

Stephen Kerr MSP
Convener
Education, Children and Young People Committee

31 March 2022

Dear Convener

Thank you for your correspondence of 9 March requesting further information regarding children in prison in Scotland. This request is following the Children and Young People's Commissioner Scotland (CYPCS) response and oral evidence provided as part of the Education, Children and Young People Committee Stage 1 scrutiny of the Coronavirus (Recovery and Reform) (Scotland) Bill.

The issue of under 18s in Young Offenders Institutions (YOI) in Scotland is one which has received increasing attention, not only through campaigning by the CYPCS but also HM Chief Inspector of Prisons Scotland, Wendy Sinclair-Gieben and the Children and Young People's Centre for Justice all calling for legislation to end the detention of under 18s in YOI. It is widely accepted that where loss of liberty is required for under 18s, that this should be in age appropriate accommodation, as outlined in The Promise. The Promise Change Programme includes a commitment that, by 2024, 16 and 17 year-olds will no longer be placed in YOI on sentence or remand.

You have enquired about any assessments the Scottish Government has carried out regarding the current situation relating to children in prison; and about actions the Scottish Government is taking.

Reducing offending by children and young people and safeguarding them within the youth justice system with a view to keeping under 18s out of YOIs, is a key priority, as outlined in the current Programme for Government. The decision on whether to keep someone under the age of 18 in custody is a matter for the independent courts. However, it is clear that as a Government we need to ensure, looking forward, that both practice and legislative changes are put in place to garner confidence in alternatives to YOI. Through keeping The Promise, we are committed to ending the placement of 16 and 17 year olds in YOI without delay.

We published a new Vision for Youth Justice¹ in 2021. The vision continues to build on the successes over the last 13 years around reductions in under 18s prosecuted in court (down 85% since 2008-09) and in 16/17 year olds being placed in YOI on remand or sentence.

¹ [Justice for children and young people - a rights-respecting approach: vision and priorities - gov.scot](https://www.gov.scot/Topics/justice/youth-justice/vision)
(www.gov.scot)

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According to Official Statistics, the number of under 18s in custody on 30 June 2007 was 221. As of 14 March 2022, that number was down to 15, of whom 10 are on remand.

The youth justice Vision represents a shared foundation between the Scottish Government and partners to keep children out of the criminal justice system, and promote the Whole System Approach to preventing offending by young people focused on early intervention, diversion from prosecution, and alternatives.

We have also committed to a Children's Care and Justice Bill, as set out in our 2021 Programme for Government. A full public consultation on its policy proposals will be undertaken shortly.

This will involve stakeholder consultation and engagement to elicit views on a range of matters, including on whether all children for whom it has been assessed as necessary to be deprived of their liberty should be cared for in safe, secure, trauma informed environments, such as secure accommodation.

Ministers consider that the best approach for the Coronavirus (Recovery and Reform) (Scotland) Bill, ahead of the proposed Children's Care and Justice Bill, is to extend the specific temporary provisions in the Coronavirus (Scotland) Act 2020 ('the 2020 Act'), as consulted on last year.

There was no discussion of new powers, or of changing the prisoner early release provisions, in the consultation leading up to the current Bill process. The existing temporary legislation requires that any early release process can only be instructed by Scottish Ministers where it is necessary and proportionate to do so to support the safe operation of prisons, and the health of prisoners and staff – specifically from the effects of Covid-19.

No matter the legitimate public policy objective, the power cannot be used for other reasons, including to amend the sentencing or conditions of a specific group or type of prisoner, or to release them early for any other reason.

The 2020 Act early release provision does not create a power for Ministers to order the early release of remand prisoners, of any age. Remand prisoners have a different legal status, as they are being held at the decision of the court in advance of trial. It is open to any remand prisoner to seek a bail review, and to present their case to the court, that they should be bailed.

Therefore, the early release provision does not apply to the large majority of under 18s in Polmont, as they are being held on remand. The provision does apply to under 18 year old sentenced prisoners, where they meet the conditions in the 2020 Act, and the specific regulations set out in the SSI detailing the conditions for the individual release process. In May 2020, one young person under 18 was eligible for early release, and was granted it.²

² SPS interim report on tranche 2 of May 2020 early release process
<https://www.sps.gov.uk/nmsruntime/saveasdialog.aspx?IID=4620&SID=1579>

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A public consultation has been conducted regarding possible reforms in relation to the law around bail and release from custody for all individuals, including under 18s. The analysis of responses to that consultation will be published in the next few weeks. This will inform the development of an upcoming Bill on these topics, which was also detailed in the 2021 Programme for Government.

