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UK National Preventive Mechanism  
c/o SHRC  
Bridgeside House  
99 McDonald Road  
EH47 4NS  
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22 April 2020

Dear Members,

**Re: Upholding the rights of people in detention and deprived of their liberty during COVID-19**

Thank you for your letter regarding the above issue, highlighting principles and recommendations appropriate in the current emergency situation.

Members of the National Preventive Mechanism will recognise that the Scottish Prison Service (SPS) and health partners working in our prisons, are facing operational challenges not experienced in a lifetime in Scotland's Justice system.

The wellbeing, safety and human rights of all those who live and work in our prisons is a priority for me and I have been working closely with the Interim Chief Executive of the SPS, Teresa Medhurst, on all aspects of the response to the virus in Scotland's prisons.

I have provided answers to your specific issues raised in your letter in the attached Annex. It may also be helpful to provide a wider update on the actions taken by the Service in response to the challenges raised by the current emergency.

Overall, I have been impressed by the rapid and comprehensive action taken by SPS in their response to COVID-19 to date. They have established a National Coronavirus Response Group with Public Health Scotland and implemented their national pandemic plan across the prison estate in conjunction with local health partners. Contingency plans for operational and staffing responses are reviewed and monitored continuously at both establishment and national levels.

The service are also reporting daily updates to the Scottish Government on the number of people in isolation, confirmed cases and staffing absence rates.

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Over recent weeks, SPS has taken a number of necessary measures in order to ensure social distancing and public health advice is adhered to, including guidance issued to all staff and prisoners. This includes the suspension of prison visits, work parties, and all temporary leave. These measures were not taken lightly but are necessary to preserve the safety and wellbeing of those who work and live across the prison estate and to prevent further spread of the virus. These are steps also being taken across the justice system in all jurisdictions in the UK.

As they respond at pace, SPS are keeping those in their care, staff and families informed of changes to regimes and other measures. This includes a dedicated COVID-19 webpage with daily updates on numbers in isolation and confirmed positive cases in the estate.

Measures have also been introduced to mitigate the impact of social isolation for those in the care of the prison service. This includes amongst others, the suspension of all TV rental fees and expanded in-cell entertainment options including the ability to purchase additional subscription services and electronic gaming solutions. A series of in-cell support material has been developed for those in SPS care by psychologists. This material focusses on social isolation, mental health and general health and wellbeing. There has also been implementation of an online banking facility across the estate which allows families and friends to transfer money to those in SPS care swiftly, safely and securely which can then be used to purchase goods.

I recognise that the suspension of prison visits, in particular, will be being felt by prisoners and families. I announced on Friday 17 April my intention to provide mobile phones to those in custody in order to allow them to maintain vital family contact despite the ongoing restrictions. While there are a number of security, technical, and legal issues which need to be resolved before phones can be rolled out, this work is being prioritised and both SPS and I are determined to make progress on this as quickly as possible. In the meantime, other measures have already been taken to mitigate the impact on prisoners and their families, including the establishment of a dedicated Family Helpline on 26 March, offering advice and support 5 days a week, and the provision of an additional £2.50 per week of phone credit to everyone in custody.

Now more than ever, SPS and health staff working in our prisons are vital in the delivery of Scotland's justice system to ensure safety and stability. We are keeping staffing absence and other staffing impacts of COVID-19 under constant review. Local staffing contingency plans across the establishments are in place. SPS has also confirmed sufficient stocks of PPE for those working in our prisons, as well as for GeoAmey staff, and consistent guidance on the use of PPE has been issued across establishments.

You will of course recognise it is important that monitoring of the conditions in our prisons continues during this time. I have discussed some of these matters directly with Her Majesty's Chief Inspector of Prisons for Scotland. I know that Wendy is in regular contact with SPS and represents inspection and monitoring interests on the SPS COVID-19 Oversight Response Group. The Inspectorate will be implementing a remote monitoring framework and liaison visits in light of the necessary suspension of face to face monitoring activity imminently.

Lastly, you note the efforts needed to reduce the prison population in light of COVID-19. The slowdown in court business has already reduced the numbers of people in prison by around 700 since mid-March. However, we cannot underestimate the challenges that our

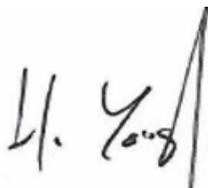
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prisons face in protecting and managing the prison population in the context of COVID-19 and we must ensure that a custodial sentence does not lead to any additional harm during this emergency.

