

Meeting	SPA Policing Performance
Date	8 June 2021
Location	Video Conference
Title of Paper	Police Scotland Custody Update (including Children in Custody & CPT paper)
Presented By	ACC Kenny MacDonald, Criminal Justice
Recommendation to Members	For Decision
Appendix Attached	Yes Appendix A – CPT Report 2018 Visit Appendix B – London Road Custody images

PURPOSE

This report provides an update on progression against the recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following the visit to the United Kingdom in 2018. Additionally, a custody update regarding children in custody.

Members are invited to approve the contents of this report.

1. BACKGROUND

- 1.1 In 2018 a delegation of the CPT made an ad hoc visit to Scotland to examine the situation in police and prison establishments and to assess the progress made since their previous visit in 2012. A report was published in 2019 which generated twelve recommendations for Police Scotland. (Appendix A)
- 1.2 Police Scotland have undertaken significant work to address the recommendations within the report and continue to prioritise work in this area ensuring at all times our organisational values of fairness, integrity, respect and human rights are at the heart of our approach.
- 1.3 In 2020 the UK National Preventive Mechanism (NPM) conducted a desk based review of progress against some of the recommendations made in 2018. It should be noted that this review also included recommendations in relation to the Scottish Prison Service, which are out with the scope of this report.
- 1.4 Having reviewed the content of the draft report, Police Scotland had significant concerns regarding some of the language, observations and recommendations made in the draft UK NPM report which, unlike the 2019 CPT report, failed to take account of the wider context of policing or to correctly attribute ownership and responsibility for specific challenges within the criminal justice sector. These concerns have been collated and shared via Scottish Government with the report authors.
- 1.5 There is ongoing work with Scottish Government to correct factual inaccuracies identified within the draft NPM report.

2. Further Detail on the Report Topic - Progress against CPT Recommendations identified within 2019 report.

- 2.1 **"The CPT recommends that police officers be regularly reminded of these basic principles,** (all injuries on newly arrived detained persons to police custody should be properly recorded and investigated; no more force than is strictly necessary should be used when effecting an arrest; once arrested persons have been brought under control, there can be no justification for their being struck by police officers) **including through practical training exercises.**

Update

Every training course provided by CJS Divisional Training Department is delivered according to ECHR obligations and Police Scotland's Code of Ethics are constantly referred to and highlighted throughout. A specific Module of the Custody Officer Induction course covers the Criminal Justice (Scotland) Act 2016 and how it complies fully with ECHR article rights. Another Module of the Induction course covers Adverse Incidents and Recording Mechanisms. This includes the topic of injuries to prisoners and staff, accident reporting and referrals to and the role of the Police Investigations and Review Commissioner (PIRC). On all CJS Training courses, Trainers make it abundantly clear that Care and Welfare of those detained in police custody is the highest priority and ensure all staff are fully aware of their primary obligations (as per guidance illustrated in the Care and Welfare of Persons in Police Custody Standard Operating Procedure - CWSOP). Police Officers receive annual Officer Safety Training refresher courses.

- 2.2 **"The CPT recommends that a person who is suspected of having ingested or secreted drugs within their body should be subject to a radiography examination and, if positive, placed under observation in a medical setting until the evacuation of the packages. Further, the CPT is aware that certain Guidelines exist that describe that the immediate assessment of persons in police custody suspected of having substances concealed internally and the individual roles and responsibilities and the process to be followed, up to and including the process for discharge from hospital; it would appreciate information regarding whether these Guidelines are being followed in all custody facilities".**

Update

Provided by the National Police Care Network – "The current process in Scotland is in line with interim custody healthcare guidance during the Covid-19 pandemic ("Interim Guidance - Custody Healthcare Provision During the Novel Coronavirus (COVID-19) Pandemic") The guidance currently states that "All persons suspected of concealing drugs or other items in any body orifice other than the mouth should be taken to the Emergency Department for assessment. Custody staff should inform the healthcare professional on site (if applicable) in the first instance, when there is

either suspicion or confirmation of a person in custody concealing drugs or any other an item, as they may require immediate medical attention.”

Discussions are ongoing between the Network, Royal College of Emergency Medicine and Police Scotland to ascertain if every person suspected of concealing drugs should go to the Emergency Department in the first instance, or if this can be safely managed with a Forensic Physician in police custody, where applicable”.

- 2.3 **“The CPT recommends that detained persons should be informed when the third party notification has been effected by custody staff; this feedback should be traceable in the police custody records”.**

Update

*This has not been identified as a significant compliance issue in internal review and audit however a *priority change request has been submitted to the National Custody System (NCS) Governance and User Forum regarding an amendment to NCS to ensure that the feedback loop to the arrested person is on a mandatory recording field. This change will prevent the NCS user from exiting the screen without inputting the time/date that the notification has been made to solicitor/RNP and feedback provided to the person. This will provide Police Scotland with actual data to support the level of compliance.**

- 2.4 **It recommends that the custody staff be alert to whether a detained person wants to consult with a lawyer directly and ensure that access to a lawyer must be guaranteed as from the very outset of a detained person’s deprivation of liberty.**

Update

Police Scotland do not have powers to deny solicitor access and the decision to delay solicitor consultation under Section 44(2) of the Criminal Justice (Scotland) Act 2016 is used extremely rarely, with full justification by an officer independent to the investigation and of the rank of Sergeant or above.

The access requests on National Custody System (NCS) only have the option for ‘pending, granted or denied’ with no rationale recorded under this section. Clearly when ‘denied’ is selected in the event of a delay then this data will be misleading.

The NCS Governance and User Forum review change requests and prioritisation of work to improve the NCS system and items on the existing Change Catalogue are now being actioned following ICT resource being realigned to priority Operation Talla (COVID response) work. New change requests are being considered along with other priorities under the Recovery, Renewal and Transformation agenda (RRT) and ongoing Custody Remodelling programme.

In order to enhance our ability to gather more accurate data in this respect, a change request for NCS to amend these categories to just 'granted or delayed' (with a mandatory drop down option for the reason) has been submitted to the NCS Governance and User Forum as part of the priority change request described in Section 2.3 above.

- 2.5 **The CPT reiterates its previous recommendation that the right of detained persons to have access to a doctor from the very outset of their deprivation of liberty be expressly provided for in law and in the administrative guidance regulating the deprivation of liberty by the police. The relevant provisions should make clear that a request by a detained person to be examined by a doctor should always be granted and it is not for police officers to filter such requests.**

Update

*The new CWSOP includes a change in wording where clinical attention is required before a decision can be made about a person's fitness to be held in custody. This is irrespective of whether the person has already received treatment elsewhere. Officers should also be aware that the effects of drink or drugs can mask other illnesses or injuries. Where such a requirement is deemed necessary, the **decision will now be made by custody healthcare staff**. This has changed from the current CWSOP which advises that "where such a requirement is deemed necessary, contact should be made with the relevant HCP".*

*Additionally, current practice across custody suites is to consult an HCP in decisions where a person refuses to answer the vulnerability assessment questions and to design the care plan taking all other relevant factors into account, the CWSOP is not explicit regarding this. The revised version of the CWSOP will include the following, more specific guidance: **'If the person refuses to answer the vulnerability questions then the custody staff would design***

the care plan through observations of the prisoner's demeanour, behaviour, history and in consultation with a HCP'

Given the different Custody Healthcare models across the country, access to a doctor will often be a subject to a Health led Triage given healthcare needs may be adequately met by Custody Nurses.

