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Convenor
Justice Committee
Scottish Parliament
Edinburgh

By Email

24 June 2020

Dear Margaret,

Prisons, Young Offenders Institutions and COVID-19

Thank you for your letter of 16 June seeking comments on letters that the Committee has received from the Chair of the Scottish Human Rights Commission (SHRC) and the Children and Young People's Commissioner Scotland. As you say, these raise important matters concerning the human rights of prisoners and young people and I am grateful that you have given me the opportunity to respond to them.

You copied your letter to Teresa Medhurst, Interim Chief Executive of the Scottish Prison Service and we have discussed its content. We thought it would be helpful to provide members of the Committee with a single response that incorporates the views of the Scottish Government and Scottish Prison Service. This approach was agreed with your Clerk.

A detailed response to the specific points raised in both of the letters is attached in the Annex to this letter. So that this can be seen in context I wish to make absolutely clear that the health and wellbeing of those who live and work in Scotland's prisons remains our highest priority. These are matters which we take very seriously and the Scottish Government and SPS have welcomed the opportunity to discuss some of these issues directly with Judith Robertson, as Chair of the SHRC, with Her Majesty's Chief Inspector of Prisons for Scotland and with members of the Prison Monitoring Advisory Group in recent months.

As is noted in the letters, people in prison are potentially more vulnerable to COVID-19 than those in the broader community. SPS's approach has therefore always been to align practice with the latest Government and public health advice.

SPS has a robust Pandemic Plan, which details the measures to be applied should anyone present with symptoms of COVID-19. This plan is continually updated to reflect the latest guidance from Health Protection Scotland and underpins all operational decision making.

The level of stability that has been maintained across all Scottish prisons during this challenging period is testament to the efforts of those who work and live in our prisons. The effective relationships that exist have ensured a mutual conformity to public health and government advice during trying times.

The decisive action and rigorous hygiene precautions taken by SPS have kept infections in prisons low. To date, there has not been a major outbreak of COVID-19 in Scotland's prisons. In fact, SPS has seen a continued reduction of the number of people presenting with the symptoms of COVID-19 in recent weeks. For the week ending 19 June 2020, there were no confirmed cases of COVID-19 in Scottish prisons, and just 7 individuals were self-isolating across 5 prisons. This is a significant achievement.

During the pandemic, HM Chief Inspector of Prisons (HMCIPS) has acknowledged that there will be a need for changes in the daily routines and regimes in Scotland's prisons in order to keep people safe. HMCIPS has also made it clear that "protective measures must never result in inhuman or degrading treatment of persons deprived of their liberty".

Justice Committee members will know that HMCIPS has implemented a remote monitoring framework and inspection liaison visits to provide assurance about the conditions and treatment of prisoners in these exceptional times. HM Chief Inspector reports to me on the treatment and conditions in which prisoners live in line with HMIPS' Standards for Inspecting and Monitoring Prisons in Scotland.

This methodology underpinning the framework focuses on the key human rights issues contained in the HMCIPS Standards for Inspecting and Monitoring Prisons in Scotland, which are followed during this normal inspection process. This approach is consistent with the Council of Europe Anti-Torture Committee's "Statement of Principles relating to the treatment of persons deprived of their liberty" in the context of COVID-19 and WHO guidance. The adapted inspection methodology incorporated into the design of the prison liaison visits, will also contribute to the UK's response to its international obligations under the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

HMCIPS intends to publish the liaison inspection reports online with the first of these liaison visits being published this week.

The prison service has had to take some difficult but necessary steps in order to ensure the safety of individuals in prisons including suspending prison visits. However, a considerable amount of work has been undertaken to support the maintenance of family ties with a programme of work being undertaken to introduce virtual visits and mobile phones for those in custody. Virtual visits have now commenced for young people in SPS care and they have also now been provided with mobile phones.

Finally, the Scottish Government has taken necessary steps to ease population and staffing pressures on our prisons and to reduce the risk of the virus spreading to protect the health and staff of those living and working in Scotland's prisons. This includes:

- **Home Detention Curfew Guidance (HDC):** HDC guidance has been amended, including the removal of residual references to the presumption against release on HDC for certain groups of prisoners. This has enabled SPS to utilise this tool more effectively in supporting the overall management of the prison population.
- **Early release arrangements:** Regulations laid before Parliament on 4 May set out criteria for early release in light of COVID-19. Prisoners would only be considered if they are (a) sentenced to 18 months or less – and (b) within 3 months of their scheduled release date. The process concluded on 1 June, after the scheduled 28 days of activity and this resulted in 348 early releases.

