



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

8th Meeting, 2020 (Session 5)

Tuesday 25 February 2020

The Committee will meet at 10.00 am in the Mary Fairfax Somerville Room (CR2).

1. **Children (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Ash Denham, Minister for Community Safety, Simon Stockwell, Head of Family Law Unit, Shona Spence, Looked after Children Team, Jamie Bowman, Scottish Government Legal Directorate, and Victoria Morton, Scottish Government Legal Directorate, Scottish Government.

2. **Secure care and prison places for children and young people in Scotland:** The Committee will consider the Scottish Government's response to its report.
3. **Justice Sub-Committee on Policing:** The Committee will consider a report back from the Sub-Committee meeting held on 20 February 2020.
4. **Children (Scotland) Bill (in private):** The Committee will review the evidence heard earlier in the meeting.

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The papers for this meeting are as follows—

Agenda item 1

Paper by the Clerk

J/S5/20/8/1

PRIVATE PAPER

J/S5/20/8/2 (P)

Agenda item 2

Paper by the Clerk

J/S5/20/8/3

Agenda item 3

Paper by the Clerk

J/S5/20/8/4

Justice Committee

8th Meeting, 2020 (Session 5), Tuesday 25 February 2020

Children (Scotland) Bill

Note by the clerk

Introduction

1. The Children (Scotland) Bill was introduced in the Scottish Parliament on 2 September 2019. It is a Scottish Government Bill. The Bill mainly makes changes to how disputes in relation to children are settled when families break down.
2. According to the Scottish Government, the policy aims of the Bill are to:
 - ensure the views of the child are heard in contact and residence cases;
 - further protect victims of domestic abuse and their children;
 - ensure the best interests of the child are at the centre of contact and residence cases and Children’s Hearings; and
 - further compliance with the United Nations Convention on the Rights of the Child (UNCRC) in family court actions.
3. More information on the Bill can be found here:
<https://www.parliament.scot/parliamentarybusiness/Bills/112632.aspx>
4. A SPICe briefing on the Bill can be found here:
<https://digitalpublications.parliament.scot/ResearchBriefings/Report/2019/11/21/The-Children--Scotland--Bill-1>
5. SPICe have also prepared a briefing looking at how other legal systems deal with parenting disputes, which can be found here:
<https://digitalpublications.parliament.scot/ResearchBriefings/Report/2019/11/20/Resolving-parenting-disputes--Scotland-compared-to-other-countries-1>

Justice Committee scrutiny

6. The Bill was referred to the Justice Committee for Stage 1 scrutiny. The Committee launched a [call for evidence](#) on 20 September 2019, with a closing date of 15 November 2019. 74 responses were received and are available here:
<https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/113648.aspx>
7. Any supplementary responses are also published on that webpage.
8. As part of its scrutiny of the Bill, the Committee commissioned an external academic, Dr Lesley-Anne Barnes Macfarlane of Edinburgh Napier University, to review both the current law and the proposed reforms in the Bill from a human rights perspective. Her report can be found here:

https://www.parliament.scot/S5_JusticeCommittee/Inquiries/Balancing_the_Rights_of_Parents_and_Children_Reportv2.pdf

And a summary report here:

https://www.parliament.scot/S5_JusticeCommittee/Inquiries/Balancing_the_Rights_of_Parents_and_Children_Report_Summary.pdf

9. At its meeting on [26 November 2019](#), the Committee took evidence from Scottish Government officials assisting Ministers in taking the Bill through Parliament (“the Bill team”).
10. At its meeting on [17 December 2019](#), the Committee held a roundtable evidence session with Dr Fiona Morrison, University of Stirling, Professor Kay Tisdall, University of Edinburgh, and representatives from the Children and Young People’s Commissioner Scotland and Scottish Women’s Aid. These individuals and organisations have been involved in recent research projects which have included hearing directly from children and young people on issues relating to the Bill. The purpose of the roundtable session was to explore the findings from these projects on children and young people’s experiences of contact disputes, their views on how the current system could be improved, and whether other work needs to be done to hear children’s views on these issues.
11. The Committee then took evidence on the Bill from Professor Elaine Sutherland, University of Stirling, and Dr Richard Whitecross, Edinburgh Napier University.
12. At its meeting on [7 January 2020](#), the Committee heard from representatives of the Children and Young People’s Commissioner Scotland, Children 1st, NSPCC Scotland, ASSIST, and Scottish Women’s Aid.
13. At its meeting on [14 January 2020](#), the Committee heard from Dr Sue Whitcombe, Chartered Psychologist, and representatives of Grandparents Apart UK, Shared Parenting Scotland, and Relationships Scotland.
14. At its meeting on [21 January 2020](#), the Committee heard from representatives of CELCIS, Social Work Scotland, Who Cares? Scotland, Children’s Hearings Scotland and the Scottish Children’s Reporter Administration.
15. At its meeting on [28 January 2020](#), the Committee heard from Susan Edington, Edingtons WS; Nadine Martin, Harper Macleod LLP; and representatives of Clan Childlaw, the Faculty of Advocates, and the Family Law Association.
16. On 4 February 2020, the Committee met informally with YELLO!, the young expert group for the Improving Justice in Child Contact project. A note of that meeting can be found [here](#).
17. At its meeting on 20 February 2020, the Committee heard from The Hon. Lady Wise and Sheriff Tait.
18. At its meeting on 25 February 2020, the Committee will take closing evidence on the Bill from the Minister for Community Safety.

