

# Voting rights for detained patients

Interim guidance for clinicians, administrators & Mental Health Act Commissioners

Previously issued by the Mental Health Act Commission and Reviewed October 2008

**This Guidance Note is to give information to NHS trusts and independent hospitals on the voting rights of detained patients, and to advise patients of their entitlement to vote and how they may register to vote.**

## 1 introduction - entitlement to vote

The Representation of the People Act 2000 allows patients detained under the civil provisions of the Mental Health Act 1983 ('MHA 1983') (i.e. Part II of the Act) and prisoners remanded to hospital under the Act<sup>1</sup> to register to vote. Those detained in hospital as a result of criminal activity (or who *would be* so detained were they not unlawfully at large) may not vote under the present law.

In order for a person to vote, his/her name must appear on the electoral register. A person may place his/her name on the electoral register if, on the relevant date, s/he is resident in the area concerned, meets the nationality requirement, and is of (or will shortly attain) voting age, and provided s/he is not legally incapable of voting.

## 2. How patients register to vote

In order to place their names on the electoral register, patients should contact the Chief Electoral Registration Officer of their local council.

Where an election is to be held, a person will only be able to vote if his/her name appears on the electoral register on the qualifying date (which may be some weeks before the election).

It is no longer forbidden for a patient to give as his/her address the address of a hospital in which s/he may be receiving medical treatment<sup>2</sup>. Now, both informal patients and those detained under the 'civil' provisions of MHA 1983 may register to vote either at the address of their hospital or at another address with which they have a local connection.

<sup>1</sup> Under MHA 1983, section 35, 36 or 48.

<sup>2</sup> For background to this, see MHAC (2008) *Risk, Rights, Recovery: Twelfth Biennial Report 2005-7*, paras 2.139- 2.141.

When registering to vote, a person who is resident in a psychiatric hospital may give the address of the hospital as his/her address if the period s/he is likely to spend there is sufficient for him/her to be regarded as resident. Such registrations will last for a maximum of 12 months.

Alternatively, such a person may register at some other address (which is likely to be the address where s/he *would be* living but for the fact of being in hospital), or by means of a “declaration of local connection”.

A “declaration of local connection” is a statement by a person that s/he has a significant link with a particular locality. Hospital patients, whether they are informal or detained under the ‘civil’ provisions of MHA 1983, may register by these means. The declaration should give the person’s name, an address for correspondence, the date, and a statement both that the person falls into one of the categories permitted to make such a declaration and of which category they fall into (in this case, patients in mental hospitals). Detained patients should also give the name of the hospital where they are living and the address where they would be living if not detained. If this is not possible, they should give an address in the UK where they have lived.

#### **4. Practical arrangements for voting**

Patients detained under MHA 1983 may vote

- by post,
- by proxy or,
- where they have leave under section 17, in person at a polling station.<sup>3</sup>

#### **5. Further sources of guidance**

The Representation of the People Act 2000, the Electoral Administration Act and their explanatory notes are available online at <http://www.hmsso.gov.uk/acts>. General information about registration for voting is at [www.aboutmyvote.co.uk](http://www.aboutmyvote.co.uk).

#### **6. Future developments : Voting rights and Part III patients**

The Mental Health Act Commission’s Eleventh Biennial Report<sup>4</sup> highlighted the relevance to patients detained under Part III of the MHA 1983 of the European Court of Human Rights’ October 2005 ruling, in *Hirst v UK*, that the blanket deprivation of voting rights for convicted prisoners was incompatible with Convention rights. We recommended that Government should redress this violation of ECHR rights to vote in respect of detained patients, ensuring in particular that unconvicted patients and convicted patients who are not given prison sentences are not caught in any

<sup>3</sup> Detained patients have only been able to vote in person since the Electoral Administration Act 2006 came into force. See paragraphs 224-227 of the Explanatory Notes to this Act at <http://www.opsi.gov.uk/acts/en2006/06en22-a.htm>

<sup>4</sup> MHAC Eleventh Biennial Report, *In Place of Fear*, para 2.108.

framework deigned for punitive disenfranchisement, which the UK Government pleaded as a justification for prisoners losing the vote.

The Government has yet to suggest a remedy to the incompatibility of UK law with ECHR rights. The Parliamentary Joint Committee on Human Rights criticised the Government for not including measures to do with prisoner voting in its Electoral Administration Bill<sup>5</sup>. This issue and the Commission recommendation was subsequently raised by Liberal Democrat peers at the Committee stage of that Bill, in response to whom the Minister (Baroness Ashton) stated that these would now be matters for the consultation process. A public consultation ran from December 2006 to March 2007, but the responses to this have yet to be made public. The Commission response is available on our website.

We will reissue this guidance in light of further developments.

Questions or concerns about this guidance should be addressed to:

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<sup>5</sup> JCHR Eleventh Report of 2005/06, *Legislative Scrutiny: Fifth Progress Report*. Feb 06, HL 115 HC 899, para 1.42 <http://www.publications.parliament.uk/pa/lt200506/ltselect/ltights/115/11504.htm#a14>