- 2.6 **The CPT recommends that all medical examinations should be conducted out of the hearing and - unless the doctor or nurse concerned expressly requests otherwise in a given case - out of the sight of police staff".**

Update

Medical examinations are conducted in private to the best of staff's ability, but due to potential risks presented, staff will always be in a position to respond, in order to protect Healthcare Professionals (HCPs). If a risk assessment deems the situation to be safe, custody staff will be out of sight and out of hearing but also close enough to react to any alarm raised. This would be the vast majority of prisoners seen by HCPs in custody.

Best practice is two members of staff in attendance whenever a person exits a cell, however every situation will be risk assessed. Where staff and safety permits, the person may be left alone in the room with NHS staff and the door closed, in order to facilitate medical examination, consultation or assessment. However, Police Scotland have a responsibility to ensure the safety and wellbeing of staff and if this is not possible, the door will be left open and staff will be outside the room to facilitate a quick response where required. If this is not possible on safety grounds, staff may be required to be in the room or alternatively NHS staff may visit the person in their cell.

- 2.7 **The CPT recommends that the Scottish authorities ensure that Police Scotland and the NHS take measures to standardise the approach to methadone maintenance and detoxification treatment in police custody. The CPT would appreciate information whether the type of DHC used in police custody is short-acting DHC, or long-acting DHC."**

Update

Update provided by the National Police Care Network - "NHS Boards have a standardised approach to methadone maintenance in police

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custody. NHS Grampian do not at present, but are planning on incorporating this. However, they do use DHC. The DHC used in the South-east region is long acting (DHC 60mg MR) and can clarify this for the other regions if required”.

- 2.8 **“The CPT recommends that the Scottish authorities ensure that custody staff are reminded, through regular training, that all injuries should be immediately and properly documented and that such detained persons should be examined by NHS health-care staff; recording of the medical examination in cases of traumatic injuries should be made on a special form provided for this purpose, with body charts for marking traumatic injuries that should be kept in the custody records of the detained person. Also, a special trauma register should be kept.**

Moreover, the CPT recommends that procedures should also be put in place to ensure that whenever injuries are recorded which are consistent with allegations of ill-treatment made by the detained person concerned (or which, even in the absence of an allegation, are clearly indicative of ill-treatment), the record is systematically brought to the attention of the competent prosecuting authorities, regardless of the wishes of the person concerned. The person should be told of the reporting obligation by the doctor and reminded that he/she can also initiate a complaint, if they so wished. The results of the examination should also be made available to the detained person concerned and his or her lawyer. If necessary, the Scottish Standard Operating Procedure should be amended to reflect these principles”.

Update

As previously referred to, a Module within the Custody Officer Induction course covers Adverse Incidents and Recording mechanisms. This is supplemented via regular email briefings from both Divisional and Force Officer Safety Training and the use of force is recorded on relevant reporting systems.

A person in custody should be referred to an HCP if there is any reason to believe they are suffering from an injury (depending on severity). All injuries are recorded on the National Custody System (NCS) and where appropriate, brought to the attention of the Force Custody Inspector. If there is injury sustained in custody through ill treatment, robust reporting mechanisms are in place for the prisoner to make a complaint. The incident will be reported to Professional

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Standards Department for consideration of informing PIRC. This again will be discussed with the Healthcare staff.

Update provided by the National Police Care Network - "Whilst there is not currently a special form or trauma register used to document injuries in these circumstances, the National Police Care Network would be happy to facilitate scope as to whether such a form would be feasible and more beneficial than the current process, along with an amendment of the current SOP to include a protocol informing doctors of their responsibilities of who to distribute their reports (of injuries) to (including the person/their lawyer). For further context, 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 facet working group, the Network will look to refresh 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.

2.9 "The CPT recommends that all police custody cells should have access to natural light".

Update

A number of cells within Police Scotland Custody Estate have access to natural light via opaque glass blocks if they are exterior to the building. However due to the design of some of the existing custody estate, cells have interior corridors and therefore do not have access to this facility. Access to natural light will be considered for any newly planned police custody facilities.

2.10 "The CPT recommends that the authorities move the CCTV monitors covering the special observation cells at St. Leonard's Police Station into a separate room, as is the practice at Govan and Glasgow City Centre Police Stations, and dedicated officers should be made responsible for supervision, duly taking into account the gender of the observed person(s). Further, the cameras should be re-aligned to pixelate the toilet area in all cells".

Update

A Short Life Working Group (SLWG) is currently ongoing to discuss all matters surrounding Constant Observations and CCTV. There is research taking place by the Scottish Institute for Policing Research into the number of persons who can be viewed at one time on CCTV and what is called 'vigilance decrement' (the reduction in vigilance over a period of time). The SLWG are also investigating opportunities for life-monitoring cameras for observations rooms which may cut down on the need for such intense observations when it is for medical reasons as these cameras monitor pulse and breathing rate, setting off alarms when there are any changes. The subject of CCTV is therefore ongoing work. The pixilation or blackout areas of the cameras at St Leonard's have been rectified and are in now the correct places however the CCTV monitors have not been moved and will be considered as part of future Estate upgrades and a wider assessment of the value provided by CCTV access within the main custody office as part of observation options.

- 2.11 The Committee recommends that the Scottish authorities take steps to decrease the high numbers of persons held in police custody facilities for longer than 24 hours (i.e. between Friday and Monday mornings), through, *inter alia*, the opening of some Saturday courts. Further, any newly planned police custody facilities should provide for access to sufficient natural light, ventilation and outdoor exercise facilities”.**

Update

As a result of the COVID19 Pandemic, The Lord Advocate revised his guidance regarding disposals for all prisoners. Only those individuals who have committed a serious crime/ offence where remand is likely, should be held for court. The preferred option in all circumstances is that persons arrested for a crime are dealt with by way of direct measures when the crime / offence meets that criteria and not brought into custody. Therefore the introduction of the new Lord Advocate Guidelines has resulted in a significant reduction in the number of persons not only being arrested but also held for court and has therefore decreased the number of persons held in custody facilities for longer than 24hrs. In addition to this, Police Scotland have introduced Quality Assurance Inspectors to further assure and support custody decision making. CJSJ are engaged with COPFS around future revision of Lord Advocate's guidelines as COVID implication recede however it is not anticipated that a return to Pre-

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COVID guidelines will have a significant impact on Custody numbers given the learning and additional assurance introduced over the last period.

Police Scotland are supportive of 6/7 day custody courts and are working with partners to achieve this. The Scottish Courts and Tribunal Service (SCTS) are now taking the lead on a Virtual Custody Working Group with the aim of developing a national custody model which could operate over 6/7 days.

The rollout of the model for Virtual Custody Courts is considered the most flexible and agile way to deliver a 6/7 day custody court system. Work on this pivotal work-stream continues and the outcomes will dictate future progress in this regard albeit it is recognised that the introduction of a 6/7 day model would have significant organisational change implications for statutory partners and wider justice stakeholders including defence agents.

CHILDREN IN CUSTODY

- 2.12 Police Scotland seek to ensure that children are not brought into or held in Police Custody save for exceptional circumstances and often this is as a result of there being no suitable alternative provided by statutory partners.
- 2.13 The Criminal Justice (Scotland) Act 2016 contains provisions which provide differing rights to children in Police custody depending on whether they are a younger child (aged under 16 years, or aged 16 or 17 years and subject to supervision), or an older child (aged 16 or 17 and not under supervision).
- 2.14 The manner in which a crime or offence committed by a child is likely to be prosecuted is governed by the Lord Advocate's Guidelines to the Chief Constable on the Reporting to the Procurator Fiscal of offences alleged to have been committed by children. Unless the child falls within these guidelines, they will be reported to Scottish Children's Reported Administration (SCRA) for consideration of action through the Children's Panel.
- 2.15 Under the terms of the Criminal Justice (Scotland) Act 2016, a 'younger' child should not be held in a police station if they are to be held for Court. Section 22 of the Act states –

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- (1) The person must be kept in a place of safety until the person can be brought before a court.
- (2) The place of safety in which the person is kept must not be a Police Station unless an appropriate constable certifies (via Child Detention Certificate) that keeping the person in a place of safety other than a police station would be –
 - (a) Impracticable,
 - (b) Unsafe or
 - (c) Inadvisable due to the person’s state of health (physical or mental).

