



**Optional Protocol to the  
Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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**Subcommittee on Prevention of Torture and Other Cruel,  
Inhuman or Degrading Treatment or Punishment**

**Comments of the United Kingdom of Great  
Britain and Northern Ireland on the  
recommendations and observations addressed to it  
in connection with the Subcommittee visit  
undertaken from 8 to 19 September 2019<sup>\*</sup> <sup>\*\*</sup>**

[Date received: 21 May 2021]

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<sup>\*</sup> The present document is being issued without formal editing.

<sup>\*\*</sup> On 21 May 2021, the State party requested the Subcommittee to publish its replies, in accordance with article 16 (2) of the Optional Protocol.



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## I. Introduction

1. The UK welcomes the report of the Subcommittee, following their visit in September 2019. The numbered recommendations below refer to the paragraphs in the SPT's October 2020 report. The report has been distributed to all relevant authorities, departments and institutions, as requested. The UK requests that this response be published alongside the SPT's report, in accordance with article 16 (2) of the Optional Protocol to the Convention Against Torture (OPCAT). Further, the UK is happy for the SPT to share information detailed in both reports with the European Committee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CPT).
2. The UK has a longstanding tradition of ensuring rights and liberties are protected domestically and of fulfilling, our international human rights obligations. We therefore commend the important work of the SPT as we continue to comply with our obligations under OPCAT.

## II. National Preventive Mechanism

### A. Legislative basis

**"27. The Subcommittee urges the State Party to provide as soon as possible the UK NPM with a formal legislative basis with a clear definition of its powers and its functions, its roles and responsibilities, in order for the UK to comply with its international obligations under OPCAT. In addition, an explicit reference to the NPM's mandate and OPCAT responsibilities should be incorporated into each of its members/bodies' own statutes, in order to comply with the OPCAT provisions and UK's international obligations.**

**28. The SPT also recommends that the functions of an independent Chairperson and the supporting and coordinating role of the NPM's independent Secretariat be embedded in the legislative text to be adopted."**

3. The UK established an independent NPM in 2009, notifying Parliament through a Written Ministerial Statement. This Statement listed the 18 independent scrutiny bodies, now risen to 21, which collectively make up the UK's NPM. Establishing the NPM through various decentralized units, in line with Article 17 of OPCAT, ensures sufficient monitoring of various places of detention throughout the United Kingdom. Each of these 21 inspection bodies have a statutory basis and are given unlimited access to the places of detention in which it inspects. Having established an NPM, the UK considers that it fully complies with its international obligations under OPCAT and that the NPM meets the requirement under Articles 17 to 23 of OPCAT. This position was reiterated during the SPT's visit in September 2019.

4. The UK undertook a consultation on '*Strengthening the independent scrutiny bodies through legislation*' in 2020 which proposed options for reform to strengthen the scrutiny bodies. This included proposals to place the NPM and a number of prison scrutiny bodies on a statutory footing. We have considered the responses to the consultation and will be producing a response in due course.

### B. Military detention and independent oversight in Overseas Territories and Crown Dependencies

**"31. The Subcommittee notes the CPT's recommendations regarding the role of the UK NPM in Overseas Territories, ensuing from its visits to the Sovereign Base Areas (SBA) of Cyprus and Gibraltar. The CPT called on the UK authorities to "adopt specific legislative powers for the mandate of the NPM, which should include the automatic right to visit all places of deprivation in the United Kingdom, as well as in British Overseas Territories and the SBA.**

**32. The Subcommittee recommends that, in order to meet the requirements of OPCAT, the NPM must have the ability to conduct unannounced visits to all places of detention, as well as to have access to all information referring to the treatment of detainees and the conditions of their detention. The Subcommittee echoes the CPT's recommendation and urges the State party to take all the necessary measures to ensure the applicability of the Optional Protocol across all of the UK's Overseas Territories and Crown Dependencies, including through unannounced visits to military detention facilities. In that regard, the SPT calls upon the UK authorities to consider using the existing NPM structure or designating or establishing new NPM bodies to ensure promptly the full compliance with the OPCAT, i.e. that all places of deprivation of liberty under the UK de jure or de facto control are visited by an independent preventive body."**

#### **Sovereign base areas and Military detention facilities**

5. The UK takes its responsibilities to prevent torture and other cruel, inhuman or degrading treatment or punishment seriously and acknowledges the recommendations made by the SPT in its report. The Ministry of Defence currently invites independent inspections of its UK based detention facilities by Her Majesty's Inspectorate of Prisons (an NPM member) which, in the past, have been unannounced. The Ministry of Defence will carefully consider the recommendations in close collaboration with other government departments.

#### **Overseas Territories**

6. The UK's ratification of OPCAT has not been extended to the Overseas Territories. Moreover, each Overseas Territory has its own legislative body, and the inhabited Territories have democratically elected governments, so it would not be appropriate for the United Kingdom Government to legislate on their behalf for the mandate of the NPM. However, if the Overseas Territories wish to have OPCAT extended to them, the United Kingdom Government will support them in this process. The United Kingdom is working with the Overseas Territories to support the development of monitoring boards, where they don't already exist, and independent review mechanisms to ensure compliance with international obligations.

#### **Crown Dependencies**

7. The Crown Dependencies (CDs) are not part of the UK but are self-governing dependencies of the Crown. This means they have their own directly elected legislative assemblies, administrative, fiscal and legal systems and their own courts of law. The constitutional relationship of the Islands with the UK is maintained through the Crown and the UK Government is responsible for the defence and international relations of the Islands, and for ensuring their good government. It would not be appropriate for the UK Government to mandate extension of OPCAT to the CDs as that is a matter for their own governments to decide upon, but we would support them if any CD wished to have OPCAT extended to them.

8. OPCAT has been extended to the Isle of Man but not to the Bailiwick of Guernsey or Jersey. However, the Bailiwick of Jersey have indicated their intention to request the extension of UK OPCAT ratification. Progress on compliance progressed until March 2020, when resources from this, and other projects, were redirected to deal with Covid-19. The extension remains high on Jersey's priority list and will be addressed as resources become available.

### **C. Independence**

**"37. The SPT recommends the UK authorities to ensure that the NPM enjoys autonomy, independence, effectiveness and credibility as an independent preventive body, in conformity with articles 17, 18 and 19 of the OPCAT. The NPM independent functions of all the different members/bodies composing its structure must be legally guaranteed, and the State Party must take all the necessary measures to this effect. In addition, its material, logistical and financial separation from governmental structure must be**

**achieved in order to ensure its independence, including functional, as foreseen in the Protocol.”**

9. The UK Government notes the concerns raised by the Subcommittee on Prevention of Torture and the NPM, that whilst the individual independent members of the NPM each have a statutory basis, the NPM itself is not set out in statute. As stated above, the UK undertook a consultation on this point and will provide a response in due course. While we do not agree that the lack of a legislative base precludes compliance with articles 17, 18 and 19 of the OPCAT, we will continue to discuss any specific issues with the NPM and its members.

10. Further, the UK Government is mindful of its obligations under Article 18(3) OPCAT to make available the necessary resources for the functioning of the NPM. The NPM receives an annual budget through Her Majesty’s Inspectorate for Prisons (HMIP), which they are free to use as they see fit. We continue to monitor and discuss resources with the NPM.

**“39. The SPT recommends the UK authorities to review the statutes of the Independent Monitoring Boards and the Lay Observers to ensure their full independence and prevent actual or potential conflicts of interest as NPM.”**

11. The recent consultation on *‘Strengthening the independent scrutiny bodies through legislation’* also covered the issue of providing national statutory status for the Independent Monitoring Boards and the Lay Observers, and their respective Chairs. Placing these bodies in statute will strengthen their operational independence from the UK Government and we intend to bring forward this legislation when Parliamentary time allows. We have also put in place a protocol with the IMB’s Management Board to set out the roles and responsibilities of the parties and to clarify IMB independence from government and we hope to publish a similar protocol shortly with the Lay Observers. We will continue to explore with both bodies how their independence can be formalised further, as well as continuing to review the wider scrutiny landscape that the Independent Monitoring Boards and Lay Observers operate in.

**“41. The Subcommittee calls upon the UK authorities to ensure the functional independence of the HMIP as well as the independence of its personnel through a transparent process of selection and appointment of the HMIP’s Chief Inspector. The Subcommittee also recommends that, in compliance with the OPCAT, the State party ensure that NPM members are independent and do not hold a position which could raise questions of real or perceived conflict of interest.”**

12. The UK is clear that HMIP is operationally independent from the UK Government. The Chief Inspector has a fully independent voice. HMIP publishes reports in its own name, with the content and timing solely at the discretion of the Chief Inspector. A protocol between the Ministry of Justice and HMIP sets out the roles and responsibilities of the two organisations and confirms the inspectorate’s independence from Government. The protocol also confirms that the Chief Inspector has the delegated authority to appoint staff within the inspectorate. In response to our consultation on *‘Strengthening the independent scrutiny bodies through legislation’* we intend to legislate to provide a stronger statutory basis for HMIP, when Parliamentary time allows.

13. The role of HM Chief Inspector of Prisons (HMCIP) appears in the Public Appointments Order in Council ([Schedule, Article 2\(2\), pg.8](#)) and the appointment is subject to regulation by the Commissioner for Public Appointments. This Order makes provision for an independent Commissioner to monitor the procedures adopted by appointing authorities when making appointments to public bodies. The recruitment process must also comply with the appointment principles set out in the Government’s Governance Code on Public Appointments. This Governance Code is publicly available on gov.uk. The role criteria, tenure, time-commitment and remuneration details are all published when posts are advertised on the Public Appointments website (as a minimum), where the campaign timetable and panel membership are clearly set out. As a significant appointment, the role of HMCIP is also subject to pre-appointment scrutiny by the Justice Select Committee (JSC), who are consulted throughout the process. The pre-appointment scrutiny hearing and transcript is publicly available and the JSC may also publish other relevant documentation.

## D. Human and financial resources

**“45. The Subcommittee recommends that the State party increase the financial and human resources of the NPM Secretariat, also as a guarantee of its independence, as per the OPCAT provisions.”**

14. The UK commends the important work that the NPM carries out and is keen to support its independence, as is necessary for its role in safeguarding the human rights of detainees across the UK. The UK maintains regular communication with the NPM Secretariat to ensure they are sufficiently supported, including through financial and human resources.

15. The NPM have been awarded a budget of £138,000 for 2020/2021. A substantial uplift to the NPM’s budget was made in 2019/20 and has subsequently rolled over for the years since. This also includes funding to pay the independent Chair and is in addition to the separate funding the NPM members receive.

## E. Visibility

**“47. The Subcommittee recommends that the State party ensure that its NPM is recognized as a key component in the country’s system for prevention of torture and ill-treatment and adopt an effective strategy to raise the NPM’s visibility and profile. In this regard, the Subcommittee recommends that the State party take all necessary measures, when establishing the formal legislative basis of the NPM, to ensure that each of its different oversight bodies/members composing the NPM exercise their mandate as NPM when they do so, in order to avoid any confusion with their other functions.”**

16. The Government regularly communicates with the NPM, providing an opportunity for any issues of concern to be raised, including on the NPM’s visibility and profile. In order to ensure its independence, the Government considers that the NPM is best placed to take the lead regarding promoting its role as a key component in preventing torture and ill-treatment. The Government publishes the NPM’s annual report in Parliament on behalf of the NPM.

17. Those bodies which have been designated as NPM members are those whose existing powers are compatible with the criteria required under OPCAT.

**“49. The Subcommittee recommends that the State party adopt legislation enabling the NPM to present its annual report in Parliament directly and to be accountable to Parliament for the implementation of its NPM mandate.”**

18. The UK welcomes the NPM’s annual reports and its finding on the conditions and treatment of those in places of detention across the UK. While the NPM’s annual report is laid in Parliament by the Government, the content of the report is entirely a matter for the NPM. In line with Article 23 (OPCAT), the UK publishes and disseminates the report, making it available on the gov.uk website.

