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Margaret Mitchell MSP
Convener, Justice Committee

By Email - justicecommittee@parliament.scot

17 April 2020

Dear Margaret,

Re: The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2020

Thank you for your letter dated 9 April 2020 regarding the above SSI laid before Parliament on 7 April.

As Committee members will recognise, the Scottish Prison Service (SPS) is facing operational challenges not experienced in a lifetime in Scotland's Justice system. The aim of these Rule changes are to support SPS's response to the exceptional pressures brought by COVID-19 and for ensuring the safety and wellbeing of staff and those in its care are maintained.

I recognise that Parliament and others will want to scrutineer measures and steps taken by the SPS and other justice agencies in their response to COVID-19. As set out in their letter to the Presiding Officer, it was not possible for the SPS to comply with the 28 day rule. This was due to the need to implement a change to the Prison Rules quickly in order to properly equip Prison Governors and the Prison Service with the flexibility they needed in order to adhere to public health and social distancing protocols and the need to contain the spread of the virus within prisons at pace. I have been clear that these Rule changes are time limited to the duration of the outbreak only. They will be closely monitoring and only used where necessary.

SPS has provided answers to your specific questions raised in your letter in the attached Annex.

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It may also be helpful to provide a wider update on the actions taken by the Service in response to the challenges raised by the current emergency.

Overall, I have been impressed by the rapid and comprehensive action taken by SPS in their response to COVID-19 to date. They have established a Coronavirus Response Group with Public Health Scotland and implemented their national pandemic plan across the prison estate in conjunction with local health partners. Contingency plans for operational and staffing responses are reviewed and monitored continuously at both establishment and national levels

The wellbeing, safety and human rights of all those who live and work in our prisons is a priority for me and I have been working closely with Interim Chief Executive, Teresa Medhurst on all aspects of the response to the virus in our prisons.

Over recent weeks, SPS has taken a number of necessary measures in order ensure social distancing and public health advice is adhered to, including guidance issued to all staff and prisoners. This includes the suspension of prison visits, work parties and all temporary leave.

As I noted in my Statement to Parliament on 24 March, these measures were not taken lightly but are necessary to preserve the safety and wellbeing of those who work and live across the prison estate and to prevent further spread of the virus. As they respond at pace, SPS are keeping those in their care, staff and families informed of changes to regimes and other measures. This includes a dedicated COVID-19 webpage with daily updates on numbers in isolation and confirmed positive cases in the estate.

Measures have also been introduced to mitigate the impact of social isolation for those in the care of the prison service. This includes amongst others, the suspension of all TV rental fees and expanded in-cell entertainment options including the ability to purchase additional subscription services and electronic gaming solutions. A series of in-cell support material has been developed for those in SPS care by psychologists. This material focusses on social isolation, mental health and general health and wellbeing. There has also been implementation of an online banking facility across the estate which allows families and friends to transfer money to those in SPS care swiftly, safely and securely which can then be used to purchase goods.

I recognise that the suspension of prison visits, in particular, will be being felt by prisoners and families. As members may be aware, I announced today our intention to provide mobile phones to those in custody in order to allow them to maintain vital family contact despite the ongoing restrictions. While there are a number of security, technical, and legal issues which need to be resolved before phones can be rolled out, this work is being prioritised and both SPS and I are determined to make progress on this as quickly as possible. We will, of course, be establishing robust systems to ensure that mobile phones can be used in a way which is practical and safe for those in custody, their families, and the wider community. In particular, as with the current landline system, security restrictions would be put in place as part of any new approach – for example, outgoing calls could be monitored and would only be possible to numbers already included in existing prisoner call lists, and the phones would not be text or internet enabled.

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Prior to the rollout of phones, other measures have been taken to support those in custody and their families – in particular, a dedicated Family Helpline was established on 26 March offering advice and support 5 days a week, and all prisoners have been provided with an additional £2.50 per week of phone credit.

Now more than ever, SPS and health staff working in our prisons are vital in the delivery of Scotland's justice system to ensure safety and stability. We are keeping staffing absence and other staffing impacts of COVID-19 under constant review. Local staffing contingency plans across the establishments are in place. SPS has also confirmed sufficient stocks of PPE for those working in our prisons, as well as for GeoAmey staff, and consistent guidance on the use of PPE has been issued across establishments..

I recognise the dedication of staff working to support people in isolation and those with symptoms of the virus in the care of SPS. These are undoubtedly challenging circumstances for SPS staff and Scottish Ministers have acknowledged this with an additional temporary reward package for both eligible prisoner officers and other SPS staff.

It is important that monitoring of the conditions in our prisons continues during this time and I have asked Her Majesty's Chief Inspector of Prisons for Scotland to provide an update on her plans for implementation of a remote monitoring framework and liaison visits in light of the necessary suspension of face to face monitoring activity.