A place of safety is defined under S202 of the Children’s Hearings (Scotland) Act 2011.

2.16 In practice, where a person subject to the provisions of Section 22 is being held to appear at court, the local Social Work Department (SWD) will be contacted to seek a place of safety for the person. Where holding a child at a police station is considered, whilst the Act requires an officer of Inspector Rank or above to certify, current CJSD Policy is that the certification will be done by a CJSD Chief Inspector. In addition, if a child is to be held in a Police Station, arrangements are made for a Social Worker to attend to check on the child’s welfare.

2.17 The following table shows Persons under the age of 18 arrested each year (from NCS):

	2018	2019	2020
Number of persons under 18 arrested each year	5436	5519	4393
Number arrested Not Officially Accused each year (initial arrest type)	2310	2344	1832
Number arrested Officially Accused each year (initial arrest type)	2203	2700	2271
Number released without charge each year	1012	1022	806
Number released for report	1155	1145	1026
Number released on UTA	847	907	1051
Number released into the care of SWD for secure accommodation	2	3	5
Number held on a Child Detention Certificate.	108	132	135

2.18 When looking at those who are classed as a child in terms of those who may be held to appear at court elsewhere than a police station under section 22 of the Criminal Justice (Scotland) Act 2016 (removing 16 and 17 year old from the figures), overall figures reduce significantly –

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	2018	2019	2020
Number of children (<16+16/17 CSO) arrested each year	1406	1555	1146
Number arrested Not Officially Accused each year (initial arrest type)	664	695	491
Number arrested Officially Accused each year (initial arrest type)	578	799	616
Number released without charge each year	322	314	228
Number released for report	351	386	296
Number released on Undertaking to Appear	179	248	207
Number released into the care of SWD for secure or alternative accommodation	2	3	5
Number held on a Child Detention Certificate.	108	132	135

2.19 The majority of those children who are arrested and brought into custody are not held to appear at court. They also clearly show that the vast majority of those who require to be held are held in police custody and the small numbers released to Social Work demonstrate the lack of availability of suitable 'place of safety' accommodation including emergency secure accommodation.

Child Suspects

2.20 Where any person is suspected of committing an offence, they can be arrested to allow enquiries to be carried out which may include interview by the police. The figures for children are shown below:

	2018	2019	2020
No. arrested Not Officially Accused each year (initial arrest type)	664	695	491

2.21 After 6 hours in custody, a suspect's presence must be reviewed by the Custody Review Inspector who will consider the necessity and proportionality of their remaining in custody. The number of children authorised to remain in custody beyond 6 hours to facilitate ongoing enquiry

Number of Six Hour Authorisations granted	97	95	44
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2.22 The low numbers clearly demonstrate there is a presumption against holding a child in custody for any longer than absolutely necessary for the enquiry.

- 2.23 We continue to work with Social Work Scotland to assure processes around children requiring to be held in Police Custody and alternatives to custody including both secure and non-secure options are maximised so that Police Custody is an absolute last resort for children.
- 2.24 Where children are required to be kept in Custody, we are examining the suitability of our own facilities under our CJSD transformation programme to provide minimise trauma and ensure the best possible environment in the circumstances for any child who has to be kept in Custody.
- 2.25 The first Estate upgrade has just been undertaken at London Road and some images are included at Appendix B highlighting the approach that has been taken. Subject to evaluation we intend to incorporate this approach more widely across our Estate moving forward.

3. FINANCIAL IMPLICATIONS

- 3.1 There are no financial implications in this report.

4. PERSONNEL IMPLICATIONS

- 4.1 There are no further personnel implications in this paper to those mentioned above.

5. LEGAL IMPLICATIONS

- 5.1 There are no further legal implications in this paper to those listed above.

6. REPUTATIONAL IMPLICATIONS

- 6.1 There are no further reputational implications associated with this paper.

7. SOCIAL IMPLICATIONS

- 7.1 There are no social implications associated with this paper.

8. COMMUNITY IMPACT

- 8.1 There are no community implications associated with this paper.

9. EQUALITIES IMPLICATIONS

9.1 There are no equality implications associated with this paper.

10. ENVIRONMENT IMPLICATIONS

10.1 There are no environmental implications associated with this paper.

RECOMMENDATIONS

Members are invited to approve the contents of this report.



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Report

**to the Government of the United Kingdom
on the visit to the United Kingdom
carried out by the European Committee
for the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment (CPT)**

from 17 to 25 October 2018

The Government of the United Kingdom has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2019) 30.

Strasbourg, 11 October 2019

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EXECUTIVE SUMMARY

The purpose of the 2018 visit to Scotland was to examine the situation in police and prison establishments and to assess the progress made since the CPT's previous visit in 2012. More specifically, the CPT paid particular attention to prisoners in segregation and to issues concerning women prisoners, as well as to overall health care provision. The delegation also examined the treatment of persons in police custody. The co-operation received from the authorities and from the staff at the establishments visited was excellent.

Police

In the course of the visit, the CPT's delegation conducted some 70 interviews with persons who had recently been deprived of their liberty by the police. Overall, the CPT found that police custody facilities were safe environments and most persons interviewed stated that they had been treated correctly. However, nearly one-third of the persons interviewed made allegations of excessive use of force upon apprehension by police officers, notably excessively tight handcuffing and/or of wider abuse partly resulting in injuries. The CPT recommends that a strong reminder be delivered to police officers that ill-treatment of detained persons is illegal, unprofessional, and will be appropriately investigated and sanctioned. The CPT's delegation met a person held in a police custody cell who had been handcuffed throughout his stay in custody, including while being asleep. The CPT considers that a person who is suspected of having ingested or secreted drugs within their body should be examined by radiography and placed under observation in a medical setting, and that prolonged periods of handcuffing when a detained person is calm cannot be justified.

The CPT found that the safeguards against ill-treatment (notably, the right to inform a third person of one's detention, the right to a lawyer and the right to a doctor) generally operated reasonably well. Nevertheless, certain elements could be improved. First, police custody sergeants should systematically inform detained persons that a third person had indeed been notified of their detention. Second, the process of identification and recording of injuries should be strengthened: all injuries should be immediately and properly documented by NHS health-care staff, and custody sergeants should be more proactive following-up on complaints, including a systematic referral to the competent body to initiate an investigation. Third, custody staff must ensure that detained persons are not hindered from directly consulting their lawyers over the telephone. With respect to health care in police custody, the CPT reiterates that all medical examinations should be conducted out of the hearing and, preferably, out of the sight of police staff. Further, Police Scotland and the NHS should take measures to standardise the approach to methadone maintenance and detoxification treatment in police custody.

The CPT found that the current police complaints' system appeared opaque; it raised concerns over the independence of the investigation and prompt accessibility to an independent body, particularly when the complaint is about "assault" or "excessive use of force" by police officers at the point of arrest. The CPT recommends that the system of handling of detainee complaints be strengthened to ensure it reflects certain basic principles: availability, accessibility, confidentiality/safety, effectiveness and traceability.