## F. Conclusion

**“50. The SPT observes that the UK NPM’s structure, composed of multiple pre-existing bodies, represents an additional challenge for the State party’s adherence to the principles enshrined in the OPCAT on NPMs, especially articles 17, 18 and 19. In this connection, the SPT believes that a clear policy from the UK Government is required to ensure that the UK NPM, and all its composing members/bodies, is compatible with the provisions of the OPCAT. Such policy needs to address current deficiencies in the NPM’s statutory basis, ensuring the independence of each and all of its members/bodies when acting as NPM, as well as the need for sufficient resourcing of the NPM. Moreover, given the scale and complexity of the UK NPM’s multi-body structure, a robust independent coordination function is essential to the effective practical implementation of the objectives of the Protocol. In addition, in order to ensure the guarantees of independence and effectiveness in terms of prevention of torture, the independence of the NPM’s Chair and Secretariat need to be recognised in law and supported in practice through sufficient provision of resources.**

**51. The SPT trusts that the present report will serve as a road-map towards the UK's compliance with the OPCAT."**

19. The UK Government is clear that it is in full compliance with its obligations under OPCAT and does not consider there to be a legal requirement for an NPM to be established in statute. It should also be noted that all the individual members of the NPM each have a statutory basis with powers commensurate with OPCAT principles albeit the NPM itself is not set out in statute. Having said that, the Government recently undertook a public consultation to seek views on putting the NPM on a statutory footing. We are giving this proposal further consideration in light of the responses received.

20. We welcome the comments and recommendations of the SPT on the NPM and they provide useful input as we consider the issue further.

### **III. Overarching issues**

#### **A. Legal and Institutional Framework**

**"54. The Subcommittee urges the State party to establish a reasonable time limit for administrative immigration detention and ensure that detention is a measure of last resort and is justified as reasonable, necessary and proportionate."**

21. Detention and removal are essential parts of effective immigration controls and are used to ensure that those with no right to remain in the UK are returned to their home country if they will not leave voluntarily. The immigration removal estate is currently almost 40% smaller than it was five years ago, and of significantly higher quality. At any one time, 95% of individuals with no leave to remain in the UK are managed within the community rather than detained.

22. The UK does not detain people under immigration powers indefinitely, the law does not allow it. For detention to be lawful there must be a realistic prospect of the individual's removal within a reasonable timescale. There are well established safeguards in the immigration system to ensure that the decision to detain, and any ongoing detention considerations, are sufficiently scrutinised.

23. The UK Parliament has debated the introduction of a 28-day time limit and voted not to introduce one. The Government believes that such a time limit would severely constrain our ability to maintain the right balance and uphold the integrity of the immigration system. We have reviewed how time limits on detention operate in other countries and how they relate to any other protections within their systems. The review showed that very few countries had time limits.

24. Instead, our priority is to ensure immigration detention is used only where necessary, and for the shortest possible time, ensuring decisions to detain and subsequent decisions to maintain or release are well made with systematic safeguards and support for the vulnerable. In the year ending September 2020, data shows that the overwhelming majority of people (98%) who left detention, were detained for less than 6 months, and (76%) were detained for 28 days or less. Decisions to detain are made on a case-by-case basis and kept under constant review.

**"56. The Subcommittee urges the State party to raise the minimum age of criminal responsibility, in accordance with international standards."**

#### **England and Wales**

25. Whilst the UK Government notes that the age of criminal responsibility goes beyond consideration of the conditions of those deprived of their liberty in order to prevent torture, relating instead to the wider legislative framework, the following response is provided to the SPT's recommendation.

26. The Government does not have any current plans to raise the age of criminal responsibility. The Government believes that children aged 10 and over can differentiate between bad behaviour and serious wrongdoing.

27. It is not always appropriate to make simple comparisons between countries because the youth justice and supporting social systems differ considerably. The principal aim of the youth justice system in England and Wales is to prevent offending by children. Setting the age of criminal responsibility at 10 provides flexibility in dealing with children, allowing early intervention with the aim of preventing subsequent offending. If assessment by the local multi-agency youth offending team identifies that a child has particular needs, the youth offending team can refer the child on to other services for further investigation and support (this can include Children's Services departments or Child and Adolescent Mental Health services).

28. The sentencing framework for children aged 10 to 17 recognises that children have their own specific needs that require a different and more tailored approach. When sentencing, the courts must take into account not only the principal aim of the youth justice system but also the welfare of the child. The age, maturity and needs of a child are always considered in determining the most appropriate response to offending by a child.

29. The Government believes that it is important to ensure that serious offences can be prosecuted and the public protected. However, serious crimes committed by children are rare and we do not want to see younger children prosecuted for offences unnecessarily where a better alternative may be available. Most younger children who enter the youth justice system are dealt with by way of an out-of-court disposal.

### **Scotland**

30. The Age of Criminal Responsibility (Scotland) Act 2019 was passed unanimously by the Scottish Parliament. Once fully commenced, it will increase the age of criminal responsibility from 8 to 12 years of age. Votes on raising the age of criminal responsibility (ACR) to 14 years old and 16 years old were defeated by 108 votes to 11 and 110 votes to 10 respectively, by the Parliament.

31. Implementation of the Act is being undertaken as quickly and safely as possible. Since 29 November 2019, children under 12 can only be referred to a children's hearing on care and protection grounds, and not on offence grounds. This means that from this date, children younger than 12 have not accrued convictions or criminal records.

32. In Scotland there are proven approaches to confronting and correcting childhood behaviour that do not need a criminal justice response, with the great majority of children under 16 who commit offences being dealt with through the welfare-focused children's hearings system, rather than by the criminal justice system.

33. The increase in the age of criminal responsibility from 8 to 12 is a significant reform that will need to be carefully evaluated to identify further policy, legislative, system and practical changes that may be required to ensure that the Act has been safely implemented. The Act, therefore, provides that the Scottish Ministers must carry out a review within 3 years of the commencement of section 1 of the Act (which increases the age to 12). The review is to evaluate the operation of the Act generally as well as to consider a future age of criminal responsibility. Evaluation of the Act will ensure that operational learning and experience about how the legislation and associated change programme operates for the under-12 age group can be taken into account as part of the overall consideration of a future age of criminal responsibility in Scotland.

### **Northern Ireland**

34. This issue is under active consideration in Northern Ireland. The Justice Minister has written to her Executive colleagues to seek their views on increasing the minimum age of criminal responsibility in Northern Ireland from 10 years to 12 years. While cross-party support has not been forthcoming to date, the Department of Justice will continue to pursue this issue.



**“58. In accordance with international standards, the Subcommittee recommends that the State party ensures that remand persons be segregated from convicted persons and be subject to a separate treatment, in conformity with their status of unconvicted persons.”**

### **England and Wales**

35. Existing Prison Rules and policies already ensure that there is appropriate separation between unconvicted and convicted prisoners. Unconvicted prisoners must be kept out of contact with convicted prisoners as far as the Governor considers that it can reasonably be done, and unconvicted prisoners must not be made to share a cell with a convicted prisoner against their will.

### **Scotland**

36. There is provision within the Prisons and Young Offenders Institution (Scotland) Rules 2011 that Governors must, so far as reasonably practical, keep civil and untried prisoners apart from other prisoners. The Rules also make provision for the regime and arrangements that apply to untried prisoner.

### **Northern Ireland**

37. The majority of remand prisoners in Northern Ireland are held at Maghaberry Prison. Significant work has been taken forward to rationalise the use of the prison site to ensure that, as far as is operationally possible, unsentenced and sentenced prisoners do not share accommodation.

**“61. The SPT recommends that the State party analyses the consequences of the austerity measures on the right of persons deprived of their liberty, take steps to revert the negative impact, and ensure the full compliance with international standards for the treatment of prisoners, including health services, regime and other rights at all times.”**

38. The UK is fully committed to ensuring the rights of persons deprived of their liberty are fully protected.

### **England and Wales**

#### *Staffing*

39. The UK is committed to ensuring a lack of staffing does not impact the treatment of prisoners. Though we recognise that we face staffing challenges, particularly related to the retention of staff, we remain committed to resolving them.

40. We are targeting action in prisons losing the most experienced officers to understand why this is happening. The leaving rate for band 3-5 prison officers for the year ending 30 September 2020 was 9.9%, which is a decrease of 2.4% compared to the year ending 31 March 2020. We closely monitor leaver trend data and use exit interviews to establish the drivers of attrition and target them.

41. New recruits leaving the prison service after less than two years is detrimental to the running of our prisons. In order to tackle this and proactively seek more closely suited candidates for the role, we have introduced a new recruitment assessment process based on current best practice which includes tests for strengths, behaviours and resilience.

42. We have also updated our Prison Officer Entry Level (POELT) training into an apprenticeship. This aims to improve retention by developing long-term developmental incentives for new recruits, incorporating training delivered through on-site experience to better equip them for the role. Building on the POELT course, the apprenticeship continues to support the new POELT for up to 15 months including periods of reflective learning and continued professional development.

43. For sites where it is hard to recruit and retain staff, we are tackling the issue of recruitment using market supplements and a tailored approach to recruitment advertising.

*Delivery of health services*

44. Health and justice partners have committed publicly to providing a standard of health care in prisons equivalent to that available in the community. This is discussed further in response to the SPT's recommendations referring to 'Healthcare in places of deprivation of liberty'.

*Prisoners' access to purposeful activities*

45. Prisons are resourced to deliver healthy regimes for prisoners, based on their core day (daily regime schedule), the agreed safe staffing levels and the maximum level of activity that can be achieved. Legislation and a framework of operational policies help structure the core day and ensure national minimum standards are met. Governors have autonomy over activity types and the way in which their staff are deployed, and central services are available to help prisons operate effectively.

46. Work is underway to articulate a future vision for prison regimes which applies the learning gained from Covid-19, which has shown that facilitating a quality regime and ensuring time is productive, including through offering in-cell activity, is more important than simply seeking to maximise time out-of-cell.

*Material conditions of detention*

47. As announced at the spending review in November 2020, we have committed over £4 billion to make significant progress in delivering 18,000 additional prison places across the prison estate by the mid-2020s. These 18,000 prison places include the 10,000 places being made available through the construction of four new prisons, the expansion of a further four prisons, refurbishment of the existing prison estate and the completion of our ongoing prison builds at Glen Parva and HMP Five Wells.

48. We are also investing a total of £315m in capital funding in 2020/21 to improve the condition of the existing estate. This will be supported by temporary units which will provide 1,000 temporary prison places to accommodate offenders during maintenance and refurbishment work, as well as support shorter-term population pressures. Construction is well underway on HMP Five Wells, the new prison at Wellingborough in Northamptonshire, and works have started at Glen Parva, Leicestershire. These prisons will provide safe, decent, and secure environments to support effective rehabilitation.

49. We have committed an additional £156 million in 2020/21 to address some of the most immediate maintenance and renewal issues across the prison estate. The recent spending review settlement will provide a total of £315m in capital funding in 2021/22 to invest in further improving the condition of the existing prison estate. We have recently announced that over £140m will be spent installing temporary prison cells, repairing and refurbishing prisons, approved premises and young offender institutions, and improving IT in prison.

**Scotland**

50. The Scottish Prison Service (SPS) seeks to comply with international standards of treatment for prisoners and HM Inspectorate for Prisons undertakes monitoring of prisons using Standards that focus on the upholding of human rights of those detained in prison. In publishing her most recent Annual Report (2019), HM Chief Inspector of Prisons for Scotland stated: "One of the key factors affecting the atmosphere in a prison is the quality of relationships between prisoners and those who work in prison and CCUs. I continue to be hugely impressed that despite COVID-19, the commitment of staff and their ability to care for and protect prisoners, a substantial proportion of whom are vulnerable, continued throughout."

51. The Scottish Government has committed a total of £460.2 million to the SPS for 2021-2022, an increase of £18 million compared to 2020-2021 to help manage multiple pressures including a rising and increasingly complex prison population.

52. The SPS resource budget will increase by £12.4 million to £354.6 million - this is a 4% increase on last year. This increase will enable SPS to respond to operational challenges.

53. The capital investment in the prison estate this year will be £72.8m, a 7% increase on last year in order to improve and modernise critical prison infrastructure. This includes completing the majority of the work on the new female custodial estate, progressing the work on replacements for HMP Inverness and HMP Barlinnie, as well as improvement works to the existing estate.