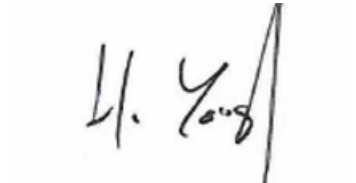
These initiatives have assisted in ensuring that measures to contain COVID-19, such as physical distancing, can operate effectively.

As a result of the downturn in court activity brought by the pandemic, the prison population since March this year has reduced by approximately 15% to under 7000 in recent weeks and this has resulted in approximately 80% single cell use across our prisons. Given the profile of offending and sentencing, the reduction in the population of women and young people aged under 21 in prison and YOI has been particularly marked, reducing by a third and a quarter respectively since March. However, in light of the continuing arrival of new remand prisoners, and the gradual reopening of the courts, we will continue to monitor the prison population and we will consider what further action will be required to both reduce the use of imprisonment and maintain this lower prison population in the coming months.

In conclusion, over recent months, SPS has had to take unprecedented steps that would ordinarily be unthinkable in order to respond to this global pandemic. However, these steps have been necessary and proportionate in order to support the safe operation of prisons and to protect the health and wellbeing of those who live and work in them. This remains a key priority in this recovery phase and has been at the centre of the justice system's response to COVID-19.

The attached Annex provides a detailed response to the issues raised by the Scottish Human Rights Commission and the Children and Young People's Commissioner Scotland.

I trust this information is helpful.

A handwritten signature in black ink, appearing to read 'H. Yousaf', written over a light blue horizontal line.

HUMZA YOUSAF

Copy to:

Christina McKelvie MSP Minister for Older People and Equalities
Ruth Maquire MSP, Convenor Equalities and Human Rights Committee
HM Chief Inspector of Prisons for Scotland
Judith Robertson, Chair Scottish Human Rights Commission

RESPONSE TO THE JUSTICE COMMITTEE ON RESPONSE TO COVID-19 IN PRISONS

The Scottish Government and Scottish Prison Service welcome the opportunity respond to comments made by the Scottish Human Rights Commission and Children and Young People's Commissioner Scotland and address the key point as follows-

| RAISED BY | ISSUE AND SCOTTISH GOVERNMENT AND SPS RESPONSE |
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| SHRC | <p><i>People in prison are likely to be more vulnerable to the risks and impacts of COVID-19. Closed conditions of detention make social distancing virtually impossible; many prisoners are currently living together in cells designed for one person; and prisoners are spending more time in their cells with no possibility of receiving a visit from their family</i></p> <p><u>Response</u></p> <p>Scotland's prison population has significantly reduced since the onset of the COVID-19 pandemic. On 16 June 2020 there were 6,947 people held in Scotland's prisons, 1,147 fewer than there were on 16 March 2020, 3 months earlier. This decline has resulted in the availability of additional capacity across a number of Scottish prisons and has significantly reduced the need for people to share accommodation. This decline in the prison population has allowed SPS to limit the spread of COVID-19.</p> <p>In order to reduce the risk of further spread, SPS is actively working to provide single cell accommodation to everyone in its care. Currently around 85% of the Scottish prison population reside in a single cell and it is hoped that efforts to provide this to a greater proportion of the prison population will be assisted by greater provision of Home Detention Curfew (HDC).</p> <p>However, whilst provision of single cell accommodation across the entire estate would require a further reduction in prison numbers, it should be noted that this is not simply a matter of having fewer people in Scotland's prisons than the cells that are available. There are a number of complexities involved in the allocation of people across the prison estate as SPS is required to provide separate accommodation for a number of sub-populations e.g. there is a requirement to keep men and women; adult and young people and those who have committed sexual offences and the general prison population separate from each other. Reductions in the prison population are unlikely to occur proportionally across these groups.</p> |