I trust this information is helpful. I value the Committee's support and gratitude for the various Justice agencies who are working tirelessly to keep our Justice system running during these unprecedented times.



HUMZA YOUSAF

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ANNEX: JUSTICE COMMITTEE QUESTIONS- THE PRISONS AND YOUNG OFFENDERS INSTITUTIONS (SCOTLAND) AMENDMENT RULES 2020

- 1. The SSI states that for the duration of the Coronavirus outbreak, where adequate arrangements cannot reasonably be made for prisoners to bathe or shower every day, then prisoners must be provided with facilities to bathe or shower at least twice per week. However, whilst we recognise that this is still in line with minimum standards and SPS say they will use this rule if necessary, is it not more important during this health crisis to maximise standards of personal hygiene?**

All Scottish prisons have transitioned to a single shift core day. Whilst introduction of a core day permits more flexible deployment of the reduced number of staff available, it also reduces the length of the prison day and restricts the time available to facilitate routine prison tasks.

All prison activities are now being delivered with enhanced controls and additional hygiene measures in place. This allows staff to more fully regulate interactions and contact between people in their care, in line with social distancing guidelines.

In order to reduce the risk of spread of COVID-19, all communal areas including showers must now be cleaned thoroughly between use. This means there is a reduction in the time that individuals will have access to communal showers.

SPS recognise the importance of personal hygiene during this health crisis and all persons in our care have access to running water, soap and towels in their cells. Those accommodated in recently built prisons and accommodation blocks will also have access to in-cell showers.

It is SPS's intention at this time to continue, where possible, to operate in line with the unamended rule which requires Governors to provide prisoners with the opportunity to shower or bathe on a daily basis, or at least every other day where adequate arrangements cannot be made to allow daily access. SPS will only give consideration to using the flexibility of the new rule and move to providing prisoners the opportunity to bathe or shower twice weekly where it is operational necessary, as result of the impact of COVID-19 on staffing and where it becomes challenging for a Governor to make safe and adequate arrangements to provide daily or at least every other day access to bathe or shower.

- 2. The Committee recognises that the above rule changes only affects prisons where there are no in-cell showers. Looking across the estate, as a percentage, how many prisoners are in cells with access to personal showers and how many will be affected by this rule change? Which prisons will be the most affected? Is it possible in those establishments to alter social distancing rules to still allow prisoners to have access to showers on a more frequent basis?**

While there are undoubted health benefits to bathing or showering regularly, there is no evidence that showering more frequently than twice per week will reduce the spread of COVID-19. However, public health advice does advise that social distancing will reduce the spread of COVID-19. It would, therefore, increase the risk of the virus being spread if SPS were to reduce social distancing in order to allow people in our care to shower more often.

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Public health advice is that hand washing regularly remains the most effective way of reducing the spread of any virus.

Across Scotland's 13 public prisons a total of 34% of cells have showers in them. However, in-cell showers are not evenly distributed: HMPs Shotts, Low Moss and Grampian have full access to in-cell showers (notwithstanding one specific and unique cell at HMP Shotts). However, at HMPs Barlinnie, Castle Huntly, Dumfries, Glenochil, Greenock, Inverness and Perth, there is minimal in-cell shower provision (2% or less).

3. The Committee notes the changes to the rules on access to books, newspapers, work, education etc. which allow a governor to curtail or suspend the current provision. Again, whilst understandable with prison visits curtailed and prisoners likely to be in lockdown for long periods, is there more of a reason to make all efforts to have purposeful activity wherever possible? Newspapers are still on sale in shops across Scotland so is there a particular reason why this is a problem in prisons? If hard copy books are deemed to present a risk of passing on the virus have alternatives such as e-books or kindles been considered?

Access to books and newspapers have not been stopped, but the arrangements by which people in our care can receive these items have changed. At the current time families and friends, are not able to hand in such items to prisons. However, they are able to arrange for them to be posted into prisons. This change reflects Public Health and Government advice regarding social distancing and the requirement to only leave your home when necessary, to attend work, medical appointments or to obtain shopping. It also reduces the number of people visiting a prison.

SPS requires flexibility in relation to the entitlement of prisoners to receive items from outside to enable us to fully comply with Public Health and Government advice, which is currently fluid and subject to change.

Flexibility is also required as all such items must be searched and, at a minimum, x-rayed, when received into the prison. SPS Staff have to undertake this task, to prevent, prohibited items such as drugs or weapons from entering prisons. Staff shortages as result of the Coronavirus outbreak may require a Governor to focus on the delivery of key tasks and whilst access to items such as newspapers and books is important, they are not critical to the security and health of those who live and work in our prisons.

Devices such as e-books or kindles, are not permitted in prisons. They are prohibited articles in terms of Section 41 (Unlawful introduction of tobacco, etc., into prison) of the Prisons (Scotland) Act 1989 as they are a portable electronic device capable of transmitting or receiving information.

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4. The impact of all of the rule changes is likely to have a major impact on the environment within our prisons. What steps are being taken to monitor the mental health and well-being of prison staff and prisoners to minimise stress, sickness and absence rates, increased risk of suicide or self-harm etc.?

People in SPS Care

Self-help support leaflets have been issued to provide both staff and people in our care with information and tools to look after their mental wellbeing during the pandemic.

Staff have also been issued with information on how to identify prisoners who may be struggling while in isolation. Relaxation and mindfulness tapes and videos are now available through in-cell TVs and radios.

Some NHS Health Boards are providing additional in cell activities for people do while in isolation to improve their wellbeing.

We are currently monitoring all instances of self-harm. Thankfully, there has, so far, been no rise in the number of self-harm incidents since the introductions of restricted prison regimes. SPS is also working towards the provision of in-cell education delivery from Fife College.

SPS Staff

SPS collate and monitor staff absence information on a daily basis. Line managers or HR teams maintain regular contact with absent employees in order to keep colleagues updated on changes occurring in the work place and to offer appropriate support.

SPS takes a proactive approach to supporting the health and wellbeing of our staff, particularly during these difficult times. SPS has a number of support mechanisms in place to support staff who are experiencing stress or other related mental health issues. All SPS employees and their families have access to our confidential Employee Assistance Programme (EAP) which is available 24 hours per day, 365 days per year.

The EAP provides free confidential counselling as well as advice on a range of topics such a legal, financial and relationship matters. In addition, SPS takes a person centred approach to supporting staff; working with our Occupational Health service providers, we identify meaningful ways in which we can support colleagues who are absent from work, returning to work from a period of absence as well as those who experience difficulties while at work.

There are a number of further sources of practical support for our staff and a plan is being developed to introduce or promote these interventions over the period of the pandemic. This includes using resources from a range of sources, such as NHS, the Charity for Civil Servants and mental health organisations such as the Scottish Recovery Network, Mind, and SAMH. All support measures are accessible on the staff intranet and the information is reviewed and updated on a regular basis.

COVID-19 testing has also been offered to staff and adult family members and commenced on 6 April 2020 at the National Facility, Glasgow Airport. A further National Facility, Edinburgh

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commenced on 15 April 2020. Local testing is also being provided by various NHS boards including Grampian, Forth Valley, Tayside and Dumfries and Galloway.

5. What consultation took place with the NHS, prison staff trade unions etc prior to the laying of this SSI and how will you and the SPS keep the implementation of these rule changes under review and keep the Committee informed of developments?

In normal circumstances SPS would have consulted with operational managers and policy colleagues within SPS, Trade Union partners and other stakeholders such as Police Scotland and NHS colleagues, when making changes to the prison rules. On this occasion this has not been possible. However, there was some limited consultation with senior SPS Operational Managers.

The amendments will only be in force for a temporary period, that being the duration of the Coronavirus outbreak. The amendments provide Governors, SPS staff and NHS staff with flexibility in regards to compliance with timescales and the provision of services this will enable SPS staff to focus on the delivery of key functions when dealing with the exceptional pressures facing prisons as a result of significant staff shortages and the COVID-19 outbreak. SPS will keep the rule changes under review and will advise you when they cease to have effect on 30 September 2020.

6. In the absence of prison visits by family and friends, what steps were considered (such as those taken in other jurisdictions such as Catalonia) to increase the number of video/phone calls permitted in lieu of direct family contact?

SPS has committed to providing everyone with a free allowance of £2.50 per week on their PIN phone balance. The weekly £1 TV rental fee has also been suspended and will no longer be taken from people in our care.

SPS has been exploring a number of innovative technological responses to maintain family contact. SPS is currently progressing options for additional mobile telephony solutions to allow ongoing family contact and the provision of additional video visit options to allow direct contact with family members through a web-based portal. All solutions being explored are subject to supply chain availability, appropriate legal authority; and to appropriate technical configuration and capacity.

7. On a prison-by-prison basis, how many staff are absent due to Coronavirus and/or self-isolating and also, how many prisoners?

SPS are reviewing the publication of prison COVID-19 data.

The number of SPS staff absent from duty fluctuates on a daily basis, across all our establishments. For example, the all staff absence rate has gone from a high of 1050 on 1 April 2020 to 873 on 16 April 2020. Please note that this number refers to all absences recorded. There are a number of operational reasons as to why the SPS is unable to provide this information in the format requested, primarily around security and stability.

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The SPS publishes information on the number of individuals in their care who are self isolating on their website on a daily basis on their dedicated [COVID-19 information webpage](#). Since 15 April 2020, the current number of confirmed cases has also been published.

To date, 2 prisoners have died with an apparent link to COVID-19. Both had underlying health conditions. The causes of death will be confirmed in due course on the medical death certificate. As with all deaths in custody a Fatal Accident Inquiry will be undertaken.

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