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BY E-MAIL

Judith Robertson
Chair of the Scottish Human Rights Commission

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Dear Judith

THE PRISONS AND YOUNG OFFENDERS INSTITUTIONS (CORONAVIRUS) (SCOTLAND) AMENDMENT (NO.2) RULES 2020

Thank you for your letter of 17 September, in which you raise a number of issues relating to the above Scottish Statutory Instrument and the availability of data to enable independent verification and oversight of monitoring. I sincerely apologise for the delay in my response and to ensure you are provided with details on all points, I hope it will be helpful if I deal with each issue separately.

Human Rights Impact Assessment

This was completed and a copy is enclosed for information.

Scrutinise and Oversight

The Prisons and Young Offenders Institutions (Coronavirus) (Scotland) Amendment (No.2) Rules 2020 is a Scottish Statutory Instrument (SSI) and was subject to parliamentary scrutiny. It was laid before Parliament on 31 August 2020 and did not come into force until 29 September 2020. As a negative instrument, the Delegated Powers and Law Reform Committee considered the technical and legal aspects of the instrument in September 2020 and the Justice Committee also considered the SSI and made no recommendations. In August, before the SSI was laid, I wrote to you and HM Inspectorate of Prisons for Scotland advising that the SSI was to be laid at the end of August.

Independent Oversight

HM Inspector of Prisons Scotland (HMIPS) have been utilising a Remote Monitoring Framework and Liaison Visits Framework to enable them to continue with their statutory duties in regards to the inspection and monitoring of prisons. I understand that the adapted framework they are using focuses on the key human rights issues contained within their Standards for Inspecting and Monitoring Prisons in Scotland, which they utilise during their normal inspection process. They have undertaken a number of visits to date, the results of which can be found at the attached link: <https://www.prisoninspectoratescotland.gov.uk/publications>.

Operation of the Amendment Rules

SPS Governors, Prison Management Teams and staff are seeking to provide the maximum opportunities for those in our care to access phones, showers and fresh air, purposeful activity and recreation, etc but are required to do so within Health Protection Scotland (HPS) guidelines. This necessarily impacts on our ability to provide a full regime to those in our care. Any decisions taken to limit regimes are not taken lightly. They are taken to ensure that we are able to protect the health, safety and security of SPS staff, NHS staff, prisoners and visitors to establishments, during this current Coronavirus outbreak.

Data Requested

Out of Cell Time and a Description of the Regime

I am not able to provide you with an analysis of out of cell time for each prison or with a description of their regime at this time. The regimes being operated in prisons at present are necessarily very fluid to enable them to be able to adapt and react to (1) the impact Coronavirus is having on SPS and NHS staff and prisoners and (2) dynamic Government and HPS guidelines. However, I can confirm that the majority of prisoners in our care have daily access to time in the open air, showers, to telephones to communicate with family, friends and legal advisors and physical visits with family, friends and legal advisors. In addition, we continue to provide access to Purposeful Activity (PA) which includes prison work, education of any kind including physical education, counselling and other rehabilitative programmes, vocational training and work placements outside the prison. I have provided information below in regards to the average number of PA hours people in custody are engaging in each week.

Outdoor Exercise (Including Those Subject to Rule 41)

The majority of prisoners not subject to Rule 40A or 41 are being given the opportunity to take exercise or where the weather permits, to spend time in the open air for at least one hour per day in accordance with Rule 87 (Exercise and time in the open air) of the Prisons and Young Offenders Institutions (Scotland) Rules 2011. Access to exercise for prisoners subject to Rule 40A or 41 will be detailed in their care plan which will have been determined by NHS colleagues and HPS guidelines and may be restricted.

Visits

Physical visits are currently available at all Scottish prisons. We do not collect centralised data in regards the uptake of physical visits, however establishments have reported a reduced demand for them. The reasons for this reduction is likely to be multifaceted and as a result of (1) mobile phones and virtual visits reducing the dependency on physical visits; (2) families may be concerned about Coronavirus transmission and do not wish to travel/visit particularly where they have to use public transport; (3) the daytime schedule of visits necessitated as a result of the core day; (4) individuals in custody feel safe and do not want to increase the risk of infection from exposure to external visitors; (5) the necessary restrictions in terms of households and numbers at visits present challenges as to who the individual invites to the visit and can cause family friction so the easy option may be not to take visits; and (6) reduced/no physical contact and having to be a safe distance away has been reported to detract from the visit experience.

Virtual Visits have been available in all establishments as of 29 June. There has been in excess of 12,500 virtual visits to date and uptake rate is about 25% of available capacity. Generally, feedback

from those using this service is extremely positive in terms of image and sound quality as well as the immense social benefits realised.