Ministers consider that the proposed legislation above are more appropriate vehicles than the Coronavirus (Recovery and Reform) (Scotland) Bill to address the much needed legislative requirements regarding children in custody in a holistic, comprehensive and sustainable manner.

Whilst we look to make legislative changes, practice and cultural change is also required. We are working with partners, through implementation groups delivering the youth justice vision, to explore alternatives to custodial remand - with secure care and intensive community based alternatives to be used instead. Gap assessment is being undertaken, and good practice will be shared across the sector by September 2022.

Negotiations are well underway on the future funding and provision of secure care in Scotland. If agreements can be reached, we hope to have a materially different approach in place by 2023, with initial funding arrangements to be confirmed before the summer. Discussions are also underway to evaluate the needs of under 18s in both secure care and YOI, to ensure appropriate care and safety supports are in place as well as adequate availability of places – ahead of the planned legislative changes.

In 2021, the Children and Young People’s Centre for Justice carried out research into the experiences of young people on remand in Polmont. The purpose was to better understand the pathways to remand. 14 of the 18 children in custody at the time were on remand, and 12 of those were over the age of 17. Key themes from the research included a lack of a consistent approach to information sharing and communication on outcomes and availability and barriers to providing alternatives to remand. This has been influential in developing proposals for the planned Care and Justice Bill.

In December, the Covid-19 Children and Families Collective Leadership Group (CLG) established a short life group to deliver improvements for under 18s in YOI and to seek to reduce the number held there. The CLG brings together national and local government and other partners to respond to immediate concerns for children, young people and families with vulnerabilities during the pandemic, and provide longer term support for recovery and renewal. The short-life group was set up in response to issues raised in the *HMIPS – Year of Childhood Pre-Inspection Survey 2021*³ and CLG’s role in supporting UNCRC Implementation and maintaining momentum on work to Keep The Promise by removing all children from YOI.

The short life group met virtually on 3 occasions between December and March with an initial remit of addressing the issue of under 18s being isolated in YOI as reported by HMIPS in the pre-inspection survey report, and understanding the key opportunities to provide additional

³ [HMIPS - Year of Childhood Pre-inspection Survey 2021 | HMIPS \(prisonsscotland.gov.uk\)](https://www.prisonsscotland.gov.uk/hmips-year-of-childhood-pre-inspection-survey-2021)

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support and alternative approaches to custody. It is understood that there have been a number of improvements for under 18s in YOI. These include:

- Re-alignment of full time Barnardo's worker to work closely with individuals and reduce social isolation and encourage participation in activities.
- Engagement with young people around their ambitions - training opportunities available through Fife College.
- Access to vocational training for both remanded and convicted individuals.
- Provision of mobile phones for all under-18s - 930 monthly minutes provided.
- Unless there are restrictions in line with Scottish Government health requirements because of Covid-19 outbreaks, there are no restrictions to the regime for 16 and 17 year olds in Polmont. Staff proactively engage with young people in communal areas and in their cells depending on the activity.
- Re-alignment of full time Inclusion Officer in January 2022 to support young people to engage in activities and connect and improve relationships with their families.
- The Scottish Prison Service has identified techniques that can be applied to control a distressed individual, but which do not rely on the application of pain/pressure. The identified techniques are in line with interventions used across other secure services and are more supportive of working within a more trauma-informed approach.

A report set out 4 recommendations to be delivered (i) Undertake a Trauma Informed Review of the Young Persons Pathway to YOI; (ii) Recognising the needs and rights of the young person and support their understanding of court processes to ensure meaningful participation; (iii) Assess and review key policies through the lens of UNCRC and other human rights treaties; and (iv) Identify and remove legal impediments to alternatives to remand and take immediate action where possible to remove under-18s from custody.

These recommendations will now be addressed as part of the legislative plans discussed above and as core elements in Scotland's wider activity in relation to youth justice in the period between now and 2024.

I hope that this response is helpful.

I have copied this letter to the Conveners of the Covid-19 Recovery Committee and the Criminal Justice Committee, for their respective interests in the Stage 1 scrutiny of the Coronavirus (Recovery and Reform) (Scotland) Bill.

KEITH BROWN

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