Justice Committee

8th Meeting, 2020 (Session 5), Tuesday 25 February 2020

Secure care and prison places for children and young people in Scotland

Note by the clerk

Introduction

1. On 26 November 2019, the Committee published its report on [secure care and prison places for children and young people in Scotland](#). This was the result of a short inquiry into the subject.
2. Subsequently, in January 2020, the Scottish Government provided the Committee with its [formal response](#) to the Committee's report (see Annex).
3. Subject to Parliamentary approval, the report and the response from the Scottish Government will be the subject of a debate in the Chamber on 17 March 2020.

Action/recommendation

4. **Members are asked to discuss the response from the Scottish Government and advise what, if any, further action is required. Members are also asked to note the proposed debate in the Chamber.**

**Justice Committee Clerks
February 2020**

Scottish Government's response to the Committee's report on secure care and prison places for children and young people in Scotland

Thank you for the opportunity to respond to the Justice Committee's report 'Secure Care and Prison Places for Children and Young People in Scotland' published in late November 2019. This followed the findings of the Expert Review of Provision of Mental Health Services at HMP YOI Polmont (Expert Review), published in May.

As the issues covered by the Committee's report span the Justice, Health and Children and Families Ministerial portfolios, we agreed that a collaborative Ministerial response was needed.

We would like to thank the Committee for taking time to hear evidence from external stakeholders. We welcome this timely and important report on what is a complex and sensitive area of commitment to our young people most in need and at risk. These issues pose significant challenges for the Scottish Ministers and external partners, notably for local authorities. We also welcome the debate scheduled for 17 March.

We recognise that all young people under the age of 18 - whether placed in secure care (on welfare or conduct grounds through the Children's Hearings System or through the courts on sentence) or those placed in HMP YOI Polmont, are vulnerable and that they should receive the best possible levels of care and service. Scotland's successful multi-agency Whole System Approach to young people's offending behaviour is firmly based on the principles of Getting it Right for Every Child (GIRFEC). We therefore remain committed to a preventative approach ensuring that children and young people in Scotland get the right support at the right time.

Many of the recommendations and findings within the report cover a range of organisations' responsibilities. A coherent and comprehensive multi-agency response and commitment from partners to the issues raised is required. Partners include Scottish Prison Service (SPS), Secure Care Providers, Her Majesty's Inspectorate of Prison Services (HMIPS), Education Scotland, Care Inspectorate, Scottish Courts and Tribunal Service, CoSLA, Scotland Excel and Mental Health Services.

We are committed to working in partnership with all those organisations in order to achieve the necessary changes to ensure that our children and young people have the best possible experience which meets their needs and equips them for a better future. Whilst doing so we are mindful of the Independent Care Review which is expected to report shortly. The recommendations from the review will no doubt have an impact on driving future changes in practice in secure care and HMP YOI Polmont alike, as well as in the alternative and transitional settings around both of those provisions.

Many of the recommendations within the Justice Committee report chime with those from the Expert Review. The Deputy First Minister chaired a roundtable on 4 December 2019 involving Ministers from across Government with a portfolio interest

in the findings of the Expert Review. In addition, the Cabinet Secretary for Justice provided an update to the Justice, Health and Sport and Education and Skills Committees on 9 January 2020 setting out progress to date. That update highlighted the work which is being taken forward by the Scottish Government, SPS and with NHS partners to address the issues raised in the Expert Review.

The work being taken forward, some of which address elements of the Justice Committee's report findings, includes:

- The completion of work to address staffing and training and support for staff at HMP YOI Polmont, including the appointment of additional staff to oversee the suicide prevention strategy and mental health strategy.
- Development of a new health and wellbeing strategy by the Scottish Prison Service, which will include a mental health strategy for young people. Consultation with key partners including the Mental Welfare Commission, Scottish Government and voluntary sector experts on the development of the strategy is already underway.
- Revised 'Talk To Me' Guidance issued to all staff in December 2019 to make clearer the circumstances in which a risk assessment and / or health care assessment should be carried out.
- Exploration of the options for implementing a pilot of in-cell phones at HMP YOI Polmont, with necessary controls in place to improve access to helplines and family support. SPS will tender for this project with the aim of having phones in cells by late summer 2020.
- To date routine body searching of under 18s in HMP YOI Polmont following visits and as part of cell searches has been discontinued.

