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Ms Audrey Nicoll MSP
Convener
Criminal Justice Committee
The Scottish Parliament
Edinburgh
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13 September 2023

Dear Audrey

I am writing to highlight an emerging issue where the response is likely to require cross-Government, cross-public sector and cross-party collaboration and engagement to ensure the best outcomes for our communities. Since the start of 2023, the prison population across the United Kingdom has been rising steadily placing the prison systems in all administrations under acute pressure. Our modelling for the population in Scotland suggests it may reach unprecedented levels by the end of the year.

To be clear, the Scottish Government is not changing its position on the use of prisons. They are necessary and the removal of someone's liberty must always be available for our independent courts. Equally, we know that short periods of imprisonment, including for remand, can also have a hugely negative impact on individuals – disrupting families, their health, employment opportunities and housing which can then lead to reoffending. To ensure greater success in reducing reoffending and therefore less crime, fewer victims and safer communities, we will continue to invest in our prisons and support people in prison and on release. We are also continuing with our court recovery programme and have already reduced the court backlog by over a third.

Recent population trends

Prior to the COVID pandemic, Scotland, along with England and Wales, had amongst the highest prison populations per capita of any country in Western Europe.

From autumn 2020 to late 2022, the prison population was broadly stable between 7,300 and 7,600. This included a high remand population (between 1,800 and 2,200), while the sentenced population remained at a lower level than the immediate pre-pandemic period (up to 1,000 lower than the average daily population in 2019-20).

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Since the start of the current year, the prison population has risen by around 600 to 7,931 on 11 September 2023. This rise was not predicted as it was anticipated that the remand population would likely reduce at broadly the same rate as the sentenced population increased, as the court backlog reduced. Instead, the data shows that remand arrivals and departures have both tended to increase over the past eight months, with arrivals exceeding departures.

Drivers of the prison population

The prison population is influenced by multiple factors. Analysis conducted by Justice Analytical Services (JAS) in 2019 showed that, over the long term, the composition of the prison population is influenced by trends in recorded crime, whilst the size of the population is largely determined by criminal justice policies, legislation, practice and procedures.

Over the decade to 2019-20, the sentenced prison population became increasingly comprised of individuals convicted of violent and sexual offences, and those serving longer sentences. Those with an index offence of serious violence were the single largest group in the sentenced average daily population in 2019-20, accounting for just over a third of the total. There has been long term growth in the average daily population serving indeterminate sentences (life sentences and Orders for Lifelong Restriction) and rapid rises in those serving long-term determinate sentences (over 4 years) from 2017-18 to 2019-20.

Actions by Scottish Government, SPS and Partners

The impact of the rising prison population is felt across the justice system, particularly in our prisons, affecting those in care of the Scottish Prison Service (SPS), staff and families.

SPS is taking forward action to respond to the pressures caused by the rising prison population and remains committed to prioritising the health and wellbeing of those in its care and staff. Measures underway include repurposing and optimising use of the public sector prison estate and purchasing additional places at the private HMP Kilmarnock.

As the Committee will be aware, as part of our commitment to reducing re-offending and rates of victimisation, the Scottish Government is committed to shifting the balance between the use of custody and justice in the community and we have taken a number of actions to encourage more widespread use of robust community-based interventions. For example, we extended the presumption against short sentences from 3 to 12 months in 2019, introduced electronic monitoring for bail (with around 400 people now supervised), and have made additional funding available to support the establishment and improvement of bail supervision services to reduce the use of remand. In addition, the Bail and Release from Custody (Scotland) Act 2023, recently passed by Parliament, aims to refocus how remand is used so that it is reserved for those who pose a risk to public and victim safety. The Act also improves support for people leaving prison, helping them to successfully resettle in their communities and not reoffend.

Ongoing work is informed by our National Strategy for Community Justice, which was revised in 2022 and sets out a clear roadmap for further improvement. Our recently published Delivery Plan details what action we will take to progress its national aims and priority actions. To support this, we have protected investment in community-based

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interventions over recent years and are providing a total of £134 million to support community justice services in 2023-24.

The Scottish Government has established the Prison Population Leadership Group, including partners such as SPS, Scottish Courts and Tribunal Service, Crown Office and Procurator Fiscal Service, Police Scotland, Community Justice Scotland and the Parole Board for Scotland. The group meets on a fortnightly basis to provide leadership and collective ownership of the challenges and mitigations associated with the rising prison population, as well as providing support to the SPS and other partners in their contingency planning.

Work is also underway by Scottish Government and partners to further understand the drivers that are increasing the prison population and to agree actions to mitigate, clearly whilst always recognising the independence of decision making by the Crown and Judiciary and also the operational independence of Police Scotland. Further plans aligned to the Community Justice Delivery Plan are also in place to support the shifting of the balance between custody and the community.

It is clear however that the current challenge extends beyond what was predicted and further action is required. The recent rise in the prison population raises a number of important questions around emerging societal trends and links to wider issues such as the impact of poverty and inequality – Scotland's most deprived communities are disproportionately represented in the prison population. It also raises issues about how prison custody is used and the resulting long-term outcomes, including how we ensure justice has been served, crime is prevented, re-offending is reduced, and we have therefore fewer victims and safer communities. With one of the highest prison populations in Western Europe, we need to actively engage with those questions.

I plan on making a statement to Parliament on this in the coming weeks and will also be inviting justice spokespeople to a discussion on the way forward. I would, of course, also be happy to appear at Justice Committee if members wished to discuss this matter further.

Yours sincerely



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