On 21 April, I announced that we will be using the emergency release powers Parliament endorsed to help manage the crisis. We will release from prison some short-term prisoners judged to be of lower-risk of harm a few weeks, or at most three months, ahead of their due release date. This follows the rest of the UK, at least 13 European countries and several US States who have already released low-risk prisoners in response to coronavirus. I provide more information in the attached Annex.

I trust this information is helpful. I would be happy to discuss any aspect of this with you.



**HUMZA YOUSAF**

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## **ANNEX: NATIONAL PREVENTATIVE MECHANISM - UPHOLDING THE RIGHTS OF PEOPLE IN DETENTION AND DEPRIVED OF THEIR LIBERTY DURING COVID-19**

To address the specific points within your letter I have provided a response below:

### **Principles**

- 1. As you may be aware, a number of international human rights and health bodies have provided guidance on States' responsibilities to uphold human rights in the context of COVID-19 and much of this relates specifically to detention and detention monitoring'.**

Please be assured that the wellbeing, safety and human rights of all those who live in our prisons is a priority for the Scottish Government and the Scottish Prison Service (SPS) and we aim to adhere to all available guidance.

The prison service is facing challenges not seen in a lifetime in our Justice system. However, we maintain a clear vision for valuing diversity, and for promoting equality and human rights.

- 2. People in prisons and other places of detention are both likely to be more vulnerable to infection with COVID-19 and to be more vulnerable to human rights violations. There are practical difficulties that put detainees and staff at risk, including the impossibility of social distance, particularly in overcrowded places of detention, staff and monitoring decrease and the nature of the restrictive measures imposed to stop the spread of the outbreak.**

All Scottish prisons have transitioned to a single shift core day. Whilst the introduction of a core day permits more flexible deployment of the reduced number of staff available, it also reduces the length of the prison day and restricts the time available to facilitate routine prison tasks.

All prison activities are now being delivered with enhanced controls and additional hygiene measures in place. This allows staff to more fully regulate interactions and contact between people in their care, in line with social distancing guidelines.

Due to public health protocols, Her Majesty's Chief Inspector of Prisons (HMIPS) has suspended all face to face independent monitoring visits effective from 24 March. This is consistent with the prison inspectorates across the rest of the UK.

However, robust monitoring of the conditions in our prisons continues during this time. HMIPS will be implementing a remote independent monitoring framework to ensure conditions and standards are being adhered to. I remain in regular contact with HMIPS to discuss the challenging times we are facing.

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- 3. A concerted effort should be made to reduce the detained populations to mitigate the inherent risk of maintaining people in close confinement. This is particularly important for detainees with underlying health conditions, remanded population, children, and those in other vulnerable categories as well as in areas of the detention estate that are already overcrowded. This should be facilitated where risk assessment and the impact on other services in the community deems it feasible and by expanding the use of existing instruments or executive release under emergency legislation.**

We must be prepared to take all necessary steps to reduce the risk of the virus spreading and to protect the health and staff of those living and working in Scotland's prisons.

Steps already taken, such as limiting court business, are already having an impact in reducing the prison population.

However, in the current circumstances, it was necessary to consider whether to release a number of lower-risk prisoners early from prison. That is why we have now legislated in the Coronavirus (Scotland) Act 2020, passed on 1 April, for that purpose should that unprecedented action be required. This is consistent with the approach taken in England and Wales. The full details on the Coronavirus (Scotland) Act 2020 are available [here](#).

During my Statement to the Scottish Parliament on 21 April, I announced that we will lay regulations by the end of April to make use of these powers and setting out the arrangements to release a number of short-sentence prisoners who are approaching their release date. This will mean prisoners serving sentences of 18 months or less – and who are in the last three months of their time in custody – will be placed under consideration for possible release. The release process is scheduled to begin at the end of this month, and to run for four weeks. The Act itself already rules out any early release for certain types of prisoner – such as those sentenced for sexual or terrorism offences, and those sentenced to supervision orders after their release.

The regulations for this process will rule out the release of further prisoner types – including those serving sentences for domestic abuse and stalking or COVID-19 related offences.

Under the Act, Prison Governors will have the power to veto any individual from early release, where there is evidence that they would present a clear risk to a specific individual.

This process will consider around 450 prisoners for release – who will all have been approaching their scheduled release date. The review and veto process will reduce the eventual number that are released.

We will work with a range of public and third sector services to enable prison leavers to access the housing, healthcare, benefits and other support services.

Work is underway to consider the medical care and supervision of any prisoners involved in this process who have COVID symptoms or other medical conditions, to ensure they are managed appropriately.