## **B. Over-representation of ethnic minorities in the Criminal Justice System**

**“64. The Subcommittee recommends that the State party take urgent measures to tackle the causes of racial disproportionality in the criminal justice system and ensure protection of minority ethnic groups from torture and ill treatment.”**

54. Addressing race disparities in the criminal justice system is extremely important to the UK government and we continue to prioritise this work, examining and acting on the issues highlighted in several reviews, recent independent inspections, and collecting and interrogating data in the spirit of the principle of “explain or change”.

55. Since the Lammy Review, into the treatment of, and outcomes for, Black Asian Minority Ethnic (BAME) individuals in the criminal justice system in September 2017 we have made progress on a number of fronts. We are also doing more than ever to identify disparity in current practices and putting into place safeguards to prevent new policies from having unintended consequences that may have a cumulative impact on racial disparities.

56. We have made good progress towards completing actions we committed to take in relation to each recommendation and adding further actions that were not explicitly contained in the report. For example, we continue to prioritise the understanding and tackling of disproportionality within the youth justice system with a focus on preventative measures such as early interventions and diversions as well as procedural focuses in respect to remand and sentencing. Since the Review we have also made good progress in the increase of workforce diversity in HMPPS: This includes seeing an increase in the diversity of our Senior Civil Servant group and in the number of successful Black, Asian and minority ethnic applicants into the prison service.

57. We are keen on continuing the constructive dialogue around race and we will continue to build on the foundation of the Lammy Review adopting a wider approach that warrants an examination on the contributory factors that perpetuate the cycle of racial disparity in the criminal justice system.

58. The independent Commission on Race and Ethnic Disparities was launched to conduct a detailed, data-led examination of inequality across the entire population, and to set out a positive agenda for change. The Commission’s report was published on 31 March 2021. The Government will now consider their recommendations in detail and assesses the implications for future government policy. The entirety of government remains fully committed to building a fairer Britain and taking the action needed to address disparities wherever they exist.

**“The Subcommittee further recommends that the State party take necessary steps to:**

**a) ensure that detention is not used discriminatorily against certain groups of people and that arrests, stops and searches are not based on appearance, colour or membership of national and ethnic groups;”**

### **England and Wales**

59. Stop and search is a valuable policing tool that removes tens of thousands of knives from the streets each year and helps police to fight crime and protect communities as part of a broader strategy to tackle serious violence. However, no one should be subject to stop and search based on any protected characteristics including race, ethnicity and age. Safeguards exist to ensure this, including the use of body worn video (BWV) by police officers to increase accountability, Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) inspections where force level disparities are examined and Code A of the Police and Criminal Evidence Act 1984 (PACE) which sets out the statutory requirements

for conducting a stop and search. In particular, Code A states that stop and search powers must be used fairly, respectfully and without unlawful discrimination, under the Equality Act 2010. Reasonable grounds for searches can never be based on any protected characteristics, generalisations or stereotypes and local scrutiny panels ensure compliance with Code A through monitoring data sets, checking reasonable grounds and/or reviewing of BWV. The Home Office publishes force-level data on stop and search, including racial disparities, which can be used to increase accountability. The College of Policing recently updated their guidance on stop and search, to further ensure fair and proportionate use of these powers and provide better practice to forces on community engagement and scrutiny. The Home Office is working with HMICFRS and forces to monitor uptake of the updated guidance.

60. Police custody is governed by Code C of PACE which sets out the legal framework for the detention, treatment and questioning of persons by police officers. The operational management of custody suites is also carried out in accordance with the Authorised Professional Practise (APP) requirements as set by the College of Policing. As for Code A, Code C states that powers and procedures available to custody officers must be used fairly, without unlawful discrimination and in line with the Equality Act 2010. The integrity of police custody is maintained via HMICFRS unannounced visits and regular visits from the Independent Custody Visitors' Association (IVCA), who make unannounced visits to police custody to check on the rights and wellbeing of detainees. Independent custody visiting is one of the means to assess the UK's commitment to OPCAT. Both HMICFRS and ICVA keep the Home Office fully informed on their visits and findings. The Home Office is currently working with the National Police Chiefs' Council (NPCC) to improve the processes by which data on use of powers and procedures in police custody is shared and published, to increase transparency and understanding.

61. Section 24 of PACE give constables in England and Wales a power of arrest for all offences. It sets out two criteria that a constable must meet before carrying out an arrest: they must have reasonable grounds to (i) suspect an individual of having committed or be about to commit an offence and (ii) believe that the individual's arrest is necessary. The reasons for which arrest may be necessary include preventing personal injury or damage to property and to allow the prompt and effective investigation of the suspected offence. The exercise of the power is governed by Code G of PACE which, as for other PACE Codes, states that powers of arrest must be used fairly, without unlawful discrimination and in line with the Equality Act 2010.

### Scotland

62. Intelligence-led stop and search is a valuable and effective policing tactic and contributes to the prevention, investigation and detection of crime while keeping people safe and improving community well-being.

63. Police Scotland's stop and search data is reported on per local authority area. Police Scotland officers understand victims of crime and the wider public have an expectation that officers will use the powers available to them, including stop and search where necessary, to bring offenders to justice. They also recognise that stopping and searching people is a significant intrusion into their personal liberty and privacy and they remain committed to ensuring that all stop and search activity is carried out in a lawful and proportionate way and that people are treated with fairness, integrity and respect.

64. Police Scotland record data and carry out analysis to ascertain any disproportionality. They liaise with local divisions ensuring robust governance through first line managers, checking every single stop and search submitted to the database and then their National Stop and Search Unit carries out further review. Their stop and search processes follow the Code of Practice on Stop and Search and which have been approved by an Independent Advisory Group and the Scottish Police Authority.

**“b) tackle the disproportionate use of restraint on individuals from ethnic minorities;”**

### England and Wales

65. We are committed to ensuring that prisons, young offenders' institutions and other custodial establishments safeguard the public as well as protecting the rights and dignity of

prisoners. Prisons are challenging places to live and work. Staff and prisoners are increasingly exposed to threats including levels of violence, the impacts of substance misuse and criminal activity, all of which increase the risk for potential physical harm. Reducing violence and improving staff prisoner relationships will reduce the need for force to be used.

66. We are working with the Race Action Plan team to tackle disproportionality. We have accepted the Lammy recommendation that Use of Force committees should not be ethnically homogenous and involve at least one individual with explicit remit to consider interests of prisoners. We are working towards implementing this across all our prisons.

67. A Use of Force evaluation team has been established to conduct research into use of force in prisons, and we will use this evidence to inform our approach moving forward, so that we can use evidence-based practice to tackle disproportionality.

## Scotland

68. In 2021, Police Scotland will engage in a consultation with community stakeholders in order to inform revised Use of Force Policy. As part of the consultation views will be sought from ethnic minority stakeholders on policies that ensure proportionate use of force.

69. Operational Safety Training Instructors will also undertake for the first time, additional, externally provided Equality and Diversity training in order to better inform training development and operational safety course content. The training will deepen their understanding of equality and diversity related issues in their role in the provision of advice on the proportionate use of force.

Police Scotland intend to utilise this enhanced knowledge to provide specific tactical advice to officers to counteract the effect of any biases they may hold.

**“c) implement programmes, which support reintegration, produce tangible outcomes and focus on preventing reoffending of persons from ethnic minority background in prisons,”**

70. Across the range of interventions and programmes that address reducing reoffending, we will need to ensure that we understand the impact across cohorts and consider how we address specific needs in all that we do. This can be observed in our evaluation programme and our work analysing the drivers of reoffending for cohorts. We aim to carry out equality impact assessments in our programmes and work to ensure that factors such as protected characteristics, do not act as a hinderance for successful rehabilitation.

71. Following the HMIP ‘Thematic review of Minority ethnic prisoners’ experiences of rehabilitation and release planning’ an action plan has been agreed to enable Her Majesty’s Prison and Probation Service (HMPPS) to make the changes identified to improve matters for the identified cohort. Fundamentally, the purpose of this work is to understand the cultural needs of Black, Asian and Minority Ethnic (BAME) and Gypsy, Roma and Travellers (GRT) prisoners in order to provide improved and culturally sensitive services around rehabilitation and release planning. This will include working to identify potential areas of discrimination and embedding improvements into the services HMPPS offers so that minority ethnic prisoners’ experiences are improved, aiding their rehabilitation.

**“d) reduce the over-representation of children from ethnic minorities in youth custody, including through adoption of alternatives to detention;”**

72. We want people to have confidence in a justice system that is fair and open - one where no person suffers discrimination of any sort. We share deeply the concerns about where we are now in terms of disproportionality. We will continue to prioritise the understanding and tackling of disproportionality within the youth justice system and recognise the absolute need for systemic change.

73. While there is important work to be done to improve the treatment and outcomes of these communities in the Criminal Justice System, this will only partially address the key issues linked to over-representation. This is because the ‘upstream’ factors that lead to crime are similarly disproportional. That is why there have been wider efforts by the Government to tackle over-representation through health, education and policing - demonstrating the significance of a holistic approach.

74. Several key actions are being taken by the Government to address disproportionality throughout the system and we are working to further strengthen our understanding of how we can ensure that BAME children can be diverted from custody, where appropriate.

75. We are investing £1m in funding to use physical activity and trauma-informed practice to improve outcomes for 11,000 BAME children at risk of entering the criminal justice system.

76. Our 'Chance to Change' pilots with police allow low-level offences to be addressed out of court. We understand that BAME defendants are consistently less likely to plead guilty and therefore face more punitive outcomes. This model places less emphasis on admission of guilt and more on the opportunity for diversion.

77. Youth Justice Board (YJB) support is in place to assist with the diversion of over-represented children through the pathfinder concept. A pathfinder to support BAME children and families impacted by Covid-19 has been developed. Payments totalling £1.4m over 3 years have been allocated to areas such as Newham and Brent with regards to Covid-19 response to provide this support to over-represented children.

78. We are going further to fund Black and Asian specialist voluntary sector organisations. A YJB project is in the process of being developed with around £80,000 youth-specific funding for voluntary and community sector organisations to support children who have experienced trauma and Adverse Childhood Experiences (ACEs) resulting from Serious Youth Violence

79. Work is ongoing in several areas with police. We have collaborated with the NPCC to tackle disproportionality in police custody. The YJB is also working on a potential pathfinder project to understand disproportionality in the out-of-court disposal system. This would identify and pilot a process for monitoring of out-of-court disposals within four police forces and make recommendations as to the process for a national approach as well as to develop a national training package specifically Community Resolutions.

80. We are currently reviewing the use of remand for children, with particular attention to the disproportionate representation of BAME children.

81. We have also worked with the Magistrates' Association to build awareness of disproportionality among sentencers. The YJB has recently held a joint roundtable with the Magistrates Association looking at over-represented children and the development of a Disproportionality Protocol and checklist for magistrates.

82. Within the Youth Custody Service (YCS), work is also taking place:

- Bespoke Diversity and Inclusion Plans are in place across the youth secure estate and are monitored for assurance against progress;
- Following de-biasing training for key staff, YCS are working with HMPPS to develop a bespoke training package on Diversity and Inclusion that will include cultural intelligence and best practice models;
- YCS continues to develop effective practice briefings to help upskill staff – for instance on supporting children and young people with specific personal, cultural or religious needs, and supporting conversations around difference;
- The first phase of HMPPS' Race Action Programme will review existing data, practice and provision and will be taken forward by staff member dedicated to the YCS.

83. Finally, we await the recommendations of the commission on race and ethnic disparities both in the criminal justice space and in its important contribution to upstream areas. We will consider this publication carefully as we shape future work in this space.

#### **Northern Ireland**

84. Whilst Catholics are not an ethnic minority group, Catholics are minorities in Northern Ireland. The proportion of Catholics within the Youth Justice System in Northern Ireland is higher than the current census breakdown for the 10-17-year-old age group, a trend

that has been evident for the last number of years. In order to explore factors that influence over-representation generally, the Youth Justice Agency in NI has commissioned Queen's University Belfast to carry out research into this area. A report is due by the summer of 2021.

