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Via email

Cabinet Secretary for Justice and Veterans
Minister for Children and Young People

16 December 2021

Dear Cabinet Secretary for Justice and Veterans, and
Minister for Children and Young People

HER MAJESTY'S INSPECTORATE OF PRISONS FOR SCOTLAND (HMIPS) PROPOSAL – REMOVAL OF UNDER-18s FROM PRISON

At my last meeting with the Cabinet Secretary, I promised I would provide a proposal on removing under-18s (children) from prison custody to be achieved by the end of the current parliamentary term. Please find attached the proposal which has had significant contributions from expert bodies to ensure it has validity and legitimacy.

As one of the 21 bodies that comprise the UK's National Preventive Mechanism (NPM), HMIPS has a duty to regularly monitor the treatment of detainees and the conditions in which they are held.

Scotland should be proud of its success in recent years, where the policy and practice towards children in conflict with the law¹ has led to a welcome reduction in the number of children coming into contact with the criminal justice system and, importantly, the number in custody dropping to record lows.

The approach to children in conflict with the law in Scotland builds on the key principles and ethos of the highly influential Kilbrandon Report, published in 1964. Concerned with legal provisions and systems to treat "children in trouble", it concluded that there was little distinction between those who commit offences, and those in need of care and protection, and advocated a holistic, welfare-based approach for all.

¹ [Preventing offending: getting it right for children and young people - gov.scot \(www.gov.scot\)](https://www.gov.scot)

Its visionary recommendations led to the establishment of the Children’s Hearing System. This distinct system has the responsibility of making decisions in the best interests of the child. For all but the most serious offences, children and young people who commit offences, and those in need of care and protection, should be dealt with in the same forum, in the same way.

Despite these positive gains, more than one-third of children, who come into contact with formal justice in Scotland, are still prosecuted in court, rather than being referred to the Children’s Hearing System,² and the percentage of children held on remand in a Young Offender Institution (YOI) has been increasing, standing at 82% in September 2021.³

COVID-19, and all its challenges, placed a spotlight on children in prison, with their treatment and conditions analogous to the adult population’s extreme restrictions, and in stark contrast to the regime that children held in secure care estate experienced. HMIPS recently became concerned at the treatment and conditions experienced by children in prison during COVID and conducted a health and wellbeing survey to confirm our impressions.

Despite calls in March and April 2020 from international human rights bodies, including the United Nations Committee on the Rights of the Child and the Alliance for Child Protection in Humanitarian Action and UNICEF,⁴ Scotland failed to ‘release children in all forms of detention, whenever possible,’ or include children in custody, or those on remand, in the emergency Coronavirus and early release legislation and policy. This was despite the UN Committee warning of the “grave physical, emotional and psychological effect of the Covid-19 pandemic on children”.⁵ UNICEF found that 84 countries, around the world, released children from places of detention during the pandemic. Scotland was not one of them.⁶

Scotland now needs to grasp the opportunity and expedite its plans to remove the remaining small number of children from prison entirely, leading the way in the treatment of children and young people who are in conflict with the law. The new [Youth Justice Vision](#), the acceptance of the recommendations of ‘the Promise’, and the recent approval by the High Court of the new sentencing guideline developed by the Scottish Sentencing Council⁷ for young people, are positive first steps.

There are three clear imperatives – legal, political, and moral – for removing children from prison custody, and three clear barriers – legal, financial and cultural. None of the latter are insurmountable in the short-term. The imperatives and barriers are explored in this proposal, with recommendations for the steps necessary to take this forward within the current administration.

² [SCCYP-CentreForYouth.pdf \(parliament.scot\)](#)

³ [CYCJ Newsletter October 2021](#)

⁴ The Alliance for Child Protection and Humanitarian Action and UNICEF (2020). Technical Note: COVID-19 and Children Deprived of their Liberty. <https://alliancecpha.org/en/child-protection-online-library/technical-note-covid-19-and-children-deprived-their-liberty>

⁵ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=INT/CRC/STA/9095&Lang=en

⁶ <https://www.unicef.org/press-releases/more-45000-children-released-detention-during-covid-19-pandemic-evidence-child>

⁷ [‘Sentencing young people’ guideline, Scottish Sentencing Council 2021.](#)



I would like to thank all the organisations whose expertise and commitment have contributed to this proposal: Children and Young People's Commissioner Scotland (CYPCS); Children and Young People's Centre for Justice; the Care Inspectorate; and Community Justice Scotland. I would also like to thank the Scottish Prison Service for their continued support.

A letter of support from the Chair of the National Secure Adolescent Inpatient Service (NSAIS) is included at Annex A.

I present this proposal to you for your consideration.

Yours sincerely,

Wendy Sinclair-Gieben

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HM Chief Inspector of Prisons for Scotland

Copy to Teresa Medhurst, Scottish Prison Service
Catriona Dalrymple, Justice Directorate
Lisa Taylor, Justice Directorate
Liz Murdoch, Children and Families Directorate
Fiona Dyer, CYCJ
Maria Galli, CYCPS
Keith Gardner, Community Justice Scotland
Neil Gentleman, Care Inspectorate
Dr Helen Smith, CAMHS
Professor Lindsay Thomson, NSAIS
Stephen Sandham, Deputy Chief Inspector, HMIPS
Dr Liz Ravalde, Researcher, HMIPS



Letter of Support from Chair of the National Secure Adolescent Inpatient Service (NSAIS)



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Dear Ms Sinclair-Gieben

I'm writing with regard to the proposal to discontinue young people under 18 years old being held in custody within the Scottish Prison Service Estate.

I would like to take this opportunity as Chair of the National Secure Adolescent Inpatient Service (NSAIS) Stakeholder Group to acknowledge the significance of this proposal and welcome the proposed change for children under the age of 18 not to be placed in YOI Polmont or elsewhere in the prison estate. The Stakeholder Group believes it is vital that children benefit from being placed in a more appropriate setting, such as secure care, where they can have their needs met.

Yours sincerely

A handwritten signature in black ink that reads "Lindsay Thomson".

Prof Lindsay Thomson
Chair - National Secure Adolescent Inpatient Service (NSAIS) Stakeholders