The material conditions in all police custody facilities visited were generally of a reasonable standard for short stays (i.e. up to 24 hours). However, most facilities also held detained persons for longer stays (i.e. from Friday evening until Monday morning when the courts re-opened), for which they were not properly equipped. Detained persons were not systematically offered the opportunity to shower

and there was only limited access (and in some cases no access at all) to natural light in cells, and police stations did not have outdoor exercise yards. Consequently, the police custody facilities visited remained unsuitable for detention for periods of longer than 24 hours; the authorities should decrease the numbers of persons held over weekends through, *inter alia*, taking measures to ensure the opening of some Saturday courts. It also recommends that any new custody facility should provide for access to sufficient natural light and outdoor exercise.

Prisons

The Scottish Government has clearly embarked on an agenda of reform, especially as concerns women prisoners and young offenders. The female prison estate, in particular, has been the subject of re-conceptualisation and structural reform. Nonetheless, the overall number of prisoners has remained at some 8,000 (147 per 100,000), and the reforms were still at a nascent phase. The CPT's delegation visited Barlinnie, Cornton Vale, Edinburgh, Grampian and Shotts Prisons,

Positively, at the five prison establishments visited, the vast majority of prisoners stated that they were treated correctly by prison officers and the delegation received no allegations of deliberate ill-treatment of prisoners by staff. The CPT noted a few allegations of excessive use of force during control and restraint operations in different prisons (Grampian, Edinburgh and Shotts) and recommends that prison staff be reminded that no more force than is strictly necessary should be used to control prisoners. It also invites the Scottish authorities to consider taking measures to ensure that body-cameras are worn by front-line prison staff and turned on for all control and restraint operations.

Prison establishments for men

The CPT noted the gradual rise of inter-prisoner and inmate-on-staff violence (notably in Edinburgh Prison), which was officially attributed to a combination of the increase in use of Novel Psychoactive Substances (NPS), mental health issues and organised crime. At Grampian Prison, there was also a tangible perception held by staff, as well as by some inmates, of a general lack of safety due to the frequent staff turn-over, staff absences and some new and inexperienced staff. Greater investment in preventing violence is necessary at both prisons. Linked to the gradual rise of this violence is the issue of the large amounts of synthetic drugs flowing into Scottish prisons. The relative ease of access to almost undetectable NPS renders policing drug flow and abuse in the prison estate a complex and challenging task. The CPT urges the authorities to continue to invest in measures designed to identify the drugs flowing into prisons, stem and prevent abuse within the prison and invest further in substance addiction programmes.

The conditions of detention in the prisons visited were, in several cases, adversely impacted by overcrowding. This was particularly notable at Barlinnie Prison, where inmates had less than 3m² each of living space in doubled-up cells of 6m² including the partitioned toilet, and at Grampian Prison, where mattresses were put on the floor under the bunk beds temporarily, resulting in tripling up of double-occupancy cells. Given the intended refurbishment of Barlinnie Prison, the CPT recommends that cells of 8m² hold no more than one prisoner, and cells of 12m² hold no more than two prisoners. It also recommends that Grampian Prison utilise the available space in Cruden Hall, such as designating half of the Hall for non-juvenile inmates. This reorganisation could also take the strain off the staff in Ellon 1 who had to balance the needs of many different categories of prisoner.

Moreover, the very small waiting cubicles (less than 1m²) in Barlinnie Prison's reception area - termed "dog-boxes" by the prisoners - have been consistently criticised by the CPT since 1994. Urgent action must now be taken to develop larger reception waiting areas at Barlinnie Prison.

In three of the five the prisons visited, the regime was restricted primarily due to overcrowding and staff shortages, which resulted in many prisoners being locked-up in their cell for extended periods of the day. The regime was particularly restrictive for remand prisoners, and had deteriorated since the CPT's 2012 visit. The CPT recommends that the number of purposeful activities on offer to remand prisoners be developed and the daily programme for these inmates be improved.

The regime was also extremely restrictive for prisoners in segregation for protection reasons and for those being held on monthly extensions under Rule 95 (11) of the Prison Rules (where a prisoner can be "removed from association" for reasons of maintaining good order and discipline, protecting the interests and safety of other prisoners). The delegation met several inmates who were locked in their cells for 23 to 24 hours per day for several weeks, if not months, at a time. The situation was most severe at Grampian and Edinburgh Prisons where a number of inmates who were on non-offence protection and extended Rule 95(11) segregation were not even offered one hour of outdoor exercise every day. In response to the CPT's request that immediate action be taken, the Scottish authorities announced that a Governor's and Manager's Action Notice would be issued to all senior management teams to remind them of the legal requirement to provide exercise for not less than one hour every day. The CPT trusts that this Action Notice is complied with in practice. Further, the CPT recommends that prisoners placed on non-offence protection for more than a short period are provided with a range of purposeful activities, education and sport and risk-assessed association time and that all segregated prisoners should be offered at least two hours of meaningful human contact every day.

The CPT visited the male Separation and Reintegration Units (SRU), in Edinburgh, Barlinnie, Grampian and Shotts Prisons and found, *inter alia*, that the staff/prisoner relations were positive, that efforts to re-integrate prisoners were being made and noted that these prisoners benefitted from individual assessments. However, the intractable issue remained that many of these prisoners were being segregated for extremely long periods of time - for several months and occasionally, years - either in "carousel" (moved between different prison SRUs) or a "yo-yo" situation (moved between the SRU to the mainstream and then back to the SRU). There lacked a middle ground, in-between the SRU and mainstream environments, for these prisoners who cannot deal with the high-stimulus environment of mainstream prison accommodation. The CPT found that many of these prisoners had become institutionalised into the SRU environment and did what they could to remain in the comparative quiet and ordered atmosphere, despite living in virtual solitary confinement. The result was that every SRU visited by the CPT's delegation was operating at almost full occupancy. Moreover, persons held on extended Rule 95(11) orders who would otherwise have been held in the SRU were being held in their own cells in the main part of the prison (and also faced equally poor regimes).

The CPT considers that the Scottish authorities need to seek alternative solutions to break the cycle and reduce the number of prisoners held in prolonged segregation in the current SRU system. It recommends the development of step-down facilities and invites the authorities to consider investing more in the establishment of small therapeutic units that can provide a robust psycho-social support system for these prisoners to facilitate their reintegration process and provide a feasible alternative to prolonged segregation in SRUs. The regimes in the SRUs should enable all prisoners - no matter what their category - to be offered at least two hours of meaningful human contact each day, including being offered purposeful activities of a varied nature. Individual regime plans tailored specifically for persons held in segregation under Rule 95 should be further developed with a view to assisting them to return to a normal regime.

Prison establishments holding women and female juvenile prisoners

The CPT was encouraged by the progressive policy changes underway, notably the plans for smaller, more individualised, community-facing units for female offenders. Nevertheless, it found that the admissions process could be further developed to take into account the vulnerabilities of women prisoners, including screening for sexual abuse or other forms of gender-based violence inflicted prior to entry to prison and ensuring that such information is reflected in the drawing up of care plans.

The CPT raises serious concerns about the treatment of women prisoners held in segregation at Cornton Vale Prison, both within the SRU and Ross House. The CPT found women who clearly were in need of urgent care and treatment in a psychiatric facility, and should not have been in a prison environment, let alone segregated for extended periods in solitary confinement under Rules 95 and 41 (accommodation in specified conditions for health or welfare reasons). Prison staff were not trained to manage the highly disturbed women: for example, one woman had bitten through the skin and muscle of her arm down to the bone; another woman sat in isolation surrounded by blood and faeces on the wall; and a third woman set fire to her own hair in-cell. At least five women with whom the CPT's delegation spoke had severe mental health issues requiring hospital treatment, care and support. The CPT noted that while male prisoners in a similar situation could be transferred to a high secure psychiatric facility, in Scotland there is still no such possibility for women prisoners (and the possibility of effecting a transfer to Rampton Hospital in England rarely occurred in practice, due to jurisdictional complexities and distance). Also, it was not clear why the women could not be transferred to a Scottish medium secure psychiatric facility.