**“e) intensify the training and awareness-raising of prosecutors, judges, lawyers and police officers in the Criminal Justice System.”**

## **England and Wales**

### *Race disproportionality and training for prosecutors*

85. Prosecutors must be fair, objective and independent. When deciding whether to prosecute a criminal case, lawyers must follow the Code for Crown Prosecutors ‘The Code’. The Code gives guidance to prosecutors on the general principles to be applied when making decisions about prosecutions. These general principles help to ensure groups, including minority groups, are treated fairly and include a number of provisions which include when making decisions, prosecutors must be fair and objective.

86. Training on the Public Sector Equality Duty is also a mandatory requirement for all lawyers as of February 2020. This is to ensure that prosecutors understand the importance of ‘consciously considering’ the needs of victims, witnesses and defendants with particular protected characteristics, including ethnic minority groups through the prosecution process.

87. The Crown Prosecution Service (CPS) has also put in place a structure for community engagement at national and local levels. Communities provide direct feedback on the way in which CPS decisions impact upon them, enabling the CPS to assess whether additional support for prosecutors is required to ensure that their application of the Code is not influenced by factors that may be a product of bias. This includes:

- Community Accountability Forum (CAF) meetings, chaired by the CPS Chief Executive Officer and an independent co-chair, with a diverse membership. CAF meetings focus on particular themes, enabling the CPS to hear from communities on particular issues;
- Local Scrutiny and Involvement Panels (LSIPs), chaired by Chief Crown Prosecutors, with membership drawn from local communities. LSIPs scrutinise CPS decision-making on a variety of cases, ensuring that prosecutorial decision-making is informed by an understanding of community perspectives;
- Community Conversations, chaired by Chief Crown Prosecutors, where community members can raise issues of local concern directly with the CPS.

### *Training for judges*

88. The judiciary of England and Wales is also independent of Government. The Lord Chief Justice (LCJ), the Senior President of the Tribunals, and the Chief Coroner have statutory responsibility for training, under the Constitutional Reform Act 2005, Tribunals, Courts and Enforcement Act 2007, and Coroners and Justice Act 2009 respectively. Training responsibilities are exercised through the Judicial College.

89. The Judicial College has a governing principle which requires diversity to be embedded into all training using examples of the social context in which judging occurs. Social context includes diversity, equality and social mobility. It is also the College’s goal to integrate the topic of bias in all induction and continuation training. Judicial trainers are provided with guidance on how to integrate fair treatment and diversity into jurisdiction specific induction and continuation training programmes which are delivered to all judicial office-holders.

90. Social context and diversity are embedded in the competence frameworks for judges and magistrates. This all reflects the judicial oath, to ‘do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill will.’

91. All judges have access to the Equal Treatment Bench Book (ETBB) which is a comprehensive guide on equal treatment issues and is publicly available at:

<https://www.judiciary.uk/publications/new-edition-of-the-equal-treatment-bench-book-launched/>. A new iteration is being published in February 2021.

#### *Training for Legal professionals*

92. The legal profession in England and Wales is also independent of Government. Statutory responsibility for encouraging an independent, strong, diverse and effective legal profession sits with the approved regulators and the oversight regulator, the Legal Services Board (LSB). Accordingly, training set by regulators is done so independently. The Ministry of Justice has informed the Solicitors Regulation Authority, Bar Standards Board and Chartered Institute for Legal Executives (CILEx) Regulation of these recommendations and highlighted their importance in ensuring the effective and fair delivery of justice. Regulators have informed us that they have been incorporating diversity into their approach to training and development and that they continue to consider equality and diversity as key priorities.

93. The UK Government has also launched an Independent Review into Criminal Legal Aid. The Review will look at how changes to Criminal Legal Aid might tackle racial disproportionality. For example, by seeking to ensure Criminal Legal Aid services are delivered through a diverse set of practitioners equipped with the right skills and expertise. The Review aims to report by the end of the year.

#### *Training for police officers*

94. The College of Policing sets and maintains training standards for policing. In 2014, it introduced the Code of Ethics, which includes a set of principles for policing, including that all officers and staff should take active steps to oppose discrimination and make their decisions free from prejudice.

95. The College of Policing implemented the Policing Education Quality Framework (PEQF) to ensure a consistent, national education framework for police officers and staff, to equip the profession with the right skills, powers and experience. The basis for this looked at the fundamental requirements of a profession – including standards of education, specialist knowledge base and, critically, ethics. The College’s foundation training for all those entering the service includes substantial coverage of police ethics and self-understanding, including the effects of personal conscious and unconscious bias. Initial training covers hate crimes, ethics and equalities and policing without bias.

96. The Code of Ethics is a key component of the National Decision Model (NDM), which is at heart of police decision-making and is therefore heavily incorporated into police training. Training and development are provided by forces at several different stages ranging from initial entry to leadership and is on-going to reflect and reinforce organisational values. The Metropolitan Police Service includes further inputs on this during its recruitment and promotion training as well as at other “touchpoints” and via intranet articles, forums and videos. It has also recently been seeking to introduce immersive, scenario-based training for ethical dilemmas. Her Majesty’s Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS) inspections regularly include an assessment of the training that officers and staff receive.

97. There is an active network of ethics panels in police forces, engaging at both a regional and national level across England and Wales. The UK Police Ethics Guidance Group provides oversight at a national level and, together, provide the opportunity to discuss ethical dilemmas.

#### **Scotland**

98. Police Scotland Initial Training includes a recently refreshed equality and diversity syllabus. Additionally, Police Diversity Staff Associations, including their ethnic minority staff association, are now invited to speak directly to officers in initial training to deepen their understanding of ethnic minority issues.

99. Significant events that impact diverse communities, such as Black or LGBTI History Month, are highlighted in initial training to students with the purpose of educating police



officers on the history of policing as it relates to diverse communities and the importance of building on relationships moving forward.

100. Leadership Training and Development are actively planning to increase BME representation within the instructional cadre within initial training in 2021 in order to ensure officers have access to experienced staff with a deeper personal knowledge of ethnic minority issues.

101. Equality and Human Rights Impact Assessment training has been developed and is being delivered throughout 2021 to ensure that policy and training accurately reflect the potential impact on diverse communities, including ethnic minorities.

102. Operational Training Staff, whom lead on training officers post their initial training and throughout their careers, are gaining wider access to externally delivered Equality and Diversity training to deepen their own understanding of issues faced by diverse communities.

103. Leadership Training and Development's Immersive Learning Unit, responsible for the delivery of Critical Incident Management training to senior Divisional Officers, is presently revising its program to ensure that it best reflects current issues faced by diverse communities, including ethnic minorities. In addition, a product will be tested in 2021 that embeds understanding of critical incident management at lower levels of leadership and supervision within Local Policing.

## C. Healthcare in places of deprivation of liberty

**“69. The SPT recommends that the State Party integrate the Mandela Rules and the Istanbul protocol in the training curriculum (including in continuous exercises) of police and health care professionals. Medical personnel must be able to examine alleged victims of torture and ill-treatment, detect and report such cases in line with the provisions of the Istanbul Protocol.”**

### Police

104. In regard to specific training or awareness that is undertaken by forces to ensure their staff are well-versed in custody protocols, this would be a matter for the College of Policing and NPCC to take forward and consider what training may be appropriate. The College of Policing are an operationally independent arm's-length body of the Home Office. The College, as the professional body for policing in England and Wales, can set and improve standards for excellence in policing, to ensure police training and ethics is of the highest possible quality.

### Medical personnel

105. It is the responsibility of the professional regulators to set the standards and outcomes for education and training and approve training curricula to ensure newly qualified healthcare professionals are equipped with the knowledge, skills and attitudes to provide high quality patient care.

106. The content and standard of medical training is the responsibility of the General Medical Council (GMC), which is an independent statutory body. The GMC has the general function of promoting high standards of education and training, and co-ordinating all stages of education to ensure that medical students and newly qualified doctors are equipped with the knowledge, skills and attitudes essential for professional practice.

107. Health Education England works with bodies that set curricula such as the GMC and the Royal Colleges to seek to ensure training meets the required professional standards to meet patients' needs.

108. All registered health care staff dealing with detained persons must have competencies of the same standard as those working in the National Health Service. Additionally, these staff have access to the same NHS training programmes as part of their continuing professional development.

**Scotland**

109. The National Police Care Network has a role to improve capability and capacity in the forensic medical workforce in Scotland. Through its Education and Workforce Working Group the Network is refreshing existing training materials. The Network will ensure that the underpinning international and national legal context, including the Mandela Rules and Istanbul Protocol is included in the revised training materials. The Networks will also work with healthcare professionals working in police custody to ensure that they are aware of processes for the examination of victims of torture and ill treatment.

110. Neither the Mandela Rules nor the Istanbul protocol is currently referenced within the custody training curriculum. However, similar principles exist within Police Scotland's Standard Operating Procedure (SOP) relating to persons in police custody. The SOP confirms that the care and welfare of individuals in police custody is paramount.

111. In relation to equality and human rights considerations, guidance directs that *"it is essential that the care, welfare and security of persons held in police custody be maintained to consistently high standards. Whilst security is of paramount importance, all persons are to be treated with care and respect, ensuring that their fundamental human rights are maintained at all times. No person should receive less favourable treatment on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Each and every person must be considered as an individual with specific needs relevant to their particular circumstances, health and condition. Reasonable requests, which do not interfere with operational requirements or security, should only be refused when there are justifiable reasons."*

112. A Pilot for trialling "Soft Cuffs" was launched in the Falkirk area of Scotland in 2019. They are Velcro straps for the wrists, which allow a custody to be restrained but with less pain than the rigid issue cuffs. These can be used on persons who are on constant observations (in certain circumstances) where officers are sitting outside a cell with open door / glass screen and not consenting to an internal search, but otherwise totally compliant/ i.e., no hostility. Alternatively, they can be used on persons with mental health issues under the same observation regime. They are more comfortable and are a way of encouraging compliance. It is the intention to roll out this equipment nationally in due course.

113. Medical provision for persons in custody is the responsibility of National Health Service (NHS) Scotland. Should medical advice and / or assistance be required in relation to any person in custody, it is the responsibility of the custody supervisor to make direct contact with the Health Care Professional (HCP), however every person entering a custody environment is not routinely seen by an HCP.

114. In relation to examinations, interim guidance is currently in place to *"ensure that a robust and reliable healthcare service continues within police custody during the COVID-19 pandemic. The National Police Care Network has co-produced this guidance with Police Scotland and other partners to ensure there is minimal contact between people in police custody and/or minimal physical attendance of persons in custody, regardless of symptoms."* This is to minimise the risk of infection from Covid-19 and protect people in custody and NHS and Police Scotland staff.

115. Current protocol advises that all cases that require clinical advice will be dealt with via telephone triage. Police Custody Officers require to phone the NHS Police Custody healthcare team in their area.

116. In the first instance NHS staff will triage over the phone. Healthcare professionals will attend police custody to see patients where clinically appropriate. If clinical judgement is such that attendance is not required, an explanation for this will be noted on the custody and clinical IT systems. Further follow up calls to healthcare professionals may be required if the situation changes.

**"73. The Subcommittee recommends that the State party develop a comprehensive national policy and strategy to ensure appropriate access to health care and mental health-care services across the criminal justice system, with particular attention to juvenile offenders. It also recommends that the State party transfer immediately persons, especially children with acute mental health problems, to an appropriate**

**psychiatric facility and abstain from using police cells and prisons as “safe environment”. In this connection, high priority should be given to increasing the number of beds in psychiatric hospitals.”**

### **England and Wales**

117. Health and justice partners have committed to providing a standard of health care in prisons equivalent to that available in the community. The National Partnership Agreement on Prison Healthcare in England and its associated workplan set out a detailed programme of work to deliver safe, decent, effective healthcare for offenders. There is a similar agreement in place for the Children and Young People’s Secure Estate between health, justice and education partners, which enables a more fully integrated approach to the commissioning and delivery of services to ensure appropriate support is available when and where children and young people need it.

118. The Children and Young People Mental Health Transformation Programme included a specific work programme on Health and Justice.

- SECURE STAIRS deliver a whole system approach to a Framework for Integrated Care within the children and young people secure estate. It uses a formulation-based approach and draws from evidence-based interventions like Trauma Systems Therapy, Enabling Environments and Psychologically Informed Environments. There is already positive evidence for SECURE STAIRS emerging from settings where it is fully mobilised;
- Thirteen Community Forensic Children and Young People Mental Health services (known as FCAMHS) currently provide a specialist service for high-risk young people that would not otherwise be available. The services ensure there are clear links between youth justice and welfare provision (community and custodial), hospital secure or specialist settings for high-risk young people, and core provision whether within specific children and young people mental health services (CYPMHS) or other services.

119. The recently published White Paper on Reforming the Mental Health Act (13 January 2021) accepts in principle that prison should not be used as a place for people who require mental health care and treatment in an inpatient setting. However, before legislative change is introduced work must first be carried out with our health partners to address the factors which lead to prison being used in this way and ensure that there are alternative and timely pathways for sentencers to transfer people directly from court to a healthcare setting or a community sentence treatment requirement.

### **Scotland**

120. The new National Secure Adolescent Inpatient Unit in North Ayrshire is scheduled to open in early 2022 which will have beds for young people with mental illness who require secure care. A National Learning Disability Inpatient Unit is also being planned, which will admit young people with moderate to severe learning disability and mental illness.

121. The Mental Health (Care and Treatment) (Scotland) Act 2003 provides the police with the powers to intervene when they find someone in a public place who they believe may have a mental disorder and be in immediate need of care and treatment. Section 297 of the 2003 Act provides that the individual can be detained in a place of safety for up to 24 hours in order to be assessed by a medical practitioner, and for any necessary arrangements to be made for that person’s care and treatment.

122. Police stations should only be used as the Place of Safety in exceptional circumstances, where it is the best option for the individual. There should be locally agreed Psychiatric Emergency Plans in place with designated Places of Safety – for example a local psychiatric hospital or Accident and Emergency Department. The aim of a Psychiatric Emergency Plan is to agree on procedures to manage the detention and transfer process in a way that minimises distress, disturbance and risk for the patient and others, and which ensures as smooth and safe a transition as possible from the site of the emergency to the appropriate assessment/treatment setting.

123. The police are required to notify the Mental Welfare Commission for Scotland of any person held under this power. The Commission has a statutory responsibility to monitor the use of powers in the 2003 Act and it publishes the results of its monitoring in an annual report. The number of orders in which the identified place of safety was a police station was at its highest in 2011/12 at 106 (18%) with the most recent figures showing that this percentage has dropped to 3% (35) for 2018/19.

124. The Commission continues to monitor this activity and its relevance to the content of local psychiatric emergency plans.

### **Northern Ireland**

125. Strategic direction within this healthcare remit is set out in the joint publication from the Department of Justice (DoJ) and the Department of Health (DoH) “Improving Health within Criminal Justice Strategy” and the accompanying Action Plan which were published in June 2019. Healthcare services (physical and mental) and addiction services are provided through healthcare teams based in each prison establishment.

126. The Juvenile Justice Centre in Northern Ireland has a range of processes and protocols in place for all young people following admission to the custodial centre. All young people are subject to a health assessment within 24 hours of admission to the facility and to a GP review within 7 days; this incorporates a physical and a mental health screen to identify issues at the earliest opportunity. This identifies any support required immediately.

127. Going forward, the Department of Justice is working with the Department of Health to develop an integrated Regional Care and Justice Campus for children in Northern Ireland. The new joint facility will provide a therapeutic model for meeting the health and mental health care needs of juvenile offenders. Satellite community wrap-around provision, including accommodation, will be developed as part of this wider Campus, with the aim of keeping all but a small number of children out of secure accommodation.

**“74. The Subcommittee echoes the CPT recommendation that prisoners with severe mental-health conditions should not be placed in segregation units as an alternative to normal accommodation; “instead, such prisoner patients should be treated in a closed hospital environment, suitably equipped and with sufficient qualified staff to provide them with the necessary assistance.”**

### **England and Wales**

128. Prisoners who need to be transferred to a psychiatric unit for treatment should be moved out of prison as quickly as possible. Prison transfer and remissions guidance in relation to COVID-19 was published by HMPPS and NHS England and NHS Improvement (NHSE/I) in April 2020.

129. The NHS has worked with the Prison Service to collect new evidence to increase the understanding of secure hospital transfers under the Mental Health Act 1983. This evidence, published in December 2018, has increased understanding of where transfers work well and how delays arise.

NHSE/I is updating the transfer and remission guidance for prisons, and this is expected to be published later this year.

130. The Mental Health Act White Paper accepts in principle the introduction of a statutory time limit of 28 days from initial assessment to hospital admission for prisoners and detainees identified as requiring inpatient admission for treatment of mental health needs; and the introduction of an independent role to manage the transfer process, coordinating between the different agencies on behalf of the patient. This will be reflected in updated NHSE/I transfers and remissions guidance to be published later this year. The White Paper recognises the importance of embedding this guidance before making the time limit statutory.

131. Prisoners should only be held in the segregation unit under the proper authority. This is provided by the Prison (YOI) Rules:

- Under Prison Rule 45 (YOI Rule 49) – Good Order Or Discipline/Own Protection;

- Under Prison Rule 46 - Close Supervision Centre of a prison;
- Under Prison Rule 53(4) (YOI Rule 58(4)) – Prisoner awaiting an adjudication to start may be kept apart from other prisoners pending the governor’s first inquiry;
- Under Prison Rule 55(e) (YOI Rule 60(f)) – Cellular confinement for a prisoner found guilty of an offence against discipline. Cellular confinement is not permitted for Young People;
- Under Prison Rule 55(h) (YOI Rule 60(g)) – Removal from wing or living unit for a prisoner found guilty of an offence against discipline;
- The policy (PSO 1700) also covers the procedures to apply in relation to prisoners on dirty protest. A prisoner on dirty protest is moved to special accommodation in the segregation unit or other fit for purpose accommodation. Prisoners engaged in a dirty protest are normally held under Rule 45 (YOI Rule 49) Good Order or Discipline.

132. Prisoners with severe mental-health conditions should not be placed in segregation units as an alternative to normal accommodation, as per the Prison Rules above.

### Scotland

133. Under section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003, there are arrangements that allow a prisoner suffering from a mental disorder for which treatment is available to be taken to hospital for care and treatment to keep the prisoner and others safe. Depending on the care and treatment and the level of security required, there may be a wait until a secure bed becomes available. Once a transfer for treatment direction has been made the prisoner must be transferred to an appropriate hospital within 7 days. Clinical assessment and care within the custodial setting is carried out by NHS with health centres in all prison establishments.

134. The Scottish Prison Service is developing a new health and wellbeing strategy for those in their care with key stakeholders to ensure the strategy and policy within prisons provides parity with the community. The Strategy will include sections on addictions, physical health and mental health. The mental health section will have a bespoke component for children and young people.

**“75. The Subcommittee also recommends that all prison staff be trained to recognise the possible symptoms of mental health problems and apply prompt and appropriate referral procedures to medical personnel.”**

### England and Wales

135. All prison officers have access to a range of training and guidance to support them in better understanding and supporting the mental health and wellbeing of prisoners. New and existing staff currently receive Suicide and Self-Harm Prevention training, which includes an ‘Introduction to Mental Health’ module. We are currently working to improve our safety training within prisons and as part of this will be looking to develop an enhanced mental health module which builds on the introductory module. As well as specific mental health training courses, key principles on this topic are also reflected in a range of other resources available to all staff.

### Scotland

136. The Scottish Prison Service has a ‘Talk to Me’ strategy which aims to assume a shared responsibility for the care of those at risk of suicide; to work together to provide a person centred care pathway based on an individual’s needs, strengths and assets and promote a supportive environment where people in custody can ask for help. This strategy was refreshed in 2019 and has been re-issued to all staff to make clearer the circumstances in which a risk assessment and / or health care assessment should be carried out and these remain in place throughout the COVID-19 pandemic.

### **Northern Ireland**

137. All prison staff and new recruits in Northern Ireland have received mental health awareness training. Staff in specific roles have received Mental Health First Aid training. All staff and new recruits are trained in SafeTalk and Managers in ASIST.

138. Towards Zero Suicide training is delivered to all recruits and has been made available to all staff. A procedure is in place where a prisoners themselves, or a member of staff can talk to the house nurse if they feel they may need mental health support.

139. All primary care healthcare nurses have received mental health training. The Healthcare team will make a referral to their mental health team if they deem it necessary. All new committals to prisons in Northern Ireland are screened by the Trust's mental health team. Staff working in Safer Custody teams can make a referral directly to the mental health team. The SEHSCT's prison healthcare team and the NIPS work together to support training approaches across organisations. This mirrors the strategic emphasis placed on collaborative working by government departments and the newly established oversight arrangements across the and the DoJ.

140. The Regulation and Quality Improvement Authority (RQIA) have recently participated in inspections of prisons and custody suites, and are currently undertaking a review, commissioned by DOH, into the specific care and treatment of Vulnerable Prisoners. For the purpose of this review, Vulnerable Prisoners are defined as those who have mental health concerns at risk of self-harm or suicide across all of Northern Ireland's prisons. The report is due to be published in the Summer.

## **IV. Situation of persons deprived of their liberty**

### **A. Police Detention**

**“80. The Subcommittee recommends that appropriate steps be taken to remedy the inadequacies in police stations and cells, including by improving natural light. The Subcommittee also recommends ensuring the enjoyment of rights to shower, phone calls and exercise, on a regular basis.”**

### **England and Wales**

141. Code C of PACE requires custody officers to inform detainees of their rights and entitlements whilst in custody, including to free independent legal advice, and in a written notice, entitlements concerning reasonable standards of physical comfort, adequate food and drink, access to toilets and washing facilities, clothing, medical attention, and exercise when practicable. Brief outdoor exercise should be offered daily if practicable.

142. Section 35 of PACE allows chief officers to designate stations within their force area for the detention and questioning of suspects, and they may remove this designation from stations that do not comply with the appropriate standards laid out in the Codes.

143. The College of Policing Authorised Professional Practice (APP) further recommends that exercise should be provided individually and be adequately supervised and notes that consideration should be given to the appropriate arrangements necessary to meet the needs of men, women and children, for example, by providing adequate clothing. Detainees should be able to access and use a toilet in privacy. Hygiene packs should be routinely offered to women on arrival and staff should take into consideration the additional needs of detainees who are menstruating or have an additional medical need on an individual basis. In July 2019 PACE Code C was amended to ensure that all women in custody are offered free menstrual products. Detainees who require a shower should, where appropriate, be offered the opportunity to do so. The APP further notes that cells should provide access to natural light.

144. The Police Custody Design Guide, developed in 2019, builds on the foundations of previous draft guides created by the Home Office. It includes extensive reference to the importance of exercise and natural light.

145. Application of Code C, the College APP and the Police Custody Design Guide are operational matters for individual forces.

146. The report referenced areas of concern in some specific forces. Following inquiry, Merseyside noted that the station inspected has not been used for many years as it is no longer designated as PACE-compliant, and hence does not reflect the standard of custody accommodation used in the inspected area where all cells have access to natural light. GMP made a similar observation as requirements for natural light have been in place in their force since 2000. All cells in their area have light tubes in the ceilings which provide access to natural light. City of London Police acknowledged issues which relate to design of the existing estate, noting that although the majority of cells have access to some natural light it is restricted, and cannot be amended due to the building's configuration. However, the force is constructing an exercise yard which will allow access to natural light and is due to be completed within the next few weeks. There are further plans for new custody facilities which will be designed in compliance with the Police Custody Design Guide, including the provision of natural light, although it will be some time before this can be built.

### Scotland

147. A number of cells within Police Scotland Custody Estate have access to natural light via glass blocks sited within the walls if they are exterior to the building. However, due to the design of some buildings, cells have interior corridors and therefore do not have this facility.

148. Due to the reduced time persons remain in police custody and the fact they attend court the next lawful day, therefore do not remain in police custody for excessive lengths of time, their access to exercise etc. is different in comparison to that provided when within Scottish Prison Service Establishments. Referencing the recommendation around improving inadequacies in police stations, two major projects have seen recent advancements within separate Custody Suites. Govan has seen distraction devices implemented, with chalkboard paint on the wall for custodies to doodle with chalk. Detainees are supplied with mindfulness colouring sheets and crayons, jigsaws or foam footballs/tennis balls. In addition to this, there has been an increase in the number of showers being offered, with toiletries being provided by a charity.

149. London Road Police Station is under construction with expected operating date in late March 2021. This will see the introduction of 6 designated children cells, not among the adult section and the introduction of two shower rooms which will improve the facilities for persons held in custody. A discreet charge bar has been built which will afford children and certain persons' privacy when being processed in/out of custody.

150. There are other additional schemes ongoing to demonstrate partnership commitment to assist persons in police custody:

- Link workers in Inverness (currently working remotely);
- Substance Abuse and Mental Health (SAMH) in Kittybrewster (currently working remotely);
- Crisis Intervention Workers starting in Fraserburgh Custody Centre in March/April 2021;
- Arrest referral Service being explored for Dundee Custody centre;
- Trial of NHS Near Me video conferencing facilities to enable remote video medical consultations to take place – trial due to start in 7 custody centres across the force in March 2021;
- Custody Peer Mentors introduced in Glasgow.

151. The current policy regarding washing, advises that:-

“where an arrested person is to be detained in custody for more than a full day, they should be offered facilities to wash and / or shave at least once per day. Any reasonable requests to wash and / or shave more often than this are to be met, where possible. Facilities are also to be made available to a person to wash and shave if they wish, prior to appearing in court.” In

addition, “Persons who require showering should, where appropriate, be offered the opportunity to do so. If necessary, female persons should be transferred between custody centres to ensure adequate washing/showering facilities are available”.

152. In relation to telephone calls, a Letter of Rights for people in police custody is issued to an arrested person which includes the explanation that a right exists to have someone told that the person is at a police station. Additionally, a video is being developed to assist with explaining a person’s rights, which is in addition to the letter of rights they receive.

## B. Penitentiary Institutions

**“90. The Subcommittee recommends that the State party ensure segregation of prisoners is a last resort and for as short as time as possible, and never longer than 15 consecutive days, and that segregated prisoners are provided with a purposeful activity and meaningful human contact each day in line with the Standard Minimum Rules for the Treatment of Prisoners (Mandela rules).”**

### England and Wales

153. Segregation should be used only as a last resort whilst maintaining a balance to ensure it remains an option for disruptive prisoners. There are occasions where, for their own safety or that of others and in line with PSO 1700, prisoners are segregated from the main population of the prison. Removal from association under these circumstances is always for the shortest time necessary and the prisoner must be returned to normal location as soon as practicable or safe. Prisoners in segregation have the opportunity for daily interaction with prison and healthcare staff, chaplaincy and can speak and, if safe to do so associate with other segregated prisoners.

Prisoners can be segregated under a range of authorities, which are set out in Prison Rules. These are:

- Under Prison Rule 45 (YOI Rule 49) – Good Order or Discipline;
- Under Prison Rule 45 (YOI Rule 49) – In his own interests;
- Under Prison Rule 53(4) (YOI Rule 58(4)) – Prisoner awaiting an adjudication to start may be kept apart from other prisoners pending the governor’s first inquiry;
- Under Prison Rule 55(1)(e) (YOI Rule 60(f)) – Cellular confinement for a prisoner found guilty of an offence against discipline;
- Under Prison Rule 55(1)(h) (YOI Rule 60(g)) – Removal from wing/unit for a prisoner found guilty of an offence against discipline:

154. A governor may authorise segregation beyond 72 hours under the Prison and YOI Rules. A Governor must obtain leave from the Secretary of State (usually the Prison Group Director (PGD) acting on behalf of the Secretary of State) to continue segregation beyond 42 days. If segregation is to continue beyond 84 days, then a further PGD Subsequent Review will take place. Segregation over 6 months must be authorised by the Director. A Segregation Review Board (SRB) must be held within the first 72 hours of a prisoner being placed in segregation, then a further SRB must be held within 14 days and every 14 days thereafter. These reviews consider carefully all of the available evidence for and against continued segregation in an impartial manner and the option of either extending segregation or removing the prisoner from segregation.

155. The regime for segregated prisoners (under Prison Rule 45 (YOI 49)) should be as full as possible and only those activities that involve associating with mainstream prisoners should be curtailed. In-cell education or work that could be done in cell (e.g. packing) should be encouraged. Access to activities such as domestic visits, legal visits, use of the telephone, canteen, exercise and showers should be comparable to those for a prisoner held on normal location. Certain regime elements, for example, TV, radio/CD player, association within the segregation unit, PE / gym access could be used as incentives / rewards for prisoners that comply with the targets set by the Segregation Review Boards.



## Scotland

156. Removal from association is only used sparingly by Scottish Prison Service and for the minimum time necessary. When determining whether it is appropriate to remove an individual from association consideration is always be given as to whether it is necessary, proportionate and balanced.

157. Rule 95 of the Prisons and Young Offenders Institutions (Scotland) Rules 2011 enables a governor to remove a person in their care from association with other persons where they are satisfied that it is appropriate to do so to protect their safety, or that of any other person, or where there is a risk to the good order or discipline of the prison or Young Offender Institution (YOI). The rule also provides important safeguards for persons removed from association, which ensure that the reason for removal is clearly communicated to the person, they are afforded the opportunity to make representations against their removal, and they are monitored and reviewed regularly. Whilst removed from association there will normally be no unnecessary restrictions on their entitlements to time in fresh air, visits, including legal visits, access to telephones and correspondence. Additional activities can be prescribed based on assessment via the review and monitoring process. The focus throughout will be to reintegrate the person at the earliest and safest opportunity into the mainstream population, thus minimising any time spent separate from others.

## Northern Ireland

158. A review of the operation of Care and Supervision Units (CSUs) in the Northern Ireland Prison Service (NIPS) is being undertaken by Criminal Justice Inspection Northern Ireland (CJI) in partnership with the Regulation and Quality Improvement Authority (RQIA) and the Education and Training Inspectorate (ETI). The NI Prison Service will respond to any recommendations relating to segregation resultant from this review.

### **92. The Subcommittee recommends that the State party:**

**“a) Strengthen the oversight of the use of force in all detention settings to ensure that force is only used in accordance with law and is strictly necessary and proportionate;”**

## England and Wales

159. A digital Use of Force reporting tool is being rolled out nationally, making it easier for staff to record the reason for their use of force, and allow better local governance. The benefits of the new tool will be felt at the data entry point, for local monitoring and response, and for national assurance and understanding of use of force across the estate.

160. We have introduced a good governance toolkit, to support prisons with their local oversight. This includes increasing the frequency of committee meetings, so that incidents are discussed in a timelier manner, and feedback and learning provided more promptly to staff. It will also enable prisons to tackle poor and unlawful practice. To support this, we have a Practice and Assurance Lead, who provides bespoke, onsite support to prisons.

161. A national Use of Force committee will monitor use of force data trends nationally when the digital tool is implemented, and we have confidence in the data it brings. It will be a forum for discussion, with outside scrutiny members invited, on how we can reduce use of force more generally, and disproportionality specifically, through intervention or improving the national training syllabus where necessary.

## Scotland

162. The Scottish Prison Service recognises that each individual has their own unique needs, and it seeks to promote equality by dealing sensitively and appropriately with all those in its care. Where force is used, a ‘Use of Force Report’ requires to be completed and submitted and there is a formal process in place to review the actions taken by staff.

163. The Scottish Prison Service has engaged in a wide-ranging review of Control & Restraint. The review included seeking advice from an external expert in the Use of Force within criminal justice and health settings.

164. A comprehensive new control and restraint manual, refreshed use of force policy, and bespoke training packages are out for consultation by the prison service.

165. The SPS have produced a revised Use of Force Policy which continues to promote de-escalation methods at the earliest opportunity with greater emphasis on roles and responsibilities, risks of intervention and medical conditions exacerbated or impacted by force.

166. An accredited Control and Restraint and Control course is undertaken by all new Operations Officers with a mandatory annual refresher course. to ensure that actions taken are lawful, necessary, reasonable and proportionate to the situation presented.

167. A range of safety measures to reduce the risk to people being restrained have been implemented, including a focus on recognising and managing a medical emergency. Additional safety training and clarity over responsibilities for staff involved in the use of force has been included in the Control & Restraint guidance.

### **Northern Ireland**

168. NI Prison Service staff are trained and will attempt to deal with any incident without the recourse to force, using de-escalation techniques. Where the use of force is unavoidable, such intervention will be reasonable, necessary and proportionate to the threat.

169. The NI Prison Service (NIPS) interrogate Use of Force incidents and statistics on a regular basis; trends are identified, and analysis carried out. Records of all use of force incidents are completed and held electronically on the Prism system. All incidents of alleged excessive Use of Force are investigated.

**“b) Review behaviour management policies across prisons with the aim of identifying and reducing the underlying causes of violence and use of force;”**

### **England and Wales**

170. HMPPS safety and security Head Quarters (HQ) teams are working together to provide a joined-up approach to identify and reduce the causes of violence and reduce the need for use of force. The Five-Minute Intervention (FMI) aims to train officers in turning their everyday conversations with those in their care into opportunities for change. Prison officers spend a great deal of time with prisoners and can significantly contribute to the process of rehabilitation by providing a safe and secure environment which is more likely to facilitate a rehabilitative culture and enhance the likelihood of rehabilitative relationships. FMI training is delivered over two days and involves staff practising 10 interpersonal skills to enhance their conversations with prisoners to make dialogues more rehabilitative. This has the potential to reduce tension and the likelihood of violent incidents.

171. The new Incentives Policy Framework was introduced in January 2020 and focuses on reinforcing positive behaviour, drawing on the principles of effective behavioural support to help people make the right choices in prison. Evidence shows that this approach can be effective at achieving positive changes in the behaviour of those in our care. The new approach provides a common framework which governors can use to determine locally how best to support and encourage people in their care to follow the rules and engage in rehabilitative activities such as work, education and substance misuse interventions. Governors will still be able to remove privileges from those who behave poorly or refuse to engage.

172. Drawing on available research, the new policy focuses more on incentivising and positively reinforcing the right behaviour and introduces simple behaviour expectations for those in prison so that they understand what is expected of them, and what they can expect in return. The new policy also promotes fairness, equality and the effective implementation of local schemes by requiring every prison to have an Incentives Forum, with representation from prisoners with protected characteristics, to shape and review the local operation of incentives.

173. The Offender Management in Custody (OMiC) model is being implemented across the estate. Every residential officer will take on a key worker role to engage and support a

small caseload of prisoners to make progress away from violence and offending. We will be monitoring the impact on the levels of force being used as prisons implement the key working scheme. Staff will have been trained in FMI as a prerequisite to OMiC roll out.

174. The Challenge, Support and Intervention Plan (CSIP) launched in November 2018 provides a case management model to help staff to manage violent prisoners and those identified as posing a raised risk of violence. The framework encourages a consistent, multi-partner response to people using aggression and violence in custody. Increasing numbers of prisons are adopting this framework.

### Scotland

175. The Scottish Prison Service has a zero-tolerance approach towards violence and staff are trained to recognise and respond to the precursors of violence and manage any incidents when they do occur.

176. Through its national Strategic Risk and Threat Group, the prison service continues to seek to understand the changing nature of the prison population profile and the subsequent impact on violence, particularly in relation to serious organised crime.

177. Levels of violence within prisons is continually under review. Violence Reduction meetings take place regularly across Scottish Prisons to discuss all notable incidents, trends and identify preventative actions. CCTV cameras operate within all Scottish prisons to deter violent incidents and assist in any post-incident investigations.

178. In her most recent Annual Report (2019), HM Chief Inspector of Prisons for Scotland stated: *“I have been impressed by the Scottish Prison Service (SPS) efforts to manage the additional population safely, and it is reassuring to note that in all of our prison inspections, and visits in this reporting year, staff and prisoners regularly reported feeling safe.”*

### Northern Ireland

179. NIPS continue to focus on predictable, stable and effective regime delivery, and have incrementally reduced the use of cell sharing to a nominal level in all three NI prison establishments. As of February 2021, no prisoners were sharing a cell and it is the ambition of NIPS to find an affordable mechanism to maintain this position.

180. The prevalence of violent incidents Northern Ireland prisons (assaults on staff / people in our care) has reduced and remains at a low level. NIPS will continue to keep policies and practice under review as part of its continuous improvement programme (this includes work being progressed to develop a challenging anti-social behaviour policy).

**“c) Provide mental health care that meets the needs of all detainees and consider introducing a statutory time limit on transfers of detainees to mental health inpatient facilities.”**

### England and Wales

181. Adults, children and young people will receive health screening on entering prison and a follow-up appointment within seven days, or sooner as required. This will be supported by the full roll-out of the health and justice digital patient record information system across all adult prisons, immigration removal centres and secure training centres for children and young people. This will include the digital transfer of patient records before custody, in custody and on release. Programmes such as Liaison and Diversion, and Community Sentencing Treatment Requirements have also been invested in with the aim of diverting people into treatment as an alternative to detention.

182. The recent White Paper on reforming the Mental Health Act sets out our ambition to introduce a 28-day time limit to speed up the transfer from prison or Immigration Removal Centres to mental health inpatient settings. We recognise that the practical consequences of making this time limit statutory need to be carefully monitored, and so we will not commence this legislative change until new NHSEI guidance on transfers and remissions is properly embedded in practice.

183. In addition, the White Paper set out a commitment establish a new designated role for a person independent of the health or criminal justice systems to manage the process of transferring people from prison to hospital when they require inpatient treatment for their mental health. This role will help ensure that institutional barriers are overcome, and the patient's needs are put first. We are seeking views in the consultation as to where this role will sit, and how it will operate.

### Scotland

184. Transfer times are being considered as part of the independent review into the delivery of forensic mental health services. The final report will be published by the end of February after which time, the Scottish Government will consider the recommendations and confirm those that will be taken forward.

**“94. The Subcommittee recommends that the State party ensure all detainees are held in clean and sanitary conditions and address promptly inadequate detention conditions at HMP Manchester.”**

185. HMP Manchester is committed to improving its living conditions for all residents. This work has been escalated and evidenced throughout the pandemic. We have significantly increased the number of trained cleaners, who are paid at an enhanced rate, to maintain and improve the cleanliness of residential areas. The HMIP Short Scrutiny Visit in May 2020 highlighted the good practice we have implemented so far:

**“Prisoners had regular access to cell cleaning materials. Cleaning across the prison was well organised; we saw communal areas being regularly disinfected throughout the day, including railings and door handles.”**

186. We have implemented a consistent cleaning programme throughout the establishment. Residents and Cleaning Officers work together and take responsibility in keeping their areas clean and decent. A Clean & Decent folder has been created on each Wing, to document any cleaning completed and record areas of concern, to ensure appropriate action is taken in sufficient time by Managers and stakeholders.

187. We have improved our working relationship with our facilities management service provider, Amey. This has helped us to action and evidence a timelier response to pest control issues. In particular, a ‘riddance programme’ to address any rodent issues has started. The programme involves weekly visits from Rentokil, with the ability to also have targeted additional visits if there is a specific area of concern. Staff are regularly encouraged to promote cleanliness and maintain rubbish free areas to avoid vermin, this is driven through the Residential Governors at briefings with staff.

188. The improved relationship and engagement with Amey has also seen higher levels of repairs for all areas including windows and broken furniture. This has been tracked through the Bed Manager role where out of action cells and spaces in the establishment are monitored daily.

189. It has been identified that capital investment is needed to replace some of the larger scale issues reported. Shower facility replacement work has been ongoing for some time now. Some areas that required upgrade on B, C, D and G wings are now complete. K wing is currently being upgraded and is near completion. I Wing, A Wing, the Segregation Unit and HCC are all due to start by the 22nd February 2021. This work will help with the issues of damp that were reported in a small number of the cells.

190. A bid for replacement safer custody windows has been submitted. This will assist in ensuring a decent standard of living is attained, however, we have a robust process in place until this is approved and achieved. Finally, work on kitchenettes has also begun which further supports our rehabilitative approach towards improving living standards.

### Scotland

191. HM Inspectorate of Prisons for Scotland (HMIPS) assess the treatment and care of prisoners across the Scottish Prison Service (SPS) estate against a pre-defined set of Standards. These Standards are set out in the document ‘Standards for Inspecting and

Monitoring Prisons in Scotland', published in May 2018 which can be found at <https://www.prisonsinspectoratescotland.gov.uk/standards>.

192. Standard 2 assesses the Decency of the environment that prisoners are living and working in. In her most recent Annual Report (2019), HM Chief Inspector of Prisons for Scotland records that of the 4 full prison inspections undertaken during the year Decency was rated as being Good at 2 establishments, Generally Acceptable at 1 establishment and poor at another. The establishment given a poor rating – HMP Barlinnie- is an older style Victorian prison which has been earmarked for replacement. Scottish Ministers have also allocated £3 million to refurbish a number of areas of the prison while work takes place on developing the site for and constructing a new prison.

## C. Institutions for Juvenile Offenders

**“97. The Subcommittee calls upon the authorities to implement fully the recommendations of the last visit report of HMIP on HMYOI of Cookham Wood.”**

193. Following the last visit of HMIP the actions allocated to Cookham Wood YOI have been progressed by the Youth Custody Service and by the establishment (who have updated their response to HMIP and their action plan) with the Governor providing monthly assurance reports to the YCS Prison Group Director (PGD). Following the HMIP/ SPT visit – Cookham Wood YOI appointed staff leads under each of the four Healthy Test areas that HMIP assess. Evaluation meetings are held weekly by each lead to determine progress and challenges. Actions in each area are quality assured and “signed off” by the Governor once completed with a record of all actions stored and maintained. Regarding broader assurance, we have introduced the Monthly Performance Assurance Report process where each functional head provides a report on their areas of performance. This includes an element of “competitive analysis” where reported performance is challenged to ensure its accuracy and feeds into the overall establishment report.

194. It should be noted that this has been taken forward alongside the need to follow physical distancing approaches, in line with national guidance, as a result of the COVID-19 pandemic. This has inevitably impacted regime delivery within all sites and has been the primary focus of all secure settings during this time. The priority has been to ensure children have had access to essential activities and enough ‘time out of room’ (as well as engaging activities within rooms), balanced with the need to keep children and staff safe. Whilst time out of room dropped at the start of the pandemic period, given the necessary measures taken to protect all working or living at the site, internal management information suggests that average ‘time out of room’ increased month on month from April to November 2020. Especially following the publication of youth-specific Exceptional Delivery Models in July 2020 which resulted in key aspects of regime such as ‘face to face’ education recommencing at Cookham Wood YOI and although this dropped slightly in December, increased once more in January 2021. Cookham Wood YOI continues to look to increase opportunities for children during this time, in a safe and sustainable manner, wherever local circumstances allow this to occur.

195. Regarding the increased usage of force, we note that levels of Use of Force (UoF) have remained relatively stable over the past twelve months with the overwhelming majority of UoF being used to prevent harm to others. We have taken steps to improve our complaints process and all complaints are quality assured to ensure that our responses address the issues raised and actions are put in place to ensure that similar issues are not repeated. The quality assurance process involves a check to ensure that the respondent to the complaint has spoken to the child as part of their investigation into the matter/s raised.

196. Whilst delivery will continue to be impacted by the pandemic, the Governor and the Cookham Wood team are focused on addressing the recommendations fully through ongoing recovery planning.

## D. Immigration detention

**“101. The Subcommittee recommends that the State party:**

**a) Ensure immigration detainees are detained only as a last resort and for the shortest possible time and consider replacing the current practice of removals and implement a time limit on immigration detention;”**

197. The UK is committed to a fair and humane immigration policy that welcomes those here legally, but tackles abuse and protects the public. Immigration detention plays a limited but essential role in maintaining effective immigration controls and securing the UK’s borders, by supporting the removal of people who have no right to remain in the UK but who refuse to leave voluntarily and, in some cases, present significant public risk.

198. The UK Borders Act 2007 requires the Home Secretary to remove foreign national offenders from the UK, and we remain committed to doing so. We maintain the detention of such individuals where it is necessary to secure their removal, it is lawful to do so and where appropriate. We will also maintain the detention for enforcing the swift removal of other individuals, who have no right to remain in the UK, but who refuse to leave voluntarily. However, we do not detain people under immigration powers indefinitely. We are always mindful of our legal obligations in respect of immigration detention, in particular in assessing that for each individual there is a realistic prospect of removal in a reasonable timescale.

199. We also recognise that it is vital that detention and removal are carried out with dignity and respect and we take the welfare of individuals in our care very seriously. Our priority is to ensure immigration detention is used only where necessary, and for the shortest possible time, ensuring decisions to detain, and subsequent decisions to maintain or release, are well made, with systematic safeguards and support for the vulnerable.

200. Improvements to immigration detention have been made in recent years, with a systematic and ambitious programme of reforms introduced following Stephen Shaw’s 2015 and 2018 reviews of welfare in detention. The overarching aim of our package of reforms is, over time, to deliver a reduction both in the numbers of those detained and their length of stay before removal, and the improved welfare of detained persons, further strengthening a culture that maintains the highest standards of professionalism. The programme of work underway includes; increasing the number of Home Office staff in immigration removal centres, so that they can work with detained individuals more closely; minimising the use of immigration detention and exploring alternatives to detention; strengthening decision-making and safeguards for the vulnerable; improving transparency; and ensuring that everyone is treated with dignity in an estate fit for purpose.

**“b) Ensure all immigration detainees (including those in short-term holding facilities) have access to good quality, free, legal advice. Ensure all detainees have effective access to fair and accessible procedures to challenge the decision to detain and/or deport;”**

201. People who are detained must be advised of their right to legal representation and of how they can obtain such representation within 24 hours of their arrival at an Immigration Removal Centre (IRC). To ensure this occurs, all detained people are provided with a list of the Legal Aid Agency Detained Duty Advice (DDA) scheme duty solicitors as part of their induction to the IRC and are made aware that they are eligible for a free 30-minute consultation regardless of financial eligibility or the merits of their case.

202. Following the outbreak of the COVID-19 pandemic, a number of changes have been introduced to ensure the welfare and safety of people who are detained and the staff in IRCs and to minimise the risk of COVID-19 spreading in the immigration detention estate. Guidance on the principles of managing COVID-19 in places of detention and during escort came into force on 5 May 2020. This includes information on vulnerability, shielding, cohorting and other preventative measures such as the cessation of social visits and adjustment of approach to legal visits. The most recent version can be found on [Gov.uk](https://www.gov.uk).

203. Adapting to the change of operations in line with Government advice on social distancing, the Legal Aid Agency (LAA) DDA scheme is currently operating by phone. People in detention who wish to access this service are asked to advise centre staff, who will

notify the duty solicitor under the scheme. The duty solicitor will contact individuals who wish to access this service directly. Service providers' welfare teams and on-site Home Office staff have a working knowledge of the LAA's services, with welfare teams signposting the legal support available to those in detention. At all IRCs, individuals who are detained and who already have legal representation may receive visits from their advisors by appointment. These visits take place in private, in designated interview rooms within sight (but not earshot) of detainee custody officers. Individuals detained in IRCs are also able to contact their representatives by telephone, fax, personal email and through Skype video calls and additional mobile phone credit is also being provided. In exceptional circumstances, and for individuals facing imminent removal from the UK, face to face legal visits can occur where other means of contact (video calling, telephone, email) are not feasible.

204. All individuals arriving at an IRC ahead of their removal receive an induction from the IRC service provider (within 24 hours) and then with a Home Office representative (within 48 hours of arrival) in which they are signposted to means of accessing legal advice, additional support and assistance. All individuals detained in an IRC are able to engage with the on-site Home Office team for information or updates on their immigration case throughout their stay, seven days a week.

205. All detained individuals are entitled to the categories of immigration legal services specified in Schedule 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) and legal aid is available for detained individuals in prison on the basis of the same eligibility criteria for those detained in IRCs.

206. Individual prison establishments are required to have in place processes to ensure prisoners (including those detained under immigration powers) are provided with information and access to independent advice from their first night in custody (PSI 07/2015) and throughout their time as a prisoner (PSI 75/2011), including specific obligations on prisons to ensure that prisoners are able to access independent immigration advice when it is required (PSI 52/2011).

207. Publicly funded immigration advice and representation has been provided to prisons by 44 separate providers over the last three years. More generally, there are 186 firms (as of October 2020) certified to provide publicly funded immigration and asylum advice, spread across 278 offices in England and Wales (October 2020). All of these providers are authorised to provide immigration and asylum advice in prisons.

208. Additionally, the Courts can, and do, hold us to account on detention decisions and Judicial oversight remains an important part of the detention system, with individuals able to apply to the Tribunal for immigration bail at any time during their detention. Furthermore, there is provision for an automatic bail referral at the four-month point for those who are not foreign national offenders.

**“c) Ensure effective oversight, monitoring and complaints policies and procedures in the immigration detention estate to ensure that any ill-treatment is immediately identified and ensure the effectiveness of investigations into allegations of ill-treatment.”**

209. The UK operates a comprehensive complaints system for detained individuals who feel that they have not been treated in accordance with our standards. We take detained individuals' complaints very seriously and ensure that they are investigated thoroughly and in a timely manner. Complaints from detained individuals are investigated in accordance with published guidance; Detention Services Order 03/2015 Handling Complaints. Detained individuals who submit complaints are not disadvantaged in any way in relation to their treatment while in detention, or in relation to the outcome of their immigration case.

210. Complaints made under formal procedures are categorised as either; service delivery complaints, minor misconduct complaints or serious misconduct complaints. Complaints made by those in detention or under escort are handled by our contracted service providers. However, the process and handling is monitored and quality assured by a dedicated Home Office Detention and Escorting Services complaints team. Serious misconduct complaints are sent for investigation by the Home Office Professional Standards Unit. Detained persons who are not satisfied with the way in which their complaint has been handled may ask for it to be reviewed by the independent Prisons and Probation Ombudsman.

211. The needs of those held in detention are safeguarded by a robust statutory and policy framework for operating the detention estate. This includes: The Detention Centre Rules 2001; the Short-term Holding Facility Rules 2018; published operating standards for IRCs, escorting and pre-departure accommodation; and published detention services orders providing detailed operational guidance to detention and escorting service providers. In addition, the Home Office operates established whistleblowing procedures. In July 2020, a Whistleblowing Detention Services Order was published, providing guidance to all staff working in the detention and escorting estate on the reporting of wrongdoing. All issues raised through whistleblowing are investigated and where appropriate, lessons learned recommendations are actioned and reported to the Cabinet Office.

212. All immigration detention facilities are subject to statutory independent scrutiny by HM Inspectorate of Prisons, which carries out a rolling programme of unannounced inspections against its published 'Expectations' framework and publishes the reports of its inspections. At a local level, Independent Monitoring Boards oversee the administration of IRCs, the state of their premises and the treatment of detainees. Board members, who are appointed from local communities, have unrestricted access to the facilities to which they are appointed and to the people detained there. They may raise any matter of concern with Home Office Ministers and publish an annual report of their findings.

**“d) Introduce independent processes, both when a decision to detain is made and during detention, for the identification of people who may face a particular risk of harm in detention.”**

213. There are well established safeguards in the immigration system to ensure that the decision to detain, and any ongoing detention considerations, are sufficiently scrutinised and give due regard to removability and vulnerability of each individual.

214. The Adults at Risk policy was placed on a statutory footing in the Immigration Act 2016. The policy increases the protections afforded to vulnerable people by strengthening the presumption against the detention of adults identified as at risk. Adults identified as at risk will be detained only when the evidence of the individual's vulnerability is outweighed by the immigration control factors in their particular case. The implementation of this policy has recently been thoroughly reviewed by the Independent Chief Inspector of Borders and Immigration.

215. The Detention Gatekeeper is a cross-departmental and independent function at the front end of the detention process, ensuring only suitable individuals enter the detention estate. Decisions to detain are made independently from referring teams or case owners and there is a clear focus on removability and vulnerability. Once a person is in detention, regular reviews are undertaken to ensure that their detention remains lawful, appropriate and proportionate. The Home Office has improved the approach to the review of detention with an updated 'Detention and Case Progression Review' form which brings further clarity to how a progression towards return is occurring.

216. Home Office Case Progression Panels provide additional assurance and challenge on the progress of cases of individuals in detention, reinforcing the consideration of removability, vulnerability and risk factors in decisions to maintain detention. Cases are reviewed when detention reaches three months and every three months thereafter, although detained cases can be referred to the panel at any time. Following the success of a recent pilot to introduce further independence into Case Progression Panels (CPP), the presence of permanent independent panel members is being formalised within the CPP process.

217. Home Office Detention Engagement Teams (DET) have also been introduced, in doing so, we have increased the number of Home Office staff within IRCs. DET operate, using face-to-face interaction to build relationships with those in detention, help to focus them towards return and provide an important on-site link between those in detention and their case working teams. Being based at the centres, engaging with those in detention and on-site healthcare providers and suppliers, DETs are better placed to ensure that vulnerability issues are identified and managed at the earliest opportunity.

218. All Immigration Removal Centres (IRCs) have dedicated health facilities run by doctors and nurses which are managed by the NHS or appropriate providers. Detained



individuals arriving at IRCs are medically assessed by a nurse within two hours of their arrival and offered an appointment with a doctor within 24 hours. Individuals also have access to medical assistance whilst they are in an IRC. The Detention Service Order 08/2016 'Management of adults at risk in immigration detention' was published to ensure all staff, including healthcare staff, are aware of the additional responsibilities towards individuals identified as adults at risk and includes a range of mitigation and safeguarding actions, such as personalised and supported living care plans.

219. Rule 35 of the Detention Centre (DC) Rules 2001 requires doctors working in IRCs to report to the Home Office where they have concerns that an individual (i) is likely to be injuriously affected by continued detention or any conditions of detention or (ii) suspects of having suicidal intentions or (iii) may have been a victim of torture. All reports raised under DC Rule 35, or Short-Term Holding Facility Rule 32, are now considered by a single team within the Home Office which is independent from detained casework commands. The team does not manage any individual in detention, and it makes an independent decision based on the individual circumstances of the case in line with the Adults at Risk in Immigration Detention Policy. Following due consideration, a decision will be made and relayed to the individual, their appointed representative, the relevant IRC or STHF and the casework team as to whether or not continuing detention remains appropriate.

220. We have also restricted the circumstances in which pregnant women may be detained and placed a time limit on their detention – 72 hours, extendable to up to a week with Ministerial authority. Between January 2020 and September 2020, there were a total of 7 pregnant women that had been detained in the immigration removal estate.

221. We ended the routine detention of families with children in 2010, introducing the family returns process to deal with families with no right to be here, including a greater focus on voluntary return. Where it is necessary to enforce a family's departure and to do so via detention, this will be in specially designed accommodation and only for a normal maximum of 72 hours (extendable to up to a week with Ministerial authority). Key aspects of family returns process, including detention time limit, are enshrined in Immigration Act 2014.

## **E. Court Custody**

**“104. The Subcommittee calls on the State Party to implement the recommendations of the reports of the NPM member (Lay Observers) and to ensure that:**

**a) the accurate and complete records, in particular of PERs, are maintained;”**

### **England and Wales**

222. The new Prisoner Escort Custody Service (PECS) contract which commenced in August 2020 is introducing a digital solution to the PER (the DPER) which will ensure that transport for Detained Persons cannot be booked if there is insufficient information on the DPER. The DPER will automatically populate some information from existing databases and the system also includes mandatory fields which must be filled to allow completion. It is anticipated that the introduction of the new DPER will significantly improve completion rates for elements of the PER that are not completed consistently. PECS are continually working with all CJS partners to monitor and assure this process.

### **Northern Ireland**

223. Prisoner Escorting and Court Custody Service (PECCS) are responsible for those held in the 17 court custody suites in Northern Ireland. PERs are completed on all persons placed in our care. These records are subsequently utilised to provide the necessary information to our reception staff within prisons and our partners should individuals be remanded or sentenced into our establishments. This information along with police custody information (PACE 15 & 16) assist PECCS staff to complete an individualised risk assessment on those held in court custody suites.

**“b) an individualized risk assessment is made for each person in court custody;”**

224. The new PECS contract specification introduced the requirement for suppliers to conduct a holistic risk assessment of each Detained Person at the point of arrival in custody at Courts which should be updated periodically as and when any further significant information becomes available. The individual risk assessment process considers suitability for cell sharing, risk of self-harm or suicide as well as use of restraints and searching that are proportionate and justified to the individual's assessment.

**“c) staff receive training to meet the individual needs of detainees, particularly children.”**

#### **England and Wales**

225. The PECS contract specification requires contractors to deliver specific training around the care and welfare of all custodies, with suppliers delivering modules in addition to the requirements to further enhance understanding. In relation to children and young people, both suppliers have a specifically trained cohort of staff who receive enhanced child/youth specific training with elements that are endorsed by external bodies to aid the delivery of the required care for this complex, vulnerable cohort whilst also assisting in the de-escalation of issues that could have otherwise presented themselves.

#### **Northern Ireland**

226. In Northern Ireland, PECCS staff are aware of their responsibilities in the transport/supervision and care of children being escorted and placed in the court setting. Staff have also received training in Adverse Childhood Experiences (ACE) to assist them in meeting the needs of children placed in our care.

227. Staff within PECCS have, in conjunction with our partners in the Juvenile Justice Centre (JJC), received training in Minimising and Managing Physical Restraint (MMPR). There is a Memorandum of Understanding (MOU) in place to ensure compliance.

## **V. Additional information**

### **Recent developments relating to the treatment of persons deprived of their liberty**

#### **England and Wales: Reforming the Mental Health Act**

228. The Government published its White Paper, Reforming the Mental Health Act on 13 January. At the same time, we launched a formal 14-week consultation, which will run until April 2021.

229. The White Paper contains a full response to the Independent Review of the Mental Health Act carried out in 2018 and considers each of the Review's recommendations in turn. The Government welcomed the Independent Review's final report and accepts the vast majority of these recommendations.

230. We will publish a response to this consultation this year and bring forward a new Mental Health Bill when parliamentary time allows.

231. The White Paper includes proposals to limit the scope to detain people with a learning disability or autistic people under the Act, so that neither autism nor a learning disability are grounds for detention in and of themselves.

232. We do not however propose to change the detention criteria for patients in contact with the criminal justice system. We want to ensure these patients can continue to be diverted away from prison, which is not able, or indeed intended, to cater for their needs.

233. When individuals with a learning disability, autism or both, are detained, Care and Treatment Reviews (CTRs) will be given statutory force.

234. The Mental Health Units (Use of Force) Act, also known as Seni's Law received Royal Assent in November 2018. The purpose of the Act is to increase the oversight, management and accountability of the use of force (restraint) in mental health units so that

force is reduced to a minimum and only ever used as a last resort. Through the collection of accurate data it will allow issues around the disproportionality in the use of force to be identified and allow targeted action to tackle them.

235. The Act requires units to produce policies and information for patients, keep a record of how and when force (physical, mechanical, chemical and isolation) is used, and improved staff training in prevention, de-escalation and the safe use of force. It is essential that if things go wrong when force is used, it is properly investigated and learned from which is why the Act also sets out requirements for undertaking timely investigations, and the police use of body worn cameras if they are called to assist mental health staff in the use of force.

236. We are developing the timeline for publishing the statutory guidance and commencing the Act. We expect to consult on the statutory guidance in late Spring 2021.

#### **Northern Ireland: Bail and remand legislation for children**

237. Information available to the Department indicates that the number of children admitted to custody on remand is significantly higher than the number who subsequently receive a custodial sentence. Work is therefore underway to introduce a number of proposed changes to bail and remand legislation for children. These are planned for inclusion in the Justice (Miscellaneous Provisions) Bill, due to be introduced to the Northern Ireland Assembly in April 2021.

238. Proposals developed include legislative changes to introduce, amongst other things:

- A new test for bail for children to take account of their age, maturity, needs and best interests;
  - Unconditional bail as standard, with justifications needed for any conditions, which must be proportionate and relevant to the offences;
  - A ‘real prospect’ test which prohibits remand of children unless there is a genuine prospect of them receiving a custodial disposal for the offence; and
  - Prohibition on remanding children to a Juvenile Justice Centre solely on the grounds of lack of alternative accommodation.
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