, prisoners who are serving short sentences. They are prisoners who are released during the day based on individual risk assessments.
9. The UK Government has in bringing forward proposals looked at how it can address other aspects of the *Hirst* judgment. The judgment stated that the UK did not make it clear to individual prisoners that they were losing the right to vote. We will work with the judiciary to change the warrant of committal to prison to ensure that prisoners are individually notified of their disenfranchisement. The UK judiciary, when sentencing, is aware that the loss of the right to vote is a consequence of a custodial sentence and decides accordingly. This further amendment will make it more transparent to the prisoner as well.
10. In coming to the position above we have examined any and all options that could potentially help to address this judgment, and not just a binary choice of a legislative solution. The administrative measures are the best approach to credibly, effectively and swiftly address the *Hirst* group of cases.
11. In recent weeks, officials representing the United Kingdom Government have started discussions with the Secretariat and member States to explain how this package of administrative measures will address the *Hirst* judgement. In the run-up to the December meeting, the United Kingdom will, of course, continue to engage with the Secretariat and member States, whose advice and ideas have been very useful.
12. We invite the Committee of Ministers to endorse these proposals. We will implement these proposals, following this endorsement at the December DH meeting. This will require close working with the devolved administrations of the United Kingdom, who are responsible for aspects of elections and prisons.

## **D. Proposal**

### Possibility of voting for prisoners released on temporary licence

13. The UK Government would change its policy and guidance to prisons to make clear that prisoners can register to vote, and vote, while released on temporary licence. Most prisoners eligible to vote under this proposal would likely be on short sentences, and will have been granted temporary release, primarily for employment-related reasons.

#### Voting for prisoners released on home detention curfew

14. Although it is established policy that prisoners are permitted to vote if permanently released on licence, it has never been made clear that this includes prisoners released on Home Detention Curfew. The Home Detention Curfew scheme applies to prisoners who are serving short sentences. It allows prisoners to live outside of prison providing they do not breach the rules of their curfew.
15. Clarifying this point in guidance would highlight the fact that the disenfranchisement of offenders in prison that is provided for in section 3 of the Representation of the People Act 1983 ends as soon as they are released, whenever that is. We would reiterate that this is not the case in several other Council of Europe member States. This is a further demonstration of the proportionality of the UK's approach in this regard. Our proposals would, additionally, make clear that those prisoners who are in the process of being reintegrated back into society through the home detention curfew scheme can vote.

#### Clarity for prisoners at the point of sentencing

16. The Court in *Hirst* noted that "in sentencing, the criminal courts in England and Wales make no reference to disenfranchisement". We propose amending the standard warrant of committal to prison to ensure that prisoners are notified of their disenfranchisement. The UK judiciary, when sentencing, is aware that the loss of the right to vote is a consequence of a custodial sentence, and decides accordingly. This further amendment emphasises the United Kingdom's commitment to transparency and clarity in individual prisoners' cases.

### **E. Conclusion of the authorities**

17. In summary, these proposals would lead to the situation where:
- a. prisoners on remand could vote;
  - b. prisoners committed to prison for contempt of court could vote;
  - c. prisoners committed to prison for default in paying fines could vote;
  - d. some prisoners released on temporary licence could vote;
  - e. prisoners released on home detention curfew could vote; and

- f. prisoners would be notified of their disenfranchisement at the time of sentence.

18. These proposals are an effective package to ensure compatibility with the Hirst judgment. We would update the Committee of Ministers when the measures have been adopted. Making voting accessible to prisoners released on temporary licence fits with our proportional system where those prisoners on Home Detention Curfew and remand can also vote.



## **Annex: Parliamentary statement of 2 November 2017**

**Secretary of State's oral statement on sentencing  
Rt Hon David Lidington MP, the Lord Chancellor and Secretary of State for Justice,  
has today delivered an Oral Statement to the House of Commons.**

With permission, Mr Speaker, I should like to make a statement on sentencing and the Government's response to the Hirst judgment.

For many years, it has been a feature of United Kingdom law that when someone commits a crime that is sufficiently serious to receive a prison sentence they are deemed to have broken their contract with society to such an extent that they should not have the right to vote until they are ready to be back in the community.

This prohibition is currently set out in the Representation of the People Act 1983 (as amended) and the principle behind this has been reaffirmed by this House, most recently in 2011.

It is in that context that successive governments have considered the implications of the Hirst judgment in 2005. Labour, Coalition and Conservative governments have all taken the view that UK laws are a matter for democratically-elected lawmakers in the UK and have not enacted any change to legislation. This Conservative Government continues to believe that convicted offenders who are detained in prison should not vote.

And unlike the Leader of the Opposition, we do not believe all prisoners should be enfranchised regardless of the length of sentence or the gravity of the crime.

The United Kingdom has a proud constitutional tradition, and it is right that we uphold our obligations: but the British public expect us to do so in our own way, consistent with British values of rights and responsibilities.

In December 2016, the Government gave a formal and public commitment to the Committee of Ministers of the Council of Europe, the body representing the national governments of its members, that we would - in time for their meeting next month - provide proposals to address the Hirst judgment.

Since then, the Government has considered this issue carefully. We have decided to propose administrative changes to address the points raised in the 2005 judgment, while maintaining the bar on convicted prisoners in custody from voting.

First, we will make it clear to criminals when they are sentenced that while they are in prison this means they will lose the right to vote. This directly addresses a specific concern of the Hirst judgment that there was not sufficient clarity in confirming to offenders that they cannot vote in prison.

Second, we will amend guidance to address an anomaly in the current system, where offenders who are released back in the community on licence using an electronic tag under the Home Detention Curfew scheme can vote, but those who are in the community on Temporary Licence, cannot.

Release on Temporary Licence is a tool typically used to allow offenders to commute to employment in the community and so prepare themselves for their return to society. Reinstating the civic right of voting at this point is consistent with this approach.

It is absolutely not an automatic entitlement and is subject to rigorous risk assessment. These measures will see no changes to the criteria for temporary release, and no offenders will be granted release in order vote.

Our estimate is that these change to temporary licence will affect up to one hundred offenders at any one time and none of them will be able to vote from prison.

This measure will require no changes to the Representation of the People Act 1983, but instead would entail a change to Prison Service guidance.

Membership of the Council of Europe is a reserved matter under the devolution settlements but we will of course work with the three devolved administrations on this issue, in particular to reflect the differences in law and practice in Scotland and Northern Ireland, and we have informed them of our plans to resolve this for the whole of the UK.

We believe these changes address the points raised in the 2005 judgment in a way that respects the clear direction of successive Parliaments and the strong views of the British public on prisoner voting. As such I commend this statement to the House.