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**4. Staff availability should be supported and staff should receive all professional support, health and safety protection as well as training necessary in order to be able to continue to fulfil their tasks in places of deprivation of liberty. This includes support to monitoring bodies and the NPM as an essential safeguard against ill-treatment.**

The wellbeing and safety of all those who live and work in our prisons as they respond to this unprecedented operational and public health challenge facing our prisons, is a priority for both this government and the SPS.

Prison officers and other staff in our prisons have been included in Category 2 of the key worker guidance issued to Local Authorities on 20 March which allows access to childcare subject to Local Authority arrangements.

A number of staff from non-critical business functions have been redeployed across the estate to support front line delivery. This will be subject to regular review.

We recognise that this is an anxious and challenging time for those in our prisons and who are working tirelessly to respond to the challenges we are all facing.

The SPS has issued public health guidance to all staff on how to prevent the spread of infection and health and wellbeing guidance on how to self-isolate if they themselves become symptomatic.

SPS have further issued the SPS Pandemic Plan (the Plan) to all staff in partnership with trade unions. The POA(S) are actively promoting the social distancing message to their members and this is consistent with the information contained in the Plan.

The prison service have confirmed that SPS staff have secured a sufficient level of Personal Protection Equipment to enable them to support these protocols designed to minimise the risk of contamination spread both to staff in people in their care. This equipment is up to date and they are actively working to secure more equipment.

SPS collate and monitor staff absence information on a daily basis. Line managers or HR teams maintain regular contact with absent employees in order to keep colleagues updated on changes occurring in the work place and to offer appropriate support.

SPS takes a proactive approach to supporting the health and wellbeing of our staff, particularly during these difficult times. SPS has a number of support mechanisms in place to support staff who are experiencing stress or other related mental health issues. All SPS employees and their families have access to our confidential Employee Assistance Programme (EAP) which is available 24 hours per day, 365 days per year.

The EAP provides free confidential counselling as well as advice on a range of topics such as legal, financial and relationship matters. In addition, SPS takes a person centred approach to supporting staff; working with our Occupational Health service providers, we identify meaningful ways in which we can support colleagues who are absent from work, returning to work from a period of absence as well as those who experience difficulties while at work.

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There are a number of further sources of practical support for SPS staff and a plan is being developed to introduce or promote these interventions over the period of the pandemic. This includes using resources from a range of sources, such as NHS, the Charity for Civil Servants and mental health organisations such as the Scottish Recovery Network, Mind, and SAMH. All support measures are accessible on the staff intranet and the information is reviewed and updated on a regular basis.

COVID-19 testing has also been offered to staff and adult family members and commenced on 6 April 2020 at the National Facility, Glasgow Airport. A further National Facility, Edinburgh commenced on 15 April 2020. Local testing is also being provided by various NHS boards including Grampian, Forth Valley, Tayside and Dumfries and Galloway.

- 5. Maintain the principles of equivalence of care in relation to both physical and mental healthcare to those in detention. At a time when all health services are under significant strain, the government must ensure that those deprived of their liberty are not disadvantaged in accessing the health services that they need. This is particularly important given the extent to which detainees are likely to be held in conditions that amount to solitary confinement. In addition, the NPM are concerned that extended solitary confinement in spaces designed for one but holding two will be detrimental to both physical and mental health.**

There are particular challenges faced by healthcare settings in places of custody in managing and responding to COVID-19. The new Scottish Health in Custody Network at National Services Division / NSS brings together local NHS partners with SPS and Police Scotland at a tactical level. This mechanism will provide national coordination, develop consistent approaches and coordinate communications between partners.

In addition to this local Governors-in-Charge of all 15 prisons are overseeing the delivery of local plans tailored to the needs of their establishment. These groups are meeting on a daily basis with local health partners to ensure all needs are being met.

Those who are identified by the NHS as requiring to shield will be accommodated in a single room and will be provided with all meals and medications in their room.

They will continue to have access to communal showers and phone but an enhanced cleaning schedule will be in place to ensure these areas are cleaned before and after anyone who is shielding.

Anyone with an underlying health condition, but who does not meet the NHS criteria to shield, can self-isolate. Staff will provide meals in their cell and limit contact.

Self-help support leaflets have been issued to provide both staff and people in our care with information and tools to look after their mental wellbeing during the pandemic.

Staff have also been issued with information on how to identify prisoners who may be struggling while in isolation. Relaxation and mindfulness tapes and videos are now available through in-cell TVs and radios.

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Some NHS Health Boards are providing additional in cell activities for people do while in isolation to improve their wellbeing.

We are currently monitoring all instances of self-harm. Thankfully, there has, so far, been no rise in the number of self-harm incidents since the introductions of restricted prison regimes. SPS is also working towards the provision of in-cell education delivery from Fife College.