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| | <p>In addition, SPS is not, at this time, transferring people in its care between areas or prisons, unless absolutely necessary. This suspension of non-essential prison transfers was introduced in order to limit the risk of any further cross contamination or introduction of COVID-19 to a new environment. This suspension, whilst necessary, makes the provision of single cell accommodation more challenging as populations reductions are not realised evenly across all prisons.</p> <p>Whilst it is certainly true that delivery of physical distancing in a prison environment is not without challenge, it is not, as suggested, “virtually impossible”. All prison activity, has been delivered in a more controlled manner, with smaller groups and reduced numbers of participants. This approach has allowed staff to more fully regulate levels of interpersonal contact in line with public health guidance.</p> <p>SPS has published clear guidance on Physical Distancing and Control Measures to reduce the spread of COVID-19. This Guidance assists managers, staff and partners to understand the reasonable measures they must take to ensure they maintain appropriate physical distancing in the work place. Where possible, staff must continue to avoid close contact and practice physical distancing at all times. Where staff are unable to maintain a 2 metre distance from their colleagues, or someone in custody, then Personal Protective Equipment (PPE) must be worn.</p> <p>People in SPS care should be able, at all times, to maintain appropriate physical distances from others. Advice on the importance of physical distancing and how this should be delivered is also communicated across the prisons estate.</p> |
| SHRC | <p><i>The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2020 introduced significant changes to the prison regime at the discretion of the Scottish Prison Service. The amended rules relax requirements to meet some basic needs including nutritious food, clean socks and underwear, access to bathing or showers, family contact, reading material, and purposeful activity.</i></p> <p><i>We are concerned that some of these changes, and associated Scottish Prison Service requirements of governors, are creating conditions where some prisoners’ fundamental rights are not being respected. We are particularly concerned that current conditions being experienced by some people could amount to inhuman and degrading treatment, in breach of Article 3 of the European Convention on Human Rights.</i></p> <p><i>These concerns are based on our review of the amended rules and the action required of governors. We are aware, for example, of people being confined to their cell for 24 hours a day, for extended periods of time, with no access to shower facilities or time out of cell, including access to outdoor exercise. We are also aware that prisoners who are confined in their cells for COVID-19 related</i></p> |

reasons are afforded limited telephone contact with their lawyer, and that some prisoners have been unable to maintain any form of telephone contact with their families.

Response

The amendment Prison Rules were designed to support SPS' response to the exceptional pressures presented during the current pandemic. They enhance SPS' ability to mitigate the impact of staff shortages as prison staff require to self-isolate to prevent the spread of the virus.

The amendments generally provide Governors in Charge with flexibility in regards to compliance with timescales and the provision of those services, which are important but not critical to the security and health of SPS staff or people in custody. The amendments enable SPS staff to focus on key functions and to help protect the health and safety of all. The amendments will only be in force for the duration of a COVID-19 outbreak.

Personal Hygiene

In light of the COVID-19 pandemic, all Scottish prisons have transitioned to a single shift core day. Whilst introduction of a core day has permitted more flexible deployment of diminishing staff availability, it reduces the length of the prison day and restricts the time available to facilitate routine prison tasks.

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

Those accommodated in recently built prisons and accommodation blocks also have access to in-cell showers. Across Scotland's 13 public prisons 34% of cells have in-built showers. At Scotland's 2 private prisons in cell showers are available across all cells at HMP Addiewell but only in 2 cells at HMP Kilmarnock, which was built at an earlier date.

It is SPS practice to continue, where possible, to provide people 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 would only give consideration to restricting access to bathe or shower (twice weekly) were it to become operationally necessary, as result of the impact of COVID-19 on staffing and if it became challenging for a Governor to make safe and adequate arrangements to provide daily or at least every other day access to showers.

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| | <p>It should be noted that hand washing regularly remains the most effective way of reducing the spread of COVID-19. SPS recognise the importance of personal hygiene and everyone in its care has access to running hot water, soap and towels in their cells.</p> <p><i>Access to Legal Agents</i></p> <p>Access to legal agents continues to be available through the phone system and agent's visits. Every Scottish prison offers virtual agents' visits. Registrations for virtual agent's visits made via the Scottish Legal Aid Board have increased by 180 since mid-March 2020. A total of 520 solicitors are now registered across Scotland. SPS is currently facilitating in excess of 100 virtual agents' visits per day.</p> <p>SPS' complaints process is also operating as normal. Changes to the prison rules, however, allow greater flexibility in regards to the administrative requirements and timescales that SPS are required to adhere to when responding to complaints.</p> <p><i>Reading Material</i></p> <p>Access to books and newspapers has not been suspended. However, the arrangements by which people in SPS 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 physical distancing.</p> <p>SPS requires flexibility in relation to the entitlement to receive items from outside in order to enable it to fully comply with Public Health 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. SPS Staff have to undertake this task, to prevent, prohibited items such as drugs or weapons from entering prisons.</p> <p>Staff shortages as result of the COVID-19 outbreak have required prisons 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.</p> |
| SHRC | <p><i>Measures amounting to solitary confinement for healthcare reasons should only be adopted on the basis of a comprehensive medical assessment. Solitary confinement, which carries significant mental and physical health impacts, should only ever be adopted where it is proportionate, limited in time and subject to procedural safeguards.</i></p> <p><u>Response</u></p> |