These severely mentally-ill women required immediate enhanced care and support by mental health staff, with a focus on providing a more therapeutic environment, and ensuring that they have more out of cell time and meaningful human contact. For female prisoners with personality/behavioural disorders who are not eligible for transfer to a psychiatric hospital, a multi-faceted approach should be adopted, involving clinical psychologists in the design of individual programmes, including psycho-social support and treatment. Further, clear protocols and operating procedures among the SPS, NHS, the judiciary, and social services should be developed to ensure that vulnerable women who cannot be treated under the Scottish Mental Health Act are afforded the necessary care in an appropriate environment. The CPT requests to be informed about the treatment of the women held in Cornton Vale's SRU under Rule 41 at the time of its delegation's visit. Overall, the CPT considered that neither the SRU nor Ross House was suitably equipped or staffed to provide proper care for the vulnerable women they held at the time of the visit.

As regards the provision of health care, a number of systemic issues are raised such as the incompatibility of the electronic systems used in the prisons and in the community, difficult access to addiction services' files and the absence of an electronic prescribing system, all leading to possible discontinuity of care when prisoners arrive or leave the prison system. Further, with regard to health-care staffing levels, there is a need to increase the presence of general practitioners in all the prisons visited and, more generally, to strengthen the addictions and mental health nursing teams. Also, the CPT recommends further investment be put into developing an effective and wider anti-drug strategy and a peer-led programme of substance misuse education in each prison to educate prisoners, particularly new arrivals, about the dangers of drug misuse. The CPT also found instances of inter-prisoner bullying for prescribed medication at every prison visited, and recommends that the way in which prescription drugs are distributed and their intake supervised be reviewed.

I. INTRODUCTION

A. The visit, the report and follow-up

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT carried out an ad hoc visit to the United Kingdom (Scotland) from 17 to 25 October 2018; this was the Committee’s fourth visit to Scotland.

2. The visit was carried out by the following members of the CPT:

- Julia Kozma (Head of the delegation)
- Vincent Micallef
- Olivera Vulić.

They were supported by Francesca Gordon of the CPT’s Secretariat, Rainer Pöhl, Consultant Physician for Internal Medicine and prison health care (Austria) and Jurgen van Poecke, Prison Director (Belgium).

3. The list of police and penitentiary establishments visited by the CPT’s delegation can be found in Appendix I.

4. The report on the visit was adopted by the CPT at its 98th meeting, held from 4 to 8 March 2019, and transmitted to the authorities of the United Kingdom on 28 March 2019. The various recommendations, comments and requests for information made by the CPT are set out in bold type in the present report. The CPT requests the United Kingdom authorities to provide within four months a response containing a full account of action taken by them to implement the Committee’s recommendations and replies to the comments and requests for information formulated in this report.

B. Consultations held by the delegation and co-operation encountered

5. In the course of the visit, the delegation held consultations with the following Scottish Ministers and senior officials, Humza Yousaf, Cabinet Secretary for Justice, Christina McKelvie, Minister for Older People and Equalities, Colin McConnell, the Chief Executive of the Scottish Prison Service, Paul Anderson, Assistant Chief Constable, Police Scotland and Gary McEwan, Chief Superintendent (responsible for custody facilities). The delegation also met with other senior officials of the Scottish Government, the Ministry of Justice of the United Kingdom and representatives from NHS Scotland.

In addition, the delegation had meetings with Wendy Sinclair-Gieben, Her Majesty’s Chief Inspector of Prisons in Scotland, Gill Imery, Her Majesty’s Inspector of Constabulary in Scotland, and representatives from the Police Investigations and Review Commissioner (PIRC) and the Scottish Human Rights Commission, as well as with representatives of non-governmental organisations active in areas of concern to the CPT.

The cooperation received by the CPT's delegation from the Scottish authorities, as well as from the management and staff in the establishments visited, was excellent. The delegation had rapid access to the places of detention visited, was able to meet with those persons with whom it wanted to speak in private and was provided with access to the information it required to carry out its task. The CPT is also appreciative of the support provided by the Ministry of Justice liaison team in London.

C. Immediate observations under Article 8, paragraph 5, of the Convention

6. At its meetings with the Scottish authorities on 24 and 25 October 2018, the CPT's delegation made three immediate observations under Article 8, paragraph 5, of the Convention. The first observation concerned the continued placing of prisoners in the very small cubicles in the reception area of Barlinnie Prison for two hours or more. It requested that the Scottish authorities take urgent action to end the use of these cubicles and develop larger reception waiting areas.

The second observation regarded inmates on non-offence protection and extended Rule 95¹ (11) segregation (within, and outside of, the Separation and Reintegration Units) at Grampian, Edinburgh and Shotts Prisons, who were locked in their cells for 23 to 24 hours per day for several weeks, if not months, at a time. The delegation requested that the Scottish authorities ensure that all segregated inmates, and particularly those inmates who are held outside of the SRUs under Rule 95 orders, are offered at least one hour of outdoor exercise every day.

The third observation concerned the treatment of women prisoners held in segregation at Cornton Vale Prison, both within the Separation and Reintegration Units and Ross House. The delegation met several women who clearly were in need of urgent care and treatment in a psychiatric facility, and should not have been in a prison environment, let alone segregated for extended periods in solitary confinement. The delegation requested that the Scottish authorities provide immediate enhanced care and support by mental health-care staff for these severely mentally-ill women with a focus on providing a more therapeutic environment, and ensuring they have more out of cell time and meaningful human contact.

The delegation asked the authorities of the United Kingdom to provide the Committee with a response by 31 January 2019 as to the action taken to remedy these issues. By letter of 27 January 2019, the United Kingdom authorities provided a response to the immediate observations and to other comments raised by the CPT's delegation in its preliminary observations. The contents of this response have been taken into account in the relevant sections of the report

¹ Rule 95 of the Prisons and Young Offenders Institution (Scotland) Rule 2011 (removal from association): "95.—(1) Subject to paragraph (2), the Governor may order in writing that a prisoner must be removed from association with other prisoners [...] (2) An order under paragraph (1) may only be made where the Governor is satisfied that removal from association is appropriate for one of the following purposes: (a) maintaining good order or discipline; (b) protecting the interests of any prisoner; (c) ensuring the safety of other persons.[...](11) The Scottish Ministers may [...] grant an extension to an order made under paragraph (1), in writing, for a period of no more than one month [...](12) The Scottish Ministers may [...] grant any number of further extensions to an order made under paragraph (1), in writing, for successive periods of no more than one month [...]."

D. National Preventive Mechanism

7. The United Kingdom ratified the Optional Protocol to the United Nations Convention against Torture (OPCAT) in December 2003 and designated its National Preventive Mechanism (NPM) in March 2009. At the time of the delegation's visit, the NPM comprised 21 bodies (including six in Scotland), which together cover all places where persons are deprived of their liberty in the United Kingdom, and the majority of which have a wealth of monitoring experience dating back many years.

In Scotland, these bodies include, *inter alia*, Her Majesty's Chief Inspector of Prisons for Scotland and Her Majesty's Inspectorate of Constabulary for Scotland, who regularly inspect the 15 prisons and the police force across Scotland. Further, police stations are also all visited by members of the "Independent Custody Visiting Scheme", where accredited local community members carry out unannounced checks on custody conditions.

The Chief Inspector of Prisons for England and Wales (HMIP) is tasked with co-ordinating the work of the NPM.