Work, Prisoner Programmes and Education Opportunities

The table below provides data on the average number of PA hours people in custody engaged in each week, per public sector establishment, by month, between July 2019 and September 2020. I am not able to provide this information for HMP Addiewell and HMP Kilmarnock as, as privately operated prisons, they are not required to submit PA hours on a monthly basis. The delivery of PA hours within these establishments is monitored through contractual arrangements with SPS Controllers and Contract Managers ensuring compliance with minimum requirements. PA includes prison work, education of any kind including physical education, counselling and other rehabilitative programmes, vocational training and work placements outside the prison.

In response to the Coronavirus outbreak, SPS introduced a number of measures to reduce the risk of further spread. These measures included the suspension of all education and vocational training, all non-essential prison work, all behavioural programmes, temporary absence and prison gyms. SPS also restricted the number of people who could attend exercise or recreation at any one time. As SPS has eased restrictions on prison regimes, in line with public health advice, the delivery of PA has begun to increase across most sites. However, PA hours have not returned to previous levels as restrictions to the number of people who are able to participate at any one time have had to be introduced. Any further national restrictions would inevitably impact upon the delivery of PA.

PA Hours	Jul 19	Aug 19	Sep 19	Oct 19	Nov 19	Dec 19	Jan' 20	Feb 20	Mar 20	Apr 20	May 20	Jun 20	Jul 20	Aug 20	Sep 20
Barlinnie	13	13	11	12	12	11	12	12	10	8	9	10	10	11	10
Castle Huntly	23	21	22	23	22	17	21	22	17	16	15	17	16	16	24
Cornton Vale	21	20	20	20	21	20	20	21	17	11	11	12	13	14	26
Dumfries	16	15	15	16	15	13	15	14	12	7	7	9	10	10	11
Edinburgh	13	11	13	13	16	12	13	12	10	6	5	6	7	5	11
Glenochil	16	16	16	17	16	14	16	15	13	8	9	10	11	12	13
Grampian	27	26	26	27	26	25	24	25	20	18	18	18	18	16	21
Greenock	25	10	22	25	24	20	22	22	20	15	15	18	17	18	21
Inverness	23	26	27	31	28	21	23	23	17	17	24	29	28	27	26
Low Moss	23	24	22	23	23	21	22	22	19	14	14	16	16	16	17
Perth *	14	15	13	14	14	13	14	14	11	7	8	6	5	4	7
Polmont	18	19	17	17	19	17	18	18	14	3	5	15	18	20	21
Shotts *	25	26	25	25	26	25	25	26	18	9	5	10	6	6	7

* The low increase in relation to both Perth and Shotts reflects local measures in place in relation to recording and physical distancing.

In Cell Telephony and its Usage

Establishment	Date of Implementation	Number of calls made (up to 29 October 2020)
Addiewell	29 July 2020	28,638
Barlinnie	21 July 2020	103,844
Castle Huntly	15 June 2020	6,531
Cornton Vale	22 June 2020	18,521
Dumfries	25 June 2020	16,773
Edinburgh	16 July 2020	67,847
Glenochil	30 June 2020	46,493
Grampian	14 July 2020	25,088
Greenock	6 July 2020	19,051

Establishment	Date of Implementation	Number of calls made (up to 29 October 2020)
Inverness	29 June 2020	9,085
Low Moss	27 July 2020	59,596
Perth	9 ^t July 2020	41,974
Polmont	17 June 2020	46,090
Shotts	7 September 2020	33,491

Total number of calls made to family and friends since project implementation until 29 October is 523,022.

HMP Kilmarnock are providing in-cell telephony via an alternative model to the Authorised Personal Communication Devices, which they started to roll out across the prison in June 2020. Calls made using the in-cell telephony are routed through their main prisoner communal telephone system and we are therefore not able to provide data on in-cell usage. However, I have detailed below for information the number of calls made by prisoners in HMP Kilmarnock; you will see a substantial increase in telephone usage following the introduction of the in-cell telephony.

Month (2020)	Number of Calls Made
April	33,944
May	37,001
June	37,902
July	48,843
August	57,160
September	53,673

The in-cell telephony technical issues have now been resolved.

Number of Prisoners Accommodated in Single and Shared Cells

For the week beginning 20 October, circa 72% of prisoners were accommodated in a cell by themselves and 28% were sharing a cell.

I hope this information is useful.

Yours sincerely



TERESA MEDHURST
Interim Chief Executive

Enclosure