Another of the recommendations highlighted in the review and re-iterated within the recent Justice Committee report is for consideration to be given to the development of new models of secure care and custody provision. These should take account of maturation evidence, the findings of the HMIPS inspection of HMP YOI Polmont and the findings of the Independent Care Review, when published. Demand and supply of secure care in Scotland is a complex matter, with no quick or easy fix to the challenges posed by the current model. Initial discussions between the Scottish Government, CoSLA and Scotland Excel have taken place. However, it is clear that any future change would require additional resources and a will to fundamentally review the respective current responsibilities. This is a challenging task on which we remain focused with our local government colleagues - discussions will continue over the course of 2020.

The Justice Committee report also suggests a number of key areas of improvement to secure care and custody. Here, we refer to the following recommendations in particular:

- The need for assessments to be made within a few days of young people entering custody or secure care and for mental health supports to be available to all those who require it;
- Improvements should be made around the flow of information shared between organisations; and
- Consideration should be given to a change in legislation to allow young people to remain in secure care beyond their 18th birthday.

The Scottish Government and key partners have already acted to address some of the recommendations within the report including:

- Drafting of Secure Care Pathway and Standards for Scotland, to be published in April 2020. Further work will be carried out across 2020 to support implementation.
- Implementation of a Standard Operating Procedure (SOP) that provides a robust system to support a young person's transition from secure care to SPS care and strengthens processes for information sharing .
- Research and investigation underway into the use of remand for those over the age of 18 and for those under the age of 18. Research will also consider the use of bail and reasons for breach of bail. Findings will be reported later in 2020.
- A Programme for Government commitment to consult on enabling the joint reporting of all 16 and 17 year olds on offence grounds to the COPFS and SCRA, along with an expansion to include 16 and 17 year old welfare cases to be considered by the children's reporter. We hope to be in a position to consult on this in spring.
- Expansion of the whole system approach to those beyond the age of 18. Investment was committed in 2019 and 2020 by the Scottish Government to local authorities to explore an expansion beyond 18 including up to 26 for care experienced young people.

A fuller response from the Scottish Government and external partners, mapping across to all of the Committee report's findings, is set out at annex A.

We trust this response reassures the Committee as to the Scottish Government's commitment to giving the closest consideration to the findings of your report, and that we are acting to make improvements where possible under the current arrangements.

HUMZA YOUSAF

MAREE TODD

CLARE HAUGHEY

YOUNG PEOPLE IN SECURE CARE

Health and Wellbeing

1. Assessments of need in relation to mental health and wellbeing should be carried out as swiftly as possible, preferably within the first days of their entry into the secure care system. We agree with Barnardo's Scotland that any such assessments should not just focus on diagnosable conditions but should be comprehensive of all needs. All children and young people held in secure care should be provided with guaranteed access to appropriate and timely provision of mental health services and trauma counselling when this is required.

Response: Health assessments of young people placed in Secure Care are carried out routinely by providers – all secure units have registered health professionals for that purpose, and a contact with a local GP practice to provide general medical services on location for young people placed in their care. These assessments build on the assessment of needs within the Child's Plan (in Scotland) and equivalent for young people from other UK areas. The Responsible Commissioner Guidance places responsibility for 'Host' boards to provide healthcare services for young people placed in secure care within the board area; but to be commissioned to do this by the 'home' board of the young person's usual place of residence/Social Services provider. This is to ensure that continuity of care is provided and young people with health care needs have access to the care they need. The Secure Care Review recommended that the standards described within the Intercollegiate Guidance on Healthcare of Young People in Secure Care is followed. This is further strengthened by the inclusion of young people in Secure Care as a priority group in the forthcoming CAMHS Service Specification (Scotland), and also in the Neurodevelopmental Service Specification (Scotland).

Health and Wellbeing

2. We also agree with the evidence received from some organisations such as those currently operating some of the secure care units located outside of Glasgow that there is a postcode lottery when it comes to accessing Child and Adolescent Mental Health Services (CAMHS) in secure care units located outside of this city. This is not acceptable. All of Scotland's children and young people held in other parts of Scotland should have equal rights to access this valuable service.

Response: Secure care providers are entitled to access to all health services provided by the board where the secure provider is located (see above). The 3 secure units and one open residential school in NHSGGC have full access to the whole range of NHSGGC secondary care services, supported by commissioning arrangements between NHSGGC with each young person's home Local Commissioning Group/board.

Most secure care providers also have employed registered psychologists, and all have employed nursing staff to work within their care team. The CAMHS Service Specification (Scotland) will set a consistent standard for services to be provided to young people receiving CAMHS, including those placed in Secure Care Units, regardless of the location of the unit.

Health and Wellbeing

3. The Committee trusts that the provision of wider health services, such as for SLT, ADHD, autism and other conditions, will be addressed in the [Independent Care Review](#) outlined above. When published, the Committee calls on the Scottish Government to respond appropriately to ensure the provision of such services across the secure care estate and remove some of the current problems which see children and young people placed on long waiting lists or, worse, lose their place on such lists simply because they have moved to a different facility.