- 6. Reassess the need to continue involuntary placement of psychiatric patients; discharge or release to community care, wherever appropriate. This is particularly important for residents of social care homes where the provision of care and imposed isolation to manage infection spread for an individual may give rise to a new or changed deprivation of liberty.**

Mental health law in Scotland is based on rights and principles and offers patients significant safeguards where compulsory treatment is necessary. Anyone carrying out functions under the Mental Health (Care and Treatment) (Scotland) Act 2003 must have regard to certain principles, including having regard to the present and past views and feelings of the patient, the importance of the patient participating as fully as possible and carrying out functions that involves the minimum restriction on the freedom of the patient as is necessary. Additional safeguards include access to independent advocacy and the ability to appoint a named person.

The involuntary placement of persons who need mental health care and treatment in Scotland is always kept under review. The 2003 Act not only requires that anyone acting under the legislation does so in a manner that involves the minimum restriction on the freedom of the patient that is necessary in the circumstances, it also contains duties that require orders and directions to be kept under review with independent decisions made by the Mental Health Tribunal Scotland and oversight and scrutiny by the Mental Welfare Commission for Scotland. This legislation remains in force and therefore patients continue to be discharged or released from involuntary hospital care as appropriate.

- 7. Ensure alternative measures to facilitate contact between detainees and their families, and contact with other professionals such as advocates. Where physical visits have had to be restricted, and given the many ways in which family contact plays a crucial role for those in detention, how will the government ensure skype, adapted mobiles and any other forms of contact are available.**

We recognise that the suspension of prison visits since 24 March is being felt by families and those in SPS care. This was a decision not taken lightly.

All prisoners, staff and partners were informed of this decision and a public statement issued on 23 March which was made in response to growing concerns raised by those living and working in our prisons about public health protocols.

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A dedicated family support helpline was up and running 2 days after suspension of visits and will provide support and advice to families about the prison service response to COVID-19. Critical agent visits will continue to be facilitated.

All those who are deemed to be in need of isolation in conjunction with our NHS partners are offered the opportunity for the prison service to contact a friend or relative to inform them of their situation. This process is being documented.

We are all acutely aware of the impact these changes to daily regimes can have on the health and wellbeing of those in custody, the prison service have been working at pace to put in a set of measures to protect those in their care from the severe negative impact that isolation can have on individuals within the prison population.

The current TV rental fees have been suspended, in-cell entertainment options have been expanded including the ability to purchase additional subscription services and allow the purchase of electronic gaming solutions. While exercise in gym halls has been restricted to small groups with enhanced cleaning, outside exercise is encouraged. There is regular communication with those in custody to provide guidance on how to prevent the spread of infection and update them on how the virus may impact their daily routine, including letters to every prisoner across the estate as well as video messaging via in-cell televisions. All prisoners have been provided with an additional £2.50 per week of phone credit.

On Friday 17 April, I announced my intention to provide mobile phones to those in custody in order to allow them to maintain vital family contact despite the ongoing restrictions. While there are a number of security, technical, and legal issues which need to be resolved before phones can be rolled out, this work is being prioritised and both SPS and I are determined to make progress on this as quickly as possible. We will, of course, be establishing robust systems to ensure that mobile phones can be used in a way which is practical and safe for those in custody, their families, and the wider community. In particular, as with the current landline system, security restrictions would be put in place as part of any new approach – for example, outgoing calls could be monitored and would only be possible to numbers already included in existing prisoner call lists, and the phones would not be text or internet enabled.

## **8. Provide periodic reports to the Scottish Parliament and wider public on the human rights of this population and your progress in protecting those in detention.**

Portfolio Ministers will be making regular Statements to Parliament outlining their response to COVID-19. On 24 March, the Lord Advocate and I made a statement to Parliament on the impact that Covid-19 is having on the justice system and the steps taken to prevent the spread of the virus and protect vital staff and those in our care. The official report of this statement is available [here](#).

I made a second Justice COVID19 Statement to Parliament on Tuesday 21 April. The official report of this statement is available [here](#).

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## 9. Provide clarity in relation to the timescale and process of the regular review of the Coronavirus (Scotland) Bill.

The purpose of the Coronavirus (Scotland) Act 2020 (“the Act”) is to respond to the emergency situation caused by the Covid-19 pandemic. The Act complements and supplements the Coronavirus Act 2020 (“the 2020 Act”), passed by the UK Parliament on 25 March 2020, and which the Scottish Parliament gave its consent to on 24 March 2020

The Scottish Government is committed to keeping the provisions of this Act under review at all times. Further details can be found [here](#).

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