8. The CPT's delegation met and/or spoke with several organisations that are part of the NPM, both in Edinburgh and London. The CPT has long enjoyed very good co-operation with HMIP, Her Majesty's Inspectorates of Prisons and Constabulary in Scotland and other United Kingdom inspection bodies. Moreover, it continues to pay close attention to wider discussions currently underway in the United Kingdom about the NPM's statutory basis, guarantees of independence and the need for sufficient resourcing of the NPM to ensure adequate compliance with the OPCAT. **It recommends that the authorities of the United Kingdom will ensure that these matters concerning the NPM are fully in compliance with OPCAT requirements.**

9. The CPT wishes to place on record its appreciation of the initiative taken by the United Kingdom and Scottish authorities to invite members of the NPM to be present when the delegation delivered its preliminary observations at the end of the visit.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Law enforcement agencies

1. Preliminary remarks

10. Policing is a “devolved matter” under the Scotland Act 1998. However, the UK Parliament and government still keep overall responsibility for the areas of national security, terrorism, firearms and drugs. Previously, the Police (Scotland) Act of 1967, and the subsequent amendments,² provided the legal basis for the sharing of responsibilities between the Scottish government, police authorities and the Chief Constables of eight regional police forces across Scotland. However, this structure was subsequently changed in 2012,³ and in 2013 a unified “Police Service of Scotland” (Police Scotland) was formally established. Police Scotland is led by a Chief Constable and comprises a command team of four Deputy Chief Constables, nine Assistant Chief Constables and three Directors. It is divided into 14 local policing divisions, each headed by a Local Police Commander. The Chief Constable is accountable to the Scottish Police Authority, a body that is also responsible for maintaining policing, promoting policing principles, and the continuous improvement of policing.

11. The legal framework governing the process of deprivation of liberty by law enforcement officials has undergone significant reform since the last CPT visit to Scotland in 2012. The Criminal Justice (Scotland) Act 2016⁴ changes the landscape of criminal practice and procedure. Part 1 (Arrest and custody) includes provisions on the powers of the police to arrest, hold in custody and question a person who is suspected of having committed an offence. This part also provides for the rights of such persons in custody, makes specific provision for vulnerable adults and children and obliges the Lord Advocate to issue a code of practice about investigative functions; police Scotland’s core procedural guidance is enshrined in its Standard Operating Procedures (SOPs). Criminal Justice (Scotland) Act 2016 (Arrest Process) SOP details the procedures and safeguards surrounding the arrest and detention of suspects under the 2016 Act.

12. Police custody centres are arranged according to 12 regional clusters across Scotland. During the 2018 visit, the CPT’s delegation visited five police custody facilities in Scotland.

In Glasgow, the CPT’s delegation visited *Glasgow City Centre Police Station* (“GCCPO” *Stewart Street*), in Glasgow North Cluster, and *Govan Police Station* (Glasgow South). These primary custody facilities have 46 and 50 cells, with occupancies of 12 and 24 detained persons at the time of the visit, respectively.

In Edinburgh, the delegation visited *St Leonard’s Police Station*, which has 41 cells and had an occupancy of six detained persons at the time of the delegation’s visit.

² Such as the [Police, Public Order and Criminal Justice \(Scotland\) Act 2006](#).

³ Police and Fire Reform (Scotland) Act 2012.

⁴ Criminal Justice (Scotland) Act 2016: <http://www.legislation.gov.uk/asp/2016/1/contents>.

It also visited, for the first time, *Fraserburgh Police Station*, a primary custody facility that covers the areas of Aberdeenshire and Moray. This custody centre has 15 cells (including a new extension of 10 cells), and had an occupancy of five detained persons at the time of the visit. *Peterhead Police Station* was an ancillary custody facility that had not been in use for seven years and had nine cells that were being used for storage at the time of the delegation's visit.

The delegation interviewed persons held in police custody at the time of the visit and a large number of inmates held on remand in the various Scottish prisons visited about their treatment by the police.

13. The Criminal Justice (Scotland) Act 2016 regulates detention and arrest. Chapter 2 of the 2016 Act provides for a person to be detained for 12 hours by the police, with the possibility to extend this period by a further 12 hours upon the authority of an inspector, or of a chief inspector for a person under 18.⁵ The custody of each detained person must be reviewed by an inspector every six hours based upon reasonable grounds for suspecting that the person has committed an offence and the test of necessity and proportionality.⁶ A detained person, if not released, must be charged and brought before a court on the next "lawful day", which excludes week-ends and public holidays.⁷ As the courts are not open on weekends, this means that persons taken into police custody on a Friday will consequently usually have to wait until the following Monday before attending court. A significant number of persons are held in police custody for more than 24 hours; in 2017, 15,171 persons were held for over 36 hours and, in the first nine months of 2018, 9,286 persons were held for over 36 hours.

Moreover, it continues to be the case that foreign nationals who are suspected of staying illegally in the country can be detained by the police, in accordance with an agreement between the police forces and the United Kingdom Border Agency (UKBA), for up to five days. In the police stations visited, the CPT's delegation was informed that foreign nationals rarely spent five days in police custody and the electronic registers consulted confirmed this. Police custody suites in Scotland are equipped to hold detained persons for short stays only (see Section 4). **The CPT trusts that detained irregular migrants will be transferred as quickly as possible to an immigration removal centre, which is specifically designed to manage persons held for administrative reasons.**

⁵ Section 11.

⁶ Sections 13 and 14.

⁷ Section 21.

2. Ill-treatment

14. All persons met by the delegation stated that they had been treated correctly by custody staff during their time in the custody facilities visited.

The majority of persons interviewed also stated that they had been treated properly by the police at the time of apprehension. That said, the delegation received a significant number of complaints by detained persons concerning excessive use of force upon apprehension by police officers; there appeared to be a marked increase in the number of these allegations compared with the CPT's previous visit in 2012. During the 2018 visit, nearly one-third of the persons interviewed by the delegation⁸ made allegations of excessively tight handcuffing and of physical abuse by the police. The allegations included punches, kicks, a person's head being banged against the side of a police van, another person's head pressed against the floor by an arresting officer's knee and persons handcuffed behind their backs and then dragged forwards by their arms. A number of the persons met by the delegation had visible recent injuries including bruising to the face, scratches to face and body, swollen and red wrists, bruising on the wrists and arms and a shoulder injury, which were consistent with at least a struggle at apprehension. A number of these persons insisted that force had been used against them even though they had not resisted arrest.

For example, Detainee A, who was apprehended at a family event, alleged that the arresting police officers from Glasgow twisted his wrist, arm and shoulder painfully, applied handcuffs too tightly and threw him into the police van causing him to hit his head on the inside of the van. The CPT's medical expert observed 'swelling of the right wrist, red marks consistent with overly tight handcuff application on both wrists, a limited range of motion of the right shoulder joint, right wrist joint and right interphalangeal joints, excoriation in the left parietal region, 5 cm in length. Suspected dislocated shoulder.' On arrival at the Glasgow City Centre custody facility, this detained person had stated that he had been injured, but this appeared not to have been followed up with any subsequent investigation (see Section 3(c)). At the time of the delegation's visit, the nurse had just visited this detained person and had promised to organise an x-ray.

Another example, Detainee B, alleged that, on the way to the police station, the arresting police officers took him out of the police van and punched him in the face in Dalkeith Police Station car park, before continuing the journey and handing him over to custody staff at St Leonard's Police Station. Detainee B had recent injuries on his right cheek and right wrist. On arrival at the custody facility, although he stated that he had been injured, and this had been recorded, this appeared not to have been followed up with any subsequent investigation.