Response: The Secure Care Review Group agreed that the standards described within the Intercollegiate Guidance on Healthcare of Young People in Secure Care should be applied in Scotland, and recommended so to the Care Review, which continued its work. This includes access to all healthcare services including those described in the comments, Furthermore, the CAMHS Service Specification and Neurodevelopmental Service Specification (Scotland) have included young people in Secure Care as one of the 'at risk' groups to be prioritised.

Education

4. The Committee also agrees that all children and young people held in secure care should be provided with guaranteed access to appropriate and timely provision of educational services.

Response: All children and young people should have access to educational services. Secure services are registered independent schools and follow the curriculum for excellence. As some Young People in secure care may not have attended school or have been out of school for some time then their learning stage is assessed and the teaching is tailored to meet their needs.

Isolation

5. The Committee is concerned by the evidence taken on the potential for social isolation in our secure care homes, particular for young people held on remand. As we state below, whilst this may not be as acute in care units compared to prison, this situation needs to be addressed.

Response: The Health and Social Care Standards published in June 2017, seek to provide better personal outcomes and to ensure that the basic human rights we are all entitled to are upheld. The Standards do not expressly condone or prohibit the use of seclusion but are dependent on staff following existing legislation and best practice. The use of single separation is also included in the national secure care standards, scheduled for publication in April 2020. Standard 31 states 'I get the care, comfort and individual support I need when I am distressed and so I am only ever isolated from other people when this is absolutely necessary to keep me or others safe. This is for the shortest time possible.' And standard 32 states 'I fully understand the reasons for any decision to further restrict my rights and freedoms. These are proportionate and recorded.'

All incidents of a young person being secluded in single separation in secure care must be recorded by the service. These records are monitored and inspected by the Care Inspectorate at every inspection, guidance to support inspectors in this area was published in September 2019.

Joint work between the Care Inspectorate and the Mental Welfare Commission for Scotland and Her Majesty's Inspectorate of Prisons for Scotland is currently being planned.

On admission to secure care a young person is allocated a key worker who will work closely with the young person to ensure that they engage in the day to day life within the secure care setting. Segregation should never be used as a punishment and should only be used when all other appropriate measures have been tried and been unsuccessful, in order to prevent the young person from significant injury to themselves, others, to prevent absconding, damage to property or to calm a disruptive group situation. When single separation is deemed appropriate it should continue for no longer than 3 hours in 24 hour, and for no more than 2 separate occasions in 24 hours. When the period of segregation ends, the young person must be given the opportunity to comment or respond to the situation.

Isolation

6. Social isolation can be eased by ensuring that a child or young person has regular access to contact with their family and friends, either in person or via Skype, Facetime etc. The Committee recommends that the Scottish Government and local authorities ensure that sufficient sums are available to facilitate regular visits by families and that steps are taken to swiftly remove any technical constraints that hinder online contact where visits are not possible.

Response: Young People in secure care are encouraged (where appropriate) to remain in regular contact with their family and friends. Young people have access to phones in order to call their parents on a daily basis if they wish. Access to the internet and social media is available but restricted and closely monitored by care and support staff. The Scottish Government will continue to work with secure care providers to monitor access to contact.

Funding Model

7. The Committee welcomes the evidence provided by Scotland Excel, CoSLA and the current secure care providers on the current contractual model (localised commissioning) for the provision of secure care. The Committee notes that this model has some advantages, such as the relative ease of administration and procurement for Scotland's local authorities. Nevertheless, the Committee remains unconvinced that this is a viable model beyond the current contractual period (which ends in March 2020). The Committee calls on the Scottish Government and CoSLA to look at alternative models, such as national commissioning or the use of block funding of places. It should never be the case that a child or young person is sent to HMP YOI Polmont when a secure care unit would more appropriate to their needs.

Response: It is widely accepted that alternative approaches to funding secure care should be explored. Secure provider's only income is from the spot purchase bed rate. Each of the Secure Care contracts are based on a 90% occupancy breakeven figure. Over the past 2 to 3 years Scottish placements have been considerably less than the 90% occupancy required to break even. Without a significant number of young people from England one or possibly two of the units would be at risk of unplanned closer. This would further limit the access to and choice of secure beds

for Scottish young people.

Scottish Government officials have had initial conversations with CoSLA and Scotland Excel to explore different funding options. This is a complex area of work with no quick or easy fix and resource implications. The Scottish Government will continue to discuss options with key partners, taking in to account the findings of the Independent Care Review, when published.

Monitoring of Referrals

8. The Committee was also surprised to learn that there is no easily accessible centralised monitoring system for the number of places and referrals in the secure care system. This needs to be addressed.

Response: Each referral is discussed with the Head of the Unit or their deputy and a decision made. Information on availability of secure care places in each of the secure centres is provided on the Secure Accommodation Network website. Improvements were made to this site in 2019, to ensure there is transparency and up to date information to support local authorities considering a secure referral.

The Scottish Government will consider, with key partners, the development of a central point for referrals in order to manage referrals and assess each young person's needs. Considering other jurisdictions and how they place young people in secure.

Expansion of Secure Care beyond the age of 18

9. The Committee believes that, unless there is strong evidence to the contrary, no young person under the age of 18 should be placed in HMP YOI Polmont when a place in a secure care unit would be more suitable. Furthermore, the Committee does not believe that current system, which sees the automatic transfer of a young person from care to HMP YOI Polmont, should be based solely on age. It makes no sense to the Committee that a young person is removed from secure care where they may have built successful and supportive relations, to be placed in prison for periods of often only a few months. Any system of transition must be based on vulnerability assessments and not purely based on reaching a specific age. The Committee calls on the Scottish Government to review the current legislative and policy framework regarding transition between secure care and prison with a view to making the relevant changes to the law and current policy.

Response: When appropriate, alternatives to custody should be considered. Over the last 12 years we have seen a decrease of 79% in the use of custody for under 18s in Scotland.

Secure care is a child facility and extending the age of secure care beyond 18 would require a change in legislation. This has been the focus of discussion previously with the Care Inspectorate, Secure Care providers and other stakeholders. The Scottish Government will review this again within the next 12 months.

The Scottish Government will also work with SPS around a roadmap of young people entering Polmont, in order to consider ways of reducing this.

Expert Review of mental health provision in HMP YOI Polmont

10. As stated above, the Committee welcomes the review of mental health services conducted by HMIPS and endorses its high level findings and major recommendations. In particular, the Committee supports the various recommendations relating to mental health training, health care provision and other support services required at HMP YOI Polmont. The Committee calls on HMIPS to keep the delivery of its recommendations under review and requests that the Scottish Government provides the Committee an update on progress within six months of the publication of this report. The Committee calls in HMIPS to report any concerns it has with delivery to the Committee.

Response: On 19th June 2019, the Cabinet Secretary for Justice made a [statement to Parliament](#), welcoming the recommendations and setting out the Scottish Government's response to the Expert Review on Mental Health Services for Young People Entering and In Custody at HMP YOI Polmont. An Action Group consisting of relevant officials from across Scottish Government, the Scottish Prison Service and the NHS was convened in June to oversee progress across the review's recommendations and has been meeting regularly.

Our [Programme for Government](#) 2019-20 sets out our commitment to take forward the recommendations set out in the review. The Cabinet Secretary for Justice wrote to the Justice Committee, Health and Sport Committee and Education and Skills Committee on 9 January 2020 as well as to Her Majesty's Chief Inspector of Prisons in Scotland to provide a comprehensive update on the actions taken to date in response to the recommendations set out by the Expert Review.

FAIs and DIPLARs

11. Furthermore, the Committee notes the views of the Chief Inspector of Prisons in Scotland that she was unable, due to time, to conduct a review of whether all determinations, recommendations and findings from FAIs (fatal accident inquiries) and DIPLARs (Death in Prison Learning and Audit Review) conducted into deaths in custody are delivered and lead to substantive change. In this respect, we note the concerns expressed in the evidence from Linda and Stuart Allan (the parents of Katie Allan).

Response: As required by Section 28 (Compliance with sheriff's recommendations) of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016, SPS has to provide a formal response to recommendations made by a Sheriff within 8 weeks of an FAI determination being published. The formal response is published on the Scottish Courts and Tribunals Service website.

In order to enable a better understanding of suicide data and inform suicide prevention learning and practice across the estate the SPS has recently undertaken a review of 70 FAI determinations of deaths in prison custody and their recommendations since 2008 to contextualise the suicide figures in Scotland, as well as to analyse the means of suicide used.

On 7 November 2019, the Cabinet Secretary for Justice announced the establishment of an independent expert review of the handling of deaths in prison and wrote to members of the Justice and Health and Sport Committees informing them of that review's Terms of Reference. The review is intended to complement current arrangements for the investigation of deaths in custody and the holding of

Fatal Accident Inquiries, which are the responsibility of the Lord Advocate acting independently of any other person. It will be taken forward by Her Majesty's Chief Inspector of Prisons in Scotland with external expertise provided by Professor Nancy Loucks of Families Outside and a human rights expert. Progressing several of the recommendations made in the Expert Review of the Provision of Mental Health Services for Young People at HMP YOI Polmont in relation to deaths in custody will be dependent on the findings of the wider review of the handling of deaths in prison custody.

Review of Deaths in Custody

12. We call on HMIPS to conduct this outstanding research without delay and for the Scottish Government to provide the necessary resources if these are needed. This could perhaps be undertaken within the newly announced review of deaths in prisons.

Response: The Cabinet Secretary for Justice wrote to the Justice and Health and Sport Committees to provide the Terms of Reference for the review of the handling of deaths in prisons, which will commence shortly and report over late Summer of 2020. The review will identify areas for improvement to ensure appropriate and transparent arrangements are in place in the immediate aftermath of deaths in Scottish prisons. The review will examine the operational policies, practice and training in place within the Scottish Prison Service and NHS relevant to deaths of prisoners. HM Chief Inspector of Prisons for Scotland will determine the research and evidence requirements that will inform the independent review.

FAIs and DIPLARs

13. The Committee is aware that such reviews invariably call for lessons to be learned and we now need evidence that they are being. In this respect, the Committee welcomes the "absolute assurance" from the Chief Executive of the Scottish Prison Service that all recommendations in a sheriff's determination will be followed through.

Response: As required by Section 28 (Compliance with sheriff's recommendations) of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016, SPS has to provide a formal response to recommendations made by a Sheriff within 8 weeks of an FAI determination being published. The formal response is published on the Scottish Courts and Tribunals Service website.

The SPS's Death in Prison Learning, Audit & Review (DIPLAR) process is intended to enable areas for improvement and potential learning to be identified following a death in prison custody (including where the death occurs in hospital) in advance of an FAI. Since the publication of the Expert Review on Mental Health Services for Young People Entering and In Custody at HMP YOI Polmont, SPS have appointed an independent Chair, SPS Non-Exec Director Ms Gill Stillie, to chair all DIPLARs in cases of drug overdose or apparent suicide from December 2019. In cases of apparent natural causes, the DIPLAR will be chaired by a Governor in Charge (GIC)/ Deputy GIC from another establishment, ensuring their independence from delivery of services in that prison.

Suicide

14. The Committee is concerned to hear evidence from HMIPS and its expert researchers that there are uncertainties around the recording of, and collection of data on, the rate of suicides at HMP YOI Polmont. The Committee

accepts that there are challenges and that ideas on an appropriate methodology differ. Nonetheless, it is important that this information is available and the Committee calls on the Scottish Government to support further work by HMIPS, the Scottish Prison Service and respected academic bodies to address the lack of an agreed methodology as soon as possible. Given that the rate of suicide by young people in prison is higher than the older prison population, the Committee agrees that more must be done to understand the scale of the problem and why.

Response: The Scottish Prison Service are committed to transparency regarding any deaths which occur in prison custody. The Scottish Prison Service posts a notification of all deaths which occur in prison custody on their website as soon as possible, following confirmation that the next of kin have been informed.

A Fatal Accident Inquiry is mandatory following all deaths in custody and this ensures that the circumstances surrounding a person's death, including whether or not a death was a suicide, is ascertained through an independent process.

We are aware that, for a variety of reasons, there can be a significant time lapse between a death in prison and a sheriff issuing an FAI determination. In response to concerns raised by bereaved families about the impact such delays can have on the transparency of data available regarding deaths in custody in Scotland, last year SPS committed to updating their website quarterly to include the medical cause of death as listed on the death certificate, with a link to all published FAI determinations. This information is due to be updated in January 2020.

SPS will continue to monitor data on all probable suicides and attempted suicides in custody to inform policy and practice and will continue to provide a link to all FAI determinations, which ascertain the ideation behind deaths, from their website. SPS and the Scottish Government are keeping the presentation and analysis of information regarding deaths in prison custody under review.

There were no deaths of young people aged under 21 in Scottish prisons in 2019.

Suicide

15. Furthermore, given that the risk of suicide by a young person is higher in the first 3 months of their imprisonment than the rest of their sentence, particular attention to the current problems during transition into and out of prison have to be addressed.

Response: In January 2019, HMP YOI Polmont implemented a Standard Operating Procedure (SOP) that provides a robust system to support a young person's transition from secure care, to SPS care and strengthens processes for information sharing in these cases.

The Expert Review on Mental Health Services for Young People Entering and In Custody at HMP YOI Polmont found that *Talk To Me*, the SPS suicide prevention strategy, is "robust" and generally followed well at Polmont. Everyone entering prison is assessed for their risk of suicide by a prison officer and, if there are concerns, a healthcare professional. If a person is deemed to be "at risk", an immediate care plan is put in place.

SPS senior management reviewed the *Talk To Me* policy and agreed actions to be

taken forward following Briège Nugent's evaluation of *Talk To Me* in 2018. Revised guidance was issued in December.

Talk To Me refresher training, which covers correct procedures in response to concerns raised and identifies the key points of vulnerability, including remand/ early days in custody and the risks associated with social isolation, has been delivered to 99 per cent of available staff at HMP and YOI Polmont. Mental Health First Aid Training for Young People has also been delivered to the first three staff cohorts (24 staff) with an additional 3 cohorts planned to complete by April 2020. Since the end of 2018, all new Officers deployed at HMP YOI Polmont undertake an induction focused on working with young people.

Governors' Action Notice GMA 72A/13 specifies the process that should be followed if a concern is raised regarding a young person's safety internally or externally by families/ peers. SPS has issued guidance to staff to ensure that people are only removed from *Talk To Me* when all relevant information is available and it is deemed appropriate.