When an individual is either COVID-19 symptomatic/confirmed or has been in close contact or has been/is sharing a cell with someone who is COVID-19 symptomatic/confirmed then they are held in isolation under Rule 41 of the Prisons and Young Offenders Institutions (Scotland) Rules 2011. When a healthcare professional identifies that precautionary isolation is necessary to shield and prevent further spread then Rule 40(a) is applied.

Individuals can only be confined to their cell for health reasons in accordance with the prison rules and following advice from an NHS healthcare professional. All those held in isolation have a care plan devised which details the activities that can be accessed.

Where any person reports COVID-19 symptoms they are able to leave their cell to use the phone and undertake outside exercise so long as they wear a mask. Staff are required to wear appropriate PPE.

Anyone who is in isolation will continue to have access to healthcare and prescribed medication. All cells have hot water so those in isolation are still able to wash on a daily basis and they are permitted to use showers, which will be cleaned before and after use.

NHS partners have identified those in SPS care who, as a result of underlying conditions, are placed at greater risk from COVID-19. NHS Boards have issued those identified with letters advising them that they should self-isolate for up to 12 weeks. There are currently 18 people in SPS care who shielding.

Those who are clinically extremely vulnerable, e.g. people with specific cancers, are notified by NHS that they are in this group. On the advice of Health Protection Scotland, clinically extremely vulnerable people who are shielding will be accommodated in a single cell where they will be provided with all meals and medication. Restricted access is given to communal showers and the communal phone. They are also provided the opportunity for outside exercise at least three times a week. Only small numbers of people should be out on exercise during this time and physical distancing must be adhered to. The person shielding should wear a fluid repellent mask while out of cell.

Where someone is advised that they should be shielding then they should be accommodated in a single room and their meals should be provided in their cell. They should continue to be given access to the phone and showers. However, these should be thoroughly cleaned prior to use. SPS has sought to ensure that all those who are shielding are given the opportunity to move to a location where they could have in-cell shower provision and, to date, 4 individuals have decided to accept this offer.

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| SHRC | <p><i>While it may be legitimate and reasonable to suspend non-essential prison activities in the current public health emergency, any restrictions must be minimised, proportionate to the nature of the health emergency, and made in accordance with law.</i></p> <p><u>Response</u></p> <p>SPS's response to this crisis has always been aligned with the latest public health advice ensuring the safety of all those who live and work in prisons</p> |
| SHRC | <p><i>The Commission is also concerned about the lack of transparent and accessible data currently available to enable adequate monitoring of prison conditions and their impacts.</i></p> <p><u>Response</u></p> <p>The Scottish Prison Service has made every effort to provide clear and up to date information on the impact COVID-19 has had on prisons. SPS publishes a daily update on its external website detailing of the number of individuals who are self-isolating, across prisons and details how many of these people are confirmed to have COVID-19.</p> <p>Every Friday SPS publishes a weekly breakdown of the number of people self-isolating or who have been confirmed as having COVID-19 broken down by prison. SPS also publishes weekly staff absence rates as well as comprehensive information issued to staff, families and our partner organisations. This information can be accessed at the following address: https://www.sps.gov.uk/Corporate/Information/covid19/covid-19-information-hub.aspx</p> <p>During the COVID-19 emergency, SPS has continued to evidence delivery against Her Majesty's Inspectorate of Prisons for Scotland's (HMIPS) monitoring priorities and compliance against The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2020. Scrutiny of SPS activities by Independent Prison Monitors (IPM) has also continued to be undertaken remotely. SPS continues to provide information on regime provision and the opportunities available for people in custody to access. Telephone calls have taken place between IPMs and people in custody.</p> <p>Governors in Charge maintain a spreadsheet which allows them to evidence delivery against HMIPS monitoring priorities and compliance against The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2020. Governors are required to provide information on regime provision and the opportunities available for people in custody to access.</p> |

