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Keith Brown MSP
Minister for Children and Young People
Ministear airson Clann agus Daoine Òga
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Scottish Government
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Dear Ms Sinclair-Gieben

Thank you for the proposal you sent in December on removing under 18s from prison. It is clear that you and partners have taken time to consider the various facets of this important and complex issue. We welcome the opportunity to consider the suggestions on how this should be resolved. First and foremost though we want to reconfirm our absolute commitment to ensuring that children in conflict with the law have their needs met in the most appropriate setting for them, and critically that they are responded to as children.

The rationale you have highlighted within your proposal for removing under 18s from prison are shared by Ministers, and are reflected clearly in the direction of travel this Government is taking. While the Scottish Government shares your sense of urgency on these matters, we are also clear that a comprehensive and sustainable set of measures which are either planned or already in train at time of writing will be required. In addition, we can assure you that official-level discussions with partners and external agencies are underway, particularly on secure care capacity, legislation and interagency protocols and we will undertake to provide you with more detail as to progress by April 2022.

As set out in the 2021 Programme for Government, we are committed to safeguarding young people within the youth justice system, supporting a presumption against under 18s in the Criminal Justice System, keeping them out of young offenders' institutions where possible and appropriate, while ensuring that victims receive the support they need. This commitment follows on from those made in the Vision for Youth Justice, as published in June 2021, and recognises the requirements of The Promise around this agenda and continues to support compatibility of the UNCRC.

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We are working through a number of interventions to fulfil those commitments before 2024. As your proposal acknowledges there are a number of barriers to be overcome, which need to be carefully and thoughtfully worked through. This requires a collaborative drive from all partners working with children in conflict with the law.

Scottish Government officials are working with key stakeholders and partners to ensure that there is not only legislative change and the redeployment of resources, but also policy and practice change across all relevant professions and disciplines to underpin the transformation required.

Your proposal also specifically mentions the emergency release of prisoners powers. The regulations were focussed on release only and cannot stop courts sending under 18s to Polmont. The powers were also only for those who had been sentenced and could not be used on remand prisoners. This is because the court has specifically decided an accused person requires to be remanded for the purpose of an ongoing court process, and that decision can be reviewed at any time. The regulation making power does not allow provision to be made for such children to be held elsewhere if released.

You specifically mention amendments to Regulation 2 removing the Governor's veto, yet this could mean the provision would fall foul of Article 3 of the ECHR, which requires the State to actively protect identified persons to whom an offender would pose a risk of harm.

We consider that given the complexities involved in the legal changes required, it is important that these matters are considered against all the competing and intersecting issues and not in isolation. This is to ensure that the legislative barriers are addressed appropriately without detrimental impacts on other parts of the system.

It might be helpful to describe the work being undertaken across portfolios to deliver on this important agenda. This includes consideration of a Children's Care and Justice Bill, which, it is felt, would be the most appropriate way to give appropriate consideration to these matters. Such a Bill was outlined in the Programme for Government and engagement with stakeholders is underway, complementing a host of work progressing internally, ahead of consultation and introduction. Considerations on these matters are continuing at pace.

Youth Justice

Our approach to youth justice is rooted in prevention and diversion from custody and to ensure effective support is in place to meet the individual needs of young people. Over the last 14 years, since the move to a more preventative approach and through the roll out of the Whole System Approach to preventing offending by young people, Scotland has seen a 91% reduction in 16 and 17 year olds in custody down from 223 on 30 June 2006 to 19 on 30 June 2020. As of 31 December there were 12 young people in YOI in Scotland of which 3 were convicted. We are committed to supporting further reductions, in particular those on remand.

In June 2021 a new Vision for children and young people in conflict with the law was published. It represents a shared ambition between the Scottish Government and youth justice partners to work together to uphold and protect the rights of children in Scotland and to avoid criminalisation. Working groups have been set up to drive actions to meet the priorities.

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Remand/Bail and Release

The decision to remand or sentence any individual is a matter for the independent judiciary and is not a matter in which Ministers can intervene. However, focusing on policy and legislative changes around community alternatives and transformational changes to secure care will assist in bolstering the confidence of decision makers, when considering potential alternatives to placement in Polmont.

The reasons why someone may be remanded to custody are multi-faceted. Research by the Children and Young People's Centre for Justice (CYCJ) shows that there is a need for a consistent approach to notification of when a young person is in court, communication when bail is opposed and consistency of approach to alternatives to remand across Scotland. In response officials are working with Social Work Scotland and other colleagues around community alternatives and improved communication between local authorities, courts, prosecutors and the Scottish Prison Service.

Legal reforms planned for the future Bail and Release from Custody Bill will help emphasise more clearly that remand should be a last resort for all, including for young people.

Secure care

We have agreed to officials holding discussions around the future of secure care and consideration around funding options which would preserve sufficient capacity for the current and likely future under 18 population liable to YOI placement, and also reduce the providers' current reliance on cross border placements. This would create financial security and capacity to support young people being placed in secure, where possible and appropriate. It would also provide space for partners to consider what is required from secure care provision in the future. In order to achieve the required change, secure centres will have to modify their services to allow them to meet the new challenges brought on by introducing more remanded and sentenced young people in to secure care. Preparation with the Scottish Prison Service will be required for such a transition.

Legislation

The planned Children's Care and Justice Bill will set out proposals to help meet the asks from the Promise that 16/17 year olds should no longer be placed in YOI and that children who need to have their liberty deprived should be cared for in small, secure, safe, trauma informed environments in a manner that upholds their rights. Engagement is taking place ahead of consultation and will continue, looking at these matters in-depth with a range of interested parties, as provisions are shaped ahead of introduction. With Parliament's backing, we hope to raise the age of referral to the Principal Reporter to 18 for all children, with a presumption against under 18s in the Criminal Justice System, as far as consistent with the Lord Advocate's prosecution policy.

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Your proposal asserts your view that the way in which children are prosecuted and imprisoned in Scotland consistently breaches international human rights law and standards including the United Nations Convention on the Rights of the Child (UNCRC) and the European Convention on Human Rights (ECHR). However, we do not consider that the current system is of itself UNCRC-incompatible. We are also unaware of any challenges in terms of compatibility with ECHR. That being said, the proposed legislative changes will definitely advance our ongoing commitment to improved children's rights, experiences and outcomes.

We close by repeating our thanks for your proposal. We hope that this reply provides you with assurance about the priority that the Government has accorded these issues. Whilst we have asked officials to move forward with urgency, we are clear that a comprehensive range of interventions are needed across the whole system. We hope that this response is helpful and look forward to providing you with a progress update by April.



KEITH BROWN



CLARE HAUGHEY

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