Information Sharing and assessments

16. The Committee recommends that all young people entering the prison estate at HMP YOI Polmont from secure care or from elsewhere should arrive with a detailed dossier of information on their circumstances, care needs etc. Additionally, such young people should have rapid access to a comprehensive assessment of their needs by suitable trained personnel upon arrival. Similarly, upon their discharge, such information should be provided to relevant organisations such as the NHS, housing providers, social work etc to ensure a smooth transition back into the local community.

Response: In January 2019, HMP YOI Polmont implemented a Standard Operating Procedure (SOP) that provides a robust system to support a young person's transition from secure care, to SPS care and strengthens processes for information sharing in these cases. Planning for all young people transitioning from secure care to HMP YOI Polmont starts 6 months before the date of transfer, in order to mitigate concerns.

All young people who are placed in secure care by Scottish Ministers and who subsequently transfer to YOI have a detailed dossier of information identifying their risks and needs shared in line with the agreed protocol and timelines.

Where a young person is remanded or sentenced [guidance](#) is available to practitioners through the Scottish Government and CYCJ, setting out what and how key information, including a Child's Plan, should be shared with SPS.

SPS' *Talk to Me* policy provides guidance in relation to support on release and reintegration arrangements for 'at risk' individuals.

Under SPS policies, support arrangements for an 'at risk' individual who is close to liberation (or possible release following a court appearance) includes early engagement by identified internal or external agencies prior to the individual returning to community. This engagement should be identified at the earliest opportunity and within 6 weeks of their release where possible. This includes access to mental health and counselling services where appropriate, promoting effective

partnership working and communication between SPS, NHS Health Boards, local authorities and third sector partners.

Information Sharing

17. As such, the Committee welcomes the support from the Scottish Prison Service to lead work to produce a 'consensus agreement' between all relevant bodies on the sharing of information setting out clear details of what can be shared and service level agreements. This should be taken forward without delay and the Scottish Government should provide the SPS with the necessary resources to make this happen.

Response: The Scottish Government Health and Justice Collaboration Board have agreed to take forward work to scope a single data sharing agreement for the Justice pathway (from point of arrest to release from prison).

The Scottish Government is taking forward discussions with SPS and other relevant partners to consider whether the female custodial estate community custodial units could provide a forum for a test of change.

Remand

18. Finally, as indicated above in our conclusions on secure care, Scotland still has a problem with the number of prisoners being held on remand. The Committee has previously expressed concerns about this in our recent inquiry. However, in our view, the current setup in prison whereby remand prisoners are under no obligation to socialise and participate in meaningful activities (education, employment training etc.) has the potential to exacerbate for social isolation. This has to be addressed.

Response: We are committed to supporting those young people held on remand. Young people on remand in HMP YOI Polmont have access to a range of services and opportunities.

Our Programme for Government published in September 2019 includes a commitment to “look more widely at how bail law operates” and we are exploring options to help ensure that remand is only used when it is needed to protect the public. We are providing additional funding for supervised and supported bail worth £1.65m over 3 years and have issued updated guidance. We have commissioned exploratory research on decision making around remand and alternatives to remand which will inform further action to address the high number of people on remand. The Scottish Prison Service is committed to supporting and encouraging all young people to access the opportunities available at Polmont, including those on remand.

The Scottish Prison Service is committed to supporting and encouraging all young people to access the opportunities available at Polmont, including those on remand. However, introducing a compulsion on remand prisoners to take part in wellbeing activities may result in increased use of the disciplinary process which would be counterproductive.

An investigation of use of remand for young people and analysis will be completed by Scottish Government Justice Analytical Services and the Centre for Youth and Criminal Justice (CYCJ) and a report will be completed in Spring 2020.

Activity of those on remand and collection of data

19. The Committee notes the comments from the Chief Inspector of Prisons in Scotland and shares her view that data should be collected on the amount of purposeful activity being carried out by prisoners on remand at HMP YOI Polmont so that this can be monitored. We recommend that SPS reviews this matter and collects such data.

Response: The SPS is committed to supporting and encouraging all young people to access the opportunities available, including those on remand.

A wide range of opportunities and support are available for everyone to access. There are however security and resource reasons why not all of these can be made available to every group at any one time.

In response to the findings of the Expert Review on Mental Health Services for Young People Entering and In Custody at HMP YOI Polmont, SPS confirmed its plans to identify individuals who don't participate in 'everyday' activities and undertake a pilot to engage with those individuals to better understand why they don't engage and what would encourage participation.

HMP YOI Polmont has set up a Project Board to look into a number of areas, including those young people who are hard to engage with, and those who do not avail themselves of the opportunities on offer.

A regime review for those young people on remand is due to commence in 2020 and will identify further opportunities to ensure that young people on remand engage with the opportunities available.

SPS will commence work to consider local groups who may be in a position to provide a volunteer visitor service for young people in HMP YOI Polmont who do not receive visits in early 2020 and make initial approaches.

HMP YOI Polmont are also building on previous work around quality indicators to inform and evidence progress.

Remand

20. More widely, the Committee calls on the Scottish Government, the Scottish Prisons Service and HMIPS to review the current legislative, policy and financial framework with a view to making changes to the regime for remand prisoners, and to set out the details of what will be required and when this can be delivered in a report to the Committee. In this, we welcome the comments from the Cabinet Secretary that he would continue to work to ensure alternatives to remand are available for young people and to support those young people held on remand".

Response: SPS have confirmed that a regime review for those young people on remand is due to commence in 2020 and will identify further opportunities to ensure that young people on remand engage with the opportunities available.

As noted in relation to recommendation 221, action is being taken to help ensure remand is only used where necessary and appropriate, including through incentivising use of bail supervision, research on decision making around use of remand and alternatives and commitment in our Programme for Government to look at how bail law operates.

Specific consideration is also being given to remand in relation to young people. The

Scottish Government Youth Justice Strategy published in 2015, highlights the need to encourage alternatives to remand and custody. Where custody is deemed the only option by the court then the use of Secure Care is recommended, where possible, rather than a young offender's institute. Research in to remand and use of bail is currently being undertaken as part of the commitments to the Youth Justice Strategy.

Justice Sub-Committee on Policing

8th Meeting, 2020 (Session 5), Tuesday 25 February 2020

Note by the Clerk

Feedback paper

Introduction

1. On 20 February 2020, the Justice Sub-Committee on Policing heard from the Cabinet Secretary for Justice, Humza Yousaf, on the Scottish Government's draft 2020-21 policing budget.

2. The Cabinet Secretary told the Sub-Committee that he did not agree with Police Scotland's view that the capital funding available for 2020-21 represents a real terms reduction on last year, once the £5m for "greening fleet" was removed. The Cabinet Secretary indicated that Police Scotland had requested funds to upgrade their fleet.

3. In response to Police Scotland's assertion that they will not be able to provide mobile devices to some officers this year, the Cabinet Secretary stated that it was his understanding that the £12m provided in last year's budget was a one-off payment to provide 10,000 officers with mobile devices. Mr Yousaf indicated that the £12m was baselined into this year's budget, which would allow the Chief Constable to determine how it is spent.

4. On the funds required to upgrade the police estate, the Cabinet Secretary confirmed that he was not dismissing concerns about the police estate, and that increases to the revenue and capital budgets could be used to address maintenance issues. Mr Yousaf indicated that the latest survey shows that 95.5% of the police estate meets UK/EU building safety standards. He indicated that a police estate conditions survey has been commissioned.

5. The additional £5m to upgrade the police fleet is £8m less than the £13m requested by Police Scotland. The Cabinet Secretary indicated that he would expect Police Scotland to prioritise spending the £5m budget on those vehicles about to come to the end of their working life. Mr Yousaf also confirmed that the 96% of the police fleet is currently on the road and that a number of police vehicles are leased, and not owned, which is cost efficient. The Cabinet Secretary was not able to confirm how many of Police Scotland's 2,400 vehicles would be replaced.

6. On the impact of the proposed budget settlement on the implementation of the 10-year ICT strategy, the Cabinet Secretary stated that ICT improvements are being made. This may not be at the pace that Police Scotland would like. The ICT strategy may have to be over a longer period than a 10-year plan, with some of the timescales elongated.

7. The Cabinet Secretary also confirmed that he is continuing to interrogate the £298m estimate for implementation of the ICT strategy.

8. The Cabinet Secretary indicated that there is a need for a wide-ranging debate on the ethics of rolling out the use of body worn video cameras to police officers. Mr

Yousaf said that he would expect this issue to be considered by the independently chaired ethics advisory group he has established, prior to the cameras being rolled out.

9. The Cabinet Secretary acknowledged that the budget provided by the UK Government to the Scottish Government and the budget they provide to Police Scotland means that there are finance challenges. He indicated that Police Scotland will need to prioritise their capital budget. That is a matter for the Chief Constable, but the Cabinet Secretary would expect that the wellbeing, health and safety of police officers will be prioritised. The Cabinet Secretary also confirmed that Police Scotland will be able to recover £25m VAT in the next financial year.

10. The Cabinet Secretary indicated that he would have concerns if local government continue to withdraw external funding for police officers.

11. On the question of whether additional funding for Brexit, as result of Barnett consequential was expected, the Cabinet Secretary confirmed that he did not expect any Barnett consequential for the police service as a result of Brexit.

12. The Cabinet Secretary confirmed that the latest position is the that UK Government has agreed in principle to pay all costs for policing COP26. The UK Government is currently interrogating the estimated £250m policing costs provided by Police Scotland. These costs include £40-50m contingency. A significant part of the costs is for mutual aide. It is expected that 7,000 – 8,000 officers from other UK forces will provide mutual aid for COP26. The Scottish Government would like to UK Government to pay the costs of these officers directly to Police Scotland. The UK Government has agreed to pay accommodation costs.

13. The Sub-Committee requested an update on the implications on local policing, of planning and policing COP26.

14. The Sub-Committee's next meeting will be on Thursday 12 March when it will hold an evidence session on policing COP26.

Justice Sub-Committee clerks
20 February 2020