15. The CPT recognises that the arrest of a suspect is often a hazardous task, in particular if the person concerned resists and/or is someone whom the police have good reason to believe may be armed and dangerous. The circumstances of an arrest may be such that injuries are sustained by the person concerned (and by police officers), without this being the result of an intention to inflict ill-treatment. Further, injuries can be sustained by the suspect prior to the apprehension by the police.

⁸

I.e. 22 out of 70 persons interviewed either in police custody or on remand in prison.

Nevertheless, the CPT considers that, from the perspective of preventing ill-treatment, all injuries on newly arrived detained persons to police custody should be properly recorded and investigated. The CPT recalls that no more force than is strictly necessary should be used when effecting an arrest. Furthermore, once arrested persons have been brought under control, there can be no justification for their being struck by police officers.

In light of the information gathered during the 2018 visit, **the CPT recommends that police officers be regularly reminded of these basic principles, including through practical training exercises. The CPT recommends that the Scottish authorities deliver a strong message that the ill-treatment of detained persons is illegal, unprofessional, and will be the subject of appropriate sanctions. Further, the authorities should ensure that injuries are systematically recorded (paragraph 24) and that an investigation is systematically carried out into every allegation of ill-treatment.**

16. The delegation also found a person in a police custody cell who was suspected of carrying drugs in his body and who was handcuffed while asleep. This detained person had been continuously handcuffed since his arrival at the custody facility some 13 hours previously and this measure was set to last throughout his stay in custody (i.e. around 36 hours). The reason for this measure was that the detained person had refused a cavity examination⁹ and the custody sergeant suspected that were he to be released from the handcuffs he would retrieve the drugs hidden within his body and then consume them.

The CPT considers that the detention of persons suspected of concealing drugs within their bodies requires appropriate medical supervision, due to the serious risk of acute intoxication from potential drug leakage; persons held in police custody cells should in principle not be handcuffed. **While handcuffing detained persons in police custody may be necessary for short periods of time, prolonged periods when a detained person is calm cannot be justified.**

By letter dated 27 January 2019 in response to the CPT's Preliminary Observations, the Scottish authorities informed the CPT that the care and welfare of prisoners in police custody is a subject of significant internal and external scrutiny and that safeguards were in place in the Care and Welfare of Persons in Police Custody Standard Operating Procedure (SOP). The authorities stated that in limited cases of particular vulnerability and risk, including a prisoner who is known to be "banking drugs internally", there may be occasions where handcuffs are applied for a period that extends for a number of hours. This approach is rare and is acknowledged as a high level use of force. It is, therefore, the subject of constant review, with the Force Custody Inspector notified and scrutinising each instance. This ensures full review, that there is clear justification and that a lesser use of force is applied when it is safe to do so and at the earliest opportunity. Further, the authorities undertook, in relation to this (above) issue, that a review would be instigated, with benchmarking, regarding best practice for circumstances where extended restraint is required. This would be overseen through reporting to the Use of Force Monitoring Group.

⁹ A cavity examination can only be ordered by a judge, which was problematic given that no courts are open during the weekends in Scotland (see paragraph 32). However, the fact remains that forced cavity searches are not permissible without the detained person's consent.

The CPT welcomes the response by the authorities and the instigation of the above review and would like to be sent an update upon its completion. However, nothing is said about **appropriate medical supervision. The CPT recommends that a person who is suspected of having ingested or secreted drugs within their body should be subject to a radiography examination and, if positive, placed under observation in a medical setting until the evacuation of the packages.** Further, the CPT is aware that certain Guidelines exist¹⁰ that describe the immediate assessment of persons in police custody suspected of having substances concealed internally and the individual roles and responsibilities and the process to be followed, up to and including the process for discharge from hospital; **it would appreciate information regarding whether these Guidelines are being followed in all custody facilities.**

3. Safeguards against ill-treatment

17. The CPT's delegation examined the safeguards afforded to persons deprived of their liberty by the police; namely, the right of such persons to inform a close relative, or another third party of their choice, of their situation, to have access to a lawyer and to have access to a doctor. It also examined whether such persons were informed without delay of all their rights and whether the custody records were properly filled out and well-maintained.

a. notification of custody

18. The right of detained persons to have a third party notified of their detention, or their refusal thereof, is provided for in Section 38 of the Criminal Justice (Scotland) Act 2016. In the course of the 2018 visit, the CPT's delegation noted that all persons with whom it spoke who had been in police detention had been afforded this right. Nonetheless, several detained persons at each of the police stations visited complained that they had not been informed about whether and when this notification had been effected. **The CPT recommends that detained persons should be informed when the third party notification has been effected by custody staff; this feedback should be traceable in the police custody records.**

Notification of custody may be delayed if it is necessary in the interests of the investigation or prevention of crime, the apprehension of offenders or for safeguarding children in custody (section 38(5)), and effected with no more delay than is necessary (section 38(4) and (7)). The CPT notes positively that the new Criminal Justice (Scotland) Act 2016 and the SOP (Chapter 9.3) now define in law and limit in time the exceptions to the exercise of this right, especially as regards children.¹¹

¹⁰ Police Scotland & NHS, Management Guidelines for Persons Suspected of Having Drugs Concealed Internally, 06/2015.

¹¹ SOP Chapter 9.3.9 For all children under 18 years of age the following circumstances may arise: it is not practicable or possible to contact, within a reasonable time, the person to whom intimation is to be sent (this includes in the interests of the investigation or prevention of crime or the apprehension of offenders), the person to whom intimation is sent, if asked to attend at the place where the child in custody is being held, claims to be unable or unwilling to attend within a reasonable time or a Local Authority has advised against sending intimation to the person to whom intimation is to be sent; 9.3.10 In the circumstances described above, attempts to send intimation to an appropriate person must continue to be made until: an appropriate person is contacted and agrees to attend, within a reasonable time, at the police station or other place where the child is being held or if a constable believes that the person in custody is an older child, the person

b. access to a lawyer

19. The right of detained persons to have a lawyer notified of their detention, the place of their custody and that legal assistance is required is provided for in Section 43 of the Criminal Justice (Scotland) Act 2016. Section 44(1) affords detained persons the right to consult with a solicitor at any time.

The delegation noted the right of notification to a solicitor operated well in practice and was afforded to all persons interviewed in police custody. Nevertheless, several persons with whom the delegation spoke (including at Fraserburgh, St Leonard's Police Stations), stated that they had wanted to directly consult their lawyers over the telephone, but had been informed that the custody staff had talked to their lawyer on their behalf; the first time that many of the detained persons were able to talk with their lawyers was just before attending court on the following Monday.

The CPT has long considered that to be effective as a safeguard against ill-treatment, access to a lawyer must be guaranteed as from the very outset of deprivation of liberty. The right of access to a lawyer must include the right to talk to him/her in private. **It recommends that the custody staff be alert to whether a detained person wants to consult with a lawyer directly and ensure that access to a lawyer must be guaranteed as from the very outset of a detained person's deprivation of liberty.**

20. Under Scottish law, in exceptional circumstances, the person's exercise of the right to access a lawyer may be delayed, so far as that is necessary in the interests of the investigation or the prevention of crime, or the apprehension of offenders, by a constable of the rank of sergeant or above, and who has not been involved in the investigation in connection with which the person is in custody.¹²

As was the case in 2012,¹³ the CPT again flags its concern at the possibility for the police to delay a detained person's access to a lawyer or the exercise of that person's right to meet a lawyer in private. The CPT fully recognises that it may exceptionally be necessary to delay for a certain period a detained person's access to a lawyer of his/her choice. However, this should not result in the right of access to a lawyer being totally denied during the period in question. In such cases, access to another independent lawyer who can be trusted not to jeopardise the legitimate interests of the investigation should be organised. It is perfectly feasible to make satisfactory arrangements in advance for this type of situation, in consultation with the local Bar Association or Law Society.

