

ANNEX

1. Letter from Prison Governors Association Scotland 30 April 2024.

Prison Governors Association – Scotland

The Scottish Branch of the Prison Governors Association, which represents the Prison Governors of the United Kingdom



Chair
Treasurer
Executive Officer

SCOTLAND
Mrs.N Beal
Mr Mr Melloy
Mr Jim
Kirkwood

President
PGA Office Contact
Bryant

UNITED KINGDOM
Mrs. Andrea Albutt
Mr. James

By email
[REDACTED]
30th April 2024

Mrs Angela Constance MSP
Cabinet Secretary for Justice and Home Affairs
The Scottish Parliament
Edinburgh EH99 1SP

Dear Cabinet Secretary,

Follow Up Request Regarding Prison Population Pressures

The Prison Governors Association Scotland PGA(S) formally raised our significant concerns around prison population pressures and the predicted trajectory of further increase in population numbers in October 2023. We remain concerned at the increasing complexity of Scotland's Prison Population and the ability to appropriately locate individuals, given the pressures on physical space.

We noted that continuation on this path, at best, provides humane containment, albeit even this may be at a stretch. In April 2024, we exceeded 8200 people being held in custody, and **now have 7 of Scotland's Prisons declaring a RED RISK status.** Given the predictions on prison population numbers by Scottish Government, we recognise that this rise in population numbers was foreseen by Government. We acknowledge that a lot of work has been done by SPS to maximise capacity internally and that work has not yet reached its full conclusion and Prison Governors are doing everything they can to mitigate risk. That said, we would again reiterate that the population pressures in Scotland, **require intervention across Justice**, requiring partnership working and **immediacy of action.** We

would contend that **the role of this crisis should shape Justice Policy in Scotland in a way that is both progressive and courageous.**

Whilst some policy windows have been created, we would contend that they are unlikely to have the scale of impact required, or indeed, at a speed that is required. Our members are working in a state of ‘permacrisis’, working with constant pressures due to the mix of population complexity and physical numbers. We are operating with a prevailing sense of **‘only just coping’ and remain concerned that emergency action will only be taken when something goes significantly wrong.** It is important to put on record that our members cannot directly impact the number of people being sent to prison and in particular the number being held on remand.

The complexity of the prison’s population mix is significantly different than it was when we previously had this type of pressure on physical numbers. Over the last 10 years, there has been a gradual, accumulation of various justice changes and policy decisions that have eroded the legitimacy of where we find ourselves today. In some cases, the effects of the increased numbers are felt immediately, however the combination of increased numbers and the time/ strain and impact on the regime and people in custody, **leaves us in a heightened state.** More prisons are operating restricted regimes, resulting in the provision of little or no positive rehabilitative work.

As noted previously, these increased population numbers require increased staffing, often the need to work extra hours, and we see our staff getting tired. Our membership and all staff in prisons already do a very challenging job but are currently under significant strain.

The PGA(S) would welcome the consideration of urgent mitigation in the form of emergency release measures, greater use of electronic monitoring **-particularly used instead of remand**, greater use of alternative disposals, as well as a review of the impacts of the Control of Release Bill and its impacts on the status of the Long-Term Prisoner Population. Furthermore, we would welcome an update on both the short- and longer-term actions and impacts, as well as preventative solutions.

Yours sincerely,

Natalie Beal
CHAIR
PGA Scotland

2. Letter from SPS Chief Executive 7 May 2024

One Lochside
1 Lochside Avenue
Edinburgh
EH12 9DJ

Teresa Medhurst
Chief Executive

7 May 2024

Dear Cabinet Secretary for Justice & Home Affairs,

SCOTTISH PRISON SERVICE – SIGNIFICANT POPULATION PRESSURES

Given the sustained rise in prisoner numbers, I am writing, as Chief Executive of the Scottish Prison Service and Accountable Officer with responsibility for the operation and management of prisons, to set out my concerns regarding the current population pressures now being faced by the Scottish Prison Service (SPS).

Today we are accommodating a population of 8291 people in our care. As I discussed with you when we last met, the significant spike in the population just prior to the Easter period, on top of a sustained period of high population numbers, overcrowding and growing complexity of need within the population, is causing very significant strain on our ability to deliver services and keep people in prison custody safe. This pressure is equally being felt by our NHS partners who are experiencing challenges in the delivery of health and social care services across the estate.

We are now operating with 7 public sector prisons identified as a red risk on our risk matrix which considers not just the impact of the rising prisoner numbers, but the complexity of the population, the impact on staffing levels, the delivery of regime and day-to-day activities.

SPS is continuing to work on multiple fronts to maximise the use of the current estate. The Director of Operations is now centrally managing the movement of prisoners across the prison estate. As you know, we are moving short-term, low risk prisoners into HMPYOI Polmont, asking that establishment to support 3 separate cohorts of prisoners and seeking to overcome significant staffing issues to release more space within HMPYOI Grampian.

As I indicated to you, one of my main concerns is that there are now very limited options around the provision of contingency spaces, which at the current time would be very challenging to achieve if there were to be any significant infrastructure failures or concerted indiscipline in any part of the estate.

The increasing prisoner population is also placing additional burdens on prisoners' access to rehabilitative programmes, which are already over-subscribed. In terms of our routine operations, we are now beginning to see pressures on the rise across the estate where low level spontaneous violence amongst prisoners is increasing, more individuals are being placed and managed on 'Talk To Me', more people are being held on Rule 95 conditions in cells out with our Separation and Re-integration Units, as well as there being an increase in the number of cases of managing people under the influence of unknown substances.

A combination of overcrowded conditions, restricting prisoners' access to basic rights and entitlements, can also impact on the operational stability of a prison and potentially create a volatile and unstable environment for both staff and prisoners. It may, in such circumstances, trigger serious unrest and has the potential to increase levels of violence within the prison estate.

I am concerned the increasing challenges caused by the rising prison population puts us at ever greater risk of breaching our legal obligations to those working in our prisons and prisoners. The significant spikes in the population particularly around public holidays and other significant events makes it increasingly likely that we will reach an in-extremis position by the end of this month.

As you know, we continue to work with support from Scottish Government and in engagement with our key partners to mitigate the impact of these pressures, but this is becoming increasingly difficult. These on-going pressures are also preventing SPS from delivering annual business priorities and key improvement work. I remain concerned whether the current resource capacity available to SPS is enabling us to cope with the escalating pressures.

It is to the credit of our staff that we are responding to this extremely difficult challenge. I would like to record my appreciation to all SPS staff who continue to work extremely hard to keep the prison estate stable and who are doing so with great skill and courage.

Finally, I must note my appreciation for the regular dialogue with both yourself and with Scottish Government colleagues on these ongoing challenges. I ask you to note the very significant strain that we as an organisation are now under, and the potential escalation of operational risk that is expected should this trend of increase and its speed continue.

Yours sincerely

TERESA MEDHURST

Chief Executive

3. Response to Cabinet Secretary to Prison Governors Association Scotland 16 May 2024

Cabinet Secretary for Justice and Home Affairs
Angela Constance MSP
F/T: 0300 244 4000
E: scottish.ministers@gov.scot

Natalie Beal
Chair
Prison Governors Association (Scotland)

By Email: [REDACTED]

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16 May 2024

Dear Ms Beal,

Thank you for your letter of 1 May 2024 raising concerns in relation to Scotland's prison population.

I would like to start by expressing my gratitude for the hard work, knowledge and commitment of your members in dealing with this challenge. I fully recognise that prison officers are at the very front line of dealing with the rising prison population and am profoundly grateful for their efforts in these difficult circumstances.

I have listened to the concerns raised by you and others, and today made a statement to Parliament.

Over the past two months, there has been a particularly sharp rise in the prison population of around 400. This has exacerbated the longer-term upward trend, which has been a significant concern for some time, and created unprecedented pressure on the prison estate.

In my statement, I set out that there is now a critical risk to the continued safe and effective operation of the prison estate, and that urgent action is needed.

Section 11 of the Bail and Release from Custody (Scotland) Act 2023, which enables Scottish Ministers to release certain groups of prisoners in an emergency situation, is due to come into force on 26 May. I announced this afternoon that should the legal test be met at that point – as I expect to be the case - my intention is to bring forward a proposal for the emergency release of prisoners as soon as possible after this provision comes into force.

This is not a decision I have taken lightly. However, I consider that this is a step that must be taken in order to ensure the security and good order of prisons as well as the health and safety of those living and working in our prisons.

The safeguards built into the 2023 Act will apply. These include limiting release to those within 180 days of their scheduled release date, certain statutory exclusions - including in relation to those serving sentences for sexual offences or domestic abuse – and a Governor veto.

I recognise that while the use of emergency release will ease the immediate pressures on the estate, should Parliament approve my proposal in due course, work must continue in the medium to long-term in order to achieve a more sustainable position with regard to the prison population. For that reason, I announced that we will carry out a short consultative exercise over the summer, with the intention of informing a Bill to change how long term prisoners are released. We also intend to bring forward secondary legislation to amend the eligibility criteria for HDC, increasing the period of time individuals can spend on release under licence conditions.

I hope this information is helpful, and I will ensure you are kept informed regarding plans for any emergency release and other measures as they continue to be developed.

Yours sincerely,

ANGELA CONSTANCE

4. Response from Cabinet Secretary to SPS Chief Executive 16 May 2024

Cabinet Secretary for Justice and Home Affairs

Angela Constance MSP
F/T: 0300 244 4000
E: scottish.ministers@gov.scot

Teresa Medhurst
Chief Executive of the Scottish Prison Service

One Lochside
1 Lochside Avenue
Edinburgh , EH12 9DJ

By Email [**REDACTED**]

16 May 2024

Dear Chief Executive,

Thank you for your letter of 7 May raising concerns about the rising prison population. I appreciate the hard work and dedication of all those who work in our prisons and would like to formally thank all SPS staff for their commitment in these increasingly challenging circumstances.

I recognise that, over the past two months, there has been a particularly sharp rise in the prison population of around 400. This has exacerbated the longer-term upward trend, which has been a significant concern for some time, and created unprecedented pressure on the prison estate as you have described.

Taking into account the issues raised in your letter, this afternoon I will make a statement to Parliament setting out that there is now a critical risk to the continued safe and effective operation of the prison estate, and that urgent action is needed.

Section 11 of the Bail and Release from Custody (Scotland) Act 2023, which enables Scottish Ministers to release certain groups of prisoners in an emergency situation, is due to come into force on 26 May. I will announce this afternoon that should the legal test be met at that point – as I expect to be the case – my intention is to bring forward a proposal for the emergency release of prisoners as soon as possible after this provision comes into force.

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I recognise that while the use of emergency release will ease the immediate pressures on the estate, should Parliament approve my proposal in due course, work must continue in the medium to long-term in order to achieve a more sustainable position with regard to the prison population. For that reason, I will announce that we will carry out a short consultative exercise over the summer, with the intention of informing a Bill to change how long term prisoners are released. I also intend to bring forward secondary legislation to amend the eligibility criteria for HDC, increasing the period of time individuals can spend on release under licence conditions.

My officials will, of course, be working closely with you in planning to implement the emergency release, should Parliament approve this course of action, and will be in touch shortly with further details of this and other measures as they continue to be developed.

Lastly, I would be grateful if you could treat this as confidential until after my statement has been made this afternoon.

Yours sincerely,

ANGELA CONSTANCE