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| | <p>This spreadsheet is a dynamic document, updated in response to any changes to individual prison regimes and allow real time overview of delivery. The Deputy Director of Operations has engaged with HMIPS and who have confirmed that this reflects the information they wish to monitor.</p> |
| <p>Additional comments</p> | <p><u>Support for People in SPS Care</u></p> <p>SPS has worked to mitigate the impact of the current situation. Staff have been provided with information on how to identify those who may be struggling whilst in isolation. Self-help support leaflets, designed by SPS Psychologists, have been issued to everyone in custody and these provide information and tools which can be used to maintain a sense of wellbeing. Relaxation and mindfulness tapes and videos are also now available through in-cell televisions and radios.</p> <p>SPS are engaging with Fife College in order to explore how best they can resume the delivery of education provision. Prison Chaplains continue to provide pastoral, spiritual and faith-specific care within prisons.</p> <p>Some NHS Health Boards are providing additional in-cell activities for people to do while in isolation in order to improve their wellbeing. SPS' Research Branch will shortly be undertaking a random sample survey of those currently in custody in order to understand better their personal experiences of the pandemic.</p> <p><u>Family Contact</u></p> <p>SPS has had to take steps that would ordinarily be unthinkable, one of the hardest being the decision to suspend visits. In order to mitigate against the suspension of prison visits and in recognising the importance of family support during this time, SPS has, from the outset of this pandemic, provided everyone in custody with a free allowance of £2.50 per week on their phone balance. Family contact is also being facilitated through prisoner voice mail, email a prisoner and the traditional mail system.</p> <p>SPS continues to progress a number of innovative technical solutions to facilitate family contact and are working in partnership with Unilink to facilitate this through virtual visits. Regulations to allow these to be facilitated were laid before Parliament on 15 June 2020. On Friday 19 June 2020 virtual visits were available and operating at HMPs Shotts, Cornton Vale and Polmont, Barlinnie, Edinburgh, Greenock, Perth and Glenochil.</p> <p>Roll out of virtual visits to the remaining prisons has been scheduled and most will begin operating during this week.</p> |

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| | <p>In addition, SPS has also agreed a contract to provide every person in custody with a restricted mobile phone. Mobile Phones have been in operation at HMP & YOI Cornton Vale since Monday 15 June and HMP & YOI Polmont since Wednesday 17 June. Feedback is being sought, on an ongoing basis, from both staff and people in custody. SPS aims to further roll phones out to 2 sites per week, subject to work being done by BT.</p> <p>HMP Kilmarnock intends to implement its own in-cell telephony option. This will be a hard wired solution where every prison cell will have its own PIN phone. HMP Kilmarnock will not, therefore, introduce mobile phones, in line with Scotland's 13 public sector prisons and HMP Addiewell.</p> |
| CYPCS | <p><i>International human rights frameworks clearly prohibit the use of solitary confinement for children, recognising the damaging effects it can have on physical and mental health. Solitary confinement is defined by the United Nations in the Nelson Mandela Rules as confinement “for 22 or more hours a day without meaningful human contact”. It is important to note that the negative impacts of isolation can begin long before the 22-hour threshold is reached. We understand that some children and young people in YOIs are currently being confined in their cells for up to 23 hours a day and those who are showing symptoms of Coronavirus are isolated in their cells for 24 hours a day.</i></p> <p><u>Response</u></p> <p>As of 22 June, there had been no confirmed cases of COVID-19 amongst children and young people aged 16 to 21 in the custody of the Scottish Prison Service. On that date there were 18 children aged 16 and 17 in custody in Scotland, all in HMP & YOI Polmont. No young offenders are currently being isolated.</p> |
| CYPCS | <p><u>Access to education and other activity</u></p> <p><i>We have been told that access to education, activity and exercise are very limited at present. This has a negative impact on children's rights to education and health. We note that the HMIPS inspection of Polmont YOI found that children on remand in particular experienced limited access to meaningful activity and support prior to the pandemic, and that access to services was also restricted prior to sentencing.</i></p> <p><u>Response</u></p> <p>Fife College provide learning materials for the children and young people on a weekly basis. SPS staff are in discussion about enhancing this provision. Other activities available to children and young people in HMP & YOI Polmont include:</p> |

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| | <ul style="list-style-type: none"> • daily kettlebell and physical workout activities daily for small groups, provided by Sports and Games instructors; • weekly activity packs and materials issued by activities staff to children and young people for them to engage with in their rooms; • access to library books, which has been maintained; • phone lines to enable contact between young people and third sector partners, including Barnardos. <p>Children and young people on remand are encouraged to participate in these activities.</p> <p>In addition to these elements, some children and young people undertake work activities for up to 6 hours a day in essential services (cooking, gardening, cleaning and hall painting).</p> <p>Staff encourage young people to participate in all the activities they have access to, including recreation, work and outdoor exercise. Staff monitor and record participation in recreation and outdoor exercise and also young people's shower use and telephone use. Senior managers within the establishment review the findings in daily meetings.</p> <p>Where a young person is being protected for reasons of their offence an individual care plan is in place and case conferences are held frequently with a view to supporting their wellbeing and maximising the individual's access to activities.</p> |
| CYPCS | <p><u>Social work support</u></p> <p><i>We have been told that social work visits have largely ceased. This will affect the level of support provided to children, the level of additional scrutiny over protection of their rights, and their ability to be assessed for and prepare for release.</i></p> <p><u>Response</u></p> <p>The Whole System Approach for children and young people has continued in virtual form, including systems for notifying Local Authority Whole System Approach Lead Officers when a young person is admitted to custody.</p> <p>Community Based Social Work (CBSW) have been attending Integrated Case Management meetings virtually and one-to-one phone calls between young people and CBSW have been facilitated. Prison Based Social Work left HMP & YOI Polmont as part of the restricting of people accessing the building at the end of March 2020. Regular contact is, however, being maintained through virtual meetings and one-to-one conversations with young people by phone.</p> |

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| | <p>Liberation is potentially particularly difficult for children and young people at this time. A local team at HMP & YOI Polmont has been set up to support liaison with all local authorities and third sector partners to support children and young people to return safely to their communities.</p> |
| CYPCS | <p><u>Family contact</u></p> <p><i>We have been told that family contact is not taking place despite it being recognised as playing a huge role in mitigating vulnerability and mental illness. We understand that no measures have been put in place to facilitate additional virtual contact and to support rights to respect for family life (such as socially distanced visits, significantly increased telephone or video contact.)</i></p> <p><u>Response</u></p> <p>Staff in HMP & YOI Polmont monitor young people's contact with families. Those few who have no contact with their family are offered support and contact with Barnardos youth workers by phone and email.</p> |
| CYPCS | <p><u>In-cell telephony and technology</u></p> <p><i>One of the recommendations of the HMIPS Mental Health Report which the Scottish Government agreed to (in June 2019) was to install in-cell telephony in HMP & YOI Polmont. On 17 April 2020, the Cabinet Secretary for Justice announced the Scottish Government's intention to provide mobile phones to those in custody. To date this has not been done.</i></p> <p><u>Response</u></p> <p>It is recognised that families and social networks are a significant motivating and stabilising factor on those in SPS care. As indicated above virtual visits and mobile telephony were introduced at HMP & YOI Polmont and Cornton Vale from 15 June. The Scottish Government indicated in its announcement on 17 April, that these arrangements would be put in place once technical, legal and security matters were resolved.</p> |
| CYPCS | <p><u>Hygiene</u></p> <p><i>Amendments to the prison rules have relaxed duties to meet basic needs including those related to hygiene. We are not aware of any Children's Rights Impact Assessment having been conducted on these amendments. Notwithstanding the impact on human dignity of having access to showers restricted, when the strong messaging</i></p> |

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| | <p><i>from public health professionals is about the critical and life-saving important of washing hands to prevent the spread of the virus, we question how hygiene and infection control in prisons is being managed.</i></p> <p><u>Response</u></p> <p>As indicated above, all children and young people in SPS care have had access to daily showers and to running water, soap and towels in their cells.</p> |
| CYPCS | <p><u>Mental Health</u></p> <p><i>The consequence of all the above will be to seriously exacerbate existing mental health vulnerabilities and to place all children detained at heightened risk of developing mental health problems. There were pre-existing concerns in YOIs about the level and quality of mental health support for children and young people. The HMIPS Report highlighted significant concerns for the mental health of those on remand, awaiting sentence, or in the early stages of their sentence. These groups are identified as being the most vulnerable to episodes of self-harm or suicide. A key reason outlined in the Report for why the remand population was considered to be particularly vulnerable related to their experience of 'social isolation'. As noted above similar concerns were raised by the Centre for Youth and Criminal Justice (CYCJ) and the Independent Care Review. The situation is only likely to have worsened as a result of the pandemic</i></p> <p><u>Response</u></p> <p>Staff working with the children and young people monitor each young person's wellbeing through their regular contact throughout the day. In cases of concern they make referrals for additional support from mental health services.</p> <p>All establishments where Young Offenders are currently detained have confirmed that NHS colleagues have continued to provide health support including mental health support for those young offenders in the care of the Scottish Prison Service who require it.</p> <p>There has been no interruption to mental health services in HMP &YOI Polmont. NHS Staff are working within the boundaries of advice from Scottish Government regarding social distancing. Psychiatry appointments are taking place by video conferencing. NHS Clinical Psychology are meeting patients one to one in the Halls. Waiting times for assessment and service are being met. There is no longer a waiting list in HMP &YOI Polmont for mental health assessment/ services.</p> |

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| | <p>Children and young people have access to chaplains for one to one conversations if they wish.</p> <p>Staff and partners recognise the impact of social isolation on young people and are seeking to mitigate its effects for example through the support that Barnardos youth workers are providing to young people during this period through 'Email a prisoner' and by telephone.</p> |
| CYPCS | <p><u>Early Release</u></p> <p><i>In March, 2020, the United Nations High Commissioner for Human Rights, Michelle Bachelet, appealed for urgent action to prevent Covid-19 from “rampaging” through places of detention and on 8th April 2020, the United Nations Committee on the Rights of the Child (the CRC) called on all States to:</i></p> <p><i>“Release children in all forms of detention, whenever possible, and provide children who cannot be released with the means to maintain regular contact with their families.”</i></p> <p><i>“Prevent the arrest or detention of children for violating State guidance and directives relating to COVID-19, and ensure that any child who was arrested or detained is immediately returned to his or her family.”</i></p> <p><i>We welcome therefore the fact that some children and young people are covered by the early release regulations, but note that the 16 and 17 year olds detained in Young Offenders’ Institutions (YOIs) are subject to the same eligibility criteria as adults. As the Howard League noted in its submission to the Committee, the criteria are not human rights based, and make no provision for assessment of children’s rights, needs and wellbeing to inform a decision on release. There is no evidence that the Government gave any consideration to the specific needs and rights of children when drafting the regulations.</i></p> <p><i>In line with the overwhelming weight of international expert opinion, including the United Nations Committee on the Rights of the Child (UN CRC), the Office of the UN High Commissioner for Human Rights (OHCHR), the World Health Organisation (WHO), the UN Office on Drugs and Crime (UNODC), the UN Joint Programme on HIV/AIDS (UNAIDS), and the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, we are calling on the Scottish Government to ensure that all children detained in YOIs are individually assessed for release using a human rights based approach. This approach would be consistent with the Government’s obligations in international law to grant children additional legal protection and consideration.</i></p> |

We are especially concerned that failure to include children and young people on remand in the early release regulations disproportionately impacts on this group, who are likely now to be facing detention and deprivation of their liberty for significant and uncertain periods of time, without having been convicted of any offence.

We welcome the Committee seeking data on the Scottish Government's early release programme. We would also encourage the Committee to seek specific disaggregated data on children detained in YOIs and in particular the length of detention, the reason for detention, the scheduled release date, parole/appeal or trial dates, whether they are care experienced or have a disability or additional support needs. This would greatly assist the Committee in assessing the impact of the programme on those whose rights are most at risk.

Response

The criteria for early release in the Regulations needed to match the legislative powers for release granted to Scottish Ministers by Parliament. Release needed to be necessary and proportionate for the purpose of protecting:

- (a) the security and good order of any prison to which the regulations relate, or
- (b) the health, safety or welfare of prisoners, or those working, in any such prison.

In considering whether release in an individual case could be said to be necessary and proportionate, it is important to note that other forms of release for individual cases, such as compassionate release, continued to operate over this period. The debate in Parliament about the use of these powers, made quite clear the context for their use was in response to population wide challenges and indeed the legislation passed is not compatible with the more detailed type of individualised assessment that is suggested. Early release did provide capacity estate wide to be able to deal with any vulnerability across the prison estate.

The emergency release arrangements set out in the Regulations came to an end after 1 June. Therefore, while we will keep the overall position in respect of further release under review, at this time a further release is not deemed necessary and as such we have no extant Regulations under which we can consider young people for an individualised assessment for release.

On remand, unlike enforcement of sentencing decisions, decisions about bail and remand are a matter for the courts, and are taken for a range of reasons including public safety and relate to future criminal

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| | <p>proceedings. Unlike for sentenced prisoners, there is a direct mechanism for those on remand to have the decision to remand them reviewed by the court. So arrangements were not extended to remand because it is not necessary, as an existing mechanism can be used for remand decisions to be re-considered and the justification for inclusion of provisions in the Act were that they need to be 'necessary' in light of COVID-19. Notwithstanding that, we share the concerns about the impact of remand more generally on people of all ages and assure you that active consideration is being given to options that might reduce the number of people held on remand. On data, information about early release, broken down by age, has been made available on the SPS website here:</p> <p>https://www.sps.gov.uk/Corporate/Information/covid19/covid-19-information-hub.aspx</p> |
| CYPCS | <p><i>In addition, we consider that children in secure care centres should also have their situation reviewed, allowing a rights-based assessment of whether detention continues to be in their best interests. This does not require legislation, but it is not clear that the Government has set an expectation that this will happen.</i></p> <p><u>Response</u></p> <p>The health and wellbeing of all those living and working in secure care is a priority. Secure centres have contingency and business continuity plans in place, which are reviewed regularly to ensure that they are able to deal with the impacts of the coronavirus. Scottish Government officials are in weekly and often daily contact with secure care providers to discuss concerns and challenges and to consider the continuation of Education provided to those in their care, virtual visits and the reintroduction of social distance visits.</p> <p>Scottish Ministers are responsible for placing children and young people convicted under solemn procedures and sentenced under sections 205 and 208 of the Criminal Procedure (Scotland) Act 1995 ('the 1995 Act'). Section 205 covers murder cases and section 208 other offences - including serious violence, assault to severe injury, sexual offences and attempted murder. Currently there are 10 children and young people under the age of 18 placed by Scottish Ministers in consequence of these sentences.</p> <p>Scottish Ministers operate under a rebuttable presumption that all children and young people under 18 sentenced under these provisions should be placed in secure accommodation rather than HMP & YOI Polmont.</p> <p>Section 7(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 ('the 1993 Act') determines the qualifying period for parole</p> |

when a child is detained under section 208 of the 1995 Act. "Detention" for this purpose includes children placed in secure accommodation. Therefore the earliest date of liberation is specified as follows - if the sentence is less than four years, they shall be released on licence by Scottish Ministers as soon as half the sentence has elapsed; if four or more years, they shall be so released as soon as two thirds of the sentence has elapsed. However, those young people subject to four or more years' sentence also have a parole qualifying date calculated on half the sentence - all are referred to the Parole Board for Scotland at this point.

Having considered the concerns raised by the Children's Commissioner relating to emergency legislation for early release of children, we would observe that Section 7(2) of the 1993 Act enables the referral to the Parole Board of young people's cases at any time. The ability to deal with young people's cases in that manner and the absence of individual cases suitable for other exceptional treatment in the period due to be covered by the emergency legislation meant that such steps were not needed.

While the affected children and young people are serving at least the early part of usually significant sentences in secure care where they are deprived of their liberty, we would emphasise that secure accommodation represents an educative child care setting rather than a custodial setting. In addition, we would observe that the application of the Lord Advocate's guidelines on offences committed by children, the associated protocols and the broader Whole System Approach to youth justice in Scotland mean that these cases involve only those young people convicted of very serious offences. Consequently, these young people are serving significant sentences that will usually involve a considerable proportion of that sentence – often multiple years - to be served in adult custody after they turn 18.

Scottish Ministers are made aware of all pending placements of sentenced children and young people in secure care. Scottish Government officials from the Sentenced Placement Team in the Children and Families Directorate manage these placements on behalf of the Scottish Ministers. Officials develop an individual placement plan for each young person. They meet with each sentenced child or young person on admission and at least on a quarterly basis thereafter with a view to ensuring that they receive the support including health and wellbeing, education and interventions they require to reduce their risk of re-offending. Prior to each meeting progress reports are received from secure care and social work. The overall aim is to prepare them for a successful transition into the community on leaving secure care.

Not all will immediately return to the community from secure care and further custody planning may be required to manage transition into a Young Offenders Institution on becoming 18 years old. All reviews

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| | <p>are attended by the child or young person, parents or carers, secure care support workers, those providing interventions and the relevant local authority social worker. These reviews are to ensure that appropriate education services, offence focussed programmes and wellbeing support is directly relevant to each child's or young person's needs and based under the SHANARRI principles: Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible, Included.</p> |
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