In 2012, the CPT flagged its concern that the relevant provision (Section 15A of the Criminal Procedure (Scotland) Act 1995) should be amended to reflect this principle. Given the recent reform of the Scottish criminal justice system and the new Criminal Justice (Scotland) Act 2016, it is disappointing that this principle appears not to have been reflected in the updated legislation. **The CPT recommends that Section 44 of the Criminal Justice (Scotland) Act 2016 be amended accordingly.**

requests that (for the time being) no further attempt to send intimation is made.

¹² Section 44(2)(3).

¹³ Paragraph 19, CPT/Inf (2014) 11.

c. access to a doctor and the recording of injuries

21. As was the case in 2012, there is still no formal requirement guaranteeing the right of access to a doctor under the law, despite overall recent revisions of the Criminal Justice (Scotland) Act 2016.

The delegation observed that in practice detained persons are first ‘triaged’ by non-medical police custody staff based on a vulnerability assessment questionnaire completed during the booking-in process. Based on the answers, custody staff (i.e. not medical staff) decide whether a detained person should be examined by NHS health-care staff (first medical ‘triage’).

Positively, some of the larger police custody facilities now have access to a pool of NHS nurses who provide 24-hour coverage (St Leonard’s, Govan, Glasgow City Centre), who could examine detained persons directly or decide whether a general practitioner (GP) was required (second ‘triage’). If urgent medical treatment was required, a detained person would not be kept at the police station but transferred to hospital.

However, smaller primary police stations (such as Fraserburgh) did not have access to a pool of 24-hour nurses; instead, the custody staff called the local emergency medical service (G-MED1) to discuss whether a doctor should be contacted. If it was decided that a GP’s consultation was required, the GP could either visit the custody facilities or diagnose and prescribe medication over the telephone, instead of directly examining a detained person. In emergencies or in cases of doubt, the custody sergeant sent detained persons to the local hospital.

The CPT considers access to a doctor as a key safeguard to help prevent ill-treatment. **The CPT reiterates its previous recommendation¹⁴ that the right of detained persons to have access to a doctor from the very outset of their deprivation of liberty be expressly provided for in law and in the administrative guidance regulating the deprivation of liberty by the police. The relevant provisions should make clear that a request by a detained person to be examined by a doctor should always be granted and it is not for police officers to filter such requests.**

22. The CPT’s delegation found that medical consultations in police stations did not take place in private, out of the hearing and sight of a police officer. At all the police stations visited, medical consultations between detained persons and NHS health-care staff took place in a cell, or medical consultation room, with officers standing by an open door for reasons of security.

The CPT considers that the close proximity of police officers during medical examinations of detained persons could discourage a detained person who has been ill-treated from saying so. **The CPT recommends that all medical examinations should be conducted out of the hearing and - unless the doctor or nurse concerned expressly requests otherwise in a given case - out of the sight of police staff.**

¹⁴ CPT/Inf (2014) 11, paragraph 21.

23. The CPT's delegation saw people suffering from drug withdrawal in many of the police stations visited; it also received several allegations from detained persons suffering from drug addiction problems that the methadone maintenance treatment was not continued during their time in police custody (Glasgow City Centre, Fraserburgh Police Stations). This is notable given that persons could spend up to three days (or even occasionally four days) in police custody. NHS Health-care staff acknowledged that while there was no uniform standard practice across all police custody suites, some police stations (such as St Leonard's) continued methadone maintenance treatment, whereas others (such as Glasgow City Centre, Govan) did not, and instead used detoxification with Dihydrocodeine (DHC).

Positively, the delegation noted that in some police stations (St Leonard's), detained persons addicted to opiates received a Naloxone kit upon release (under the "Take Home Naloxone Programme").

Given the possible lengthy stays in police custody facilities in Scotland, **the CPT recommends that the Scottish authorities ensure that Police Scotland and the NHS take measures to standardise the approach to methadone maintenance and detoxification treatment in police custody. The CPT would appreciate information whether the type of DHC used in police custody is short-acting DHC, or long-acting DHC.** In principle, switching from long-acting opioids, such as methadone, to short-acting opioids, such as DHC, should be based on an individual approach and be undertaken with specialist advice. The patient should give consent to the switch. Once the conversion has occurred, the dose of new opioids should be titrated carefully according to individual response and the patient monitored closely for side effects and efficacy. **Generally, persons in police custody should have access to the same treatment as they had had in the community.**

24. The CPT's delegation noted that the process of identification and recording of injuries upon admission to the police station was in need of improvement. The delegation observed a number of detained persons at the custody facilities with recent injuries. During the booking-in, completion of custody records and risk assessment process, the onus remained on the detained person to say whether he/she was injured; if he/she said 'no injuries', it was marked on file as such (in some cases, despite obvious injuries).

Even when there were evident injuries, it was not clear that any proactive follow-up was taken by custody sergeants, with no systematic referral made to the competent police complaints' investigation body to initiate an investigation. On the contrary, at St Leonard's Police Station, the delegation was informed that it was not the duty of custody staff to register or to report any complaints of potential abuse by arresting officers.

The CPT considers that proper documentation and recording by custody staff of detained persons' injuries upon arrival at the police station is an important safeguard against ill-treatment, all the more important in light of the marked increase in the number of allegations against arresting officers received by the CPT's delegation in Scotland. Booking-in custody staff should be attuned to the need to systematically record obvious injuries observed on newly-arrived detained persons and refer these persons to NHS health-care staff for a medical examination. **The CPT recommends that the Scottish authorities ensure that custody staff are reminded, through regular training, that all injuries should be immediately and properly documented and that such detained persons should be examined by NHS health-care staff; recording of the medical examination in cases of traumatic injuries should be made on a special form provided for this purpose, with body charts for marking traumatic injuries that should be kept in the custody records of the detained person. Also, a special trauma register should be kept.**

Moreover, the CPT recommends that procedures should also be put in place to ensure that whenever injuries are recorded which are consistent with allegations of ill-treatment made by the detained person concerned (or which, even in the absence of an allegation, are clearly indicative of ill-treatment), the record is systematically brought to the attention of the competent prosecuting authorities, regardless of the wishes of the person concerned. The person should be told of the reporting obligation by the doctor and reminded that he/she can also initiate a complaint, if they so wished. The results of the examination should also be made available to the detained person concerned and his or her lawyer. If necessary, the Scottish Standard Operating Procedure should be amended to reflect these principles.

d. information on rights

25. Scottish law provides that any person deprived of his or her liberty must be immediately informed of the reason for police detention and of their rights.¹⁵ All detained persons with whom the delegation spoke confirmed that they had been informed about their rights. Further, in all police stations visited, leaflets were available explaining detained persons' rights; they existed in a variety of commonly spoken languages. Information in foreign languages could also be provided to detained persons via the telephone, or if necessary, by face-to-face interpretation services; detained foreign nationals with whom the delegation spoke did not complain about any lack of understanding.

¹⁵

Criminal Justice (Scotland) Act 2016, Chapter 1, Sections 3 and 5.

e. complaints procedures

26. The police complaints procedure lies predominantly with the Police Investigations & Review Commissioner (PIRC),¹⁶ whose name and mandate had changed since the CPT's last visit in 2012 and now who has the additional task of undertaking independent investigations into the most serious incidents involving the police.¹⁷ The delegation was informed that since 2013, the majority of PIRC's work concerned investigations of crimes allegedly committed by police officers, as well as deaths after police contact, including all deaths in police custody. These investigations are carried out under the overall responsibility of the prosecutorial services (the Crown Office and Procurator Fiscal Service, ('the Crown Office')). The cases are either handed over by the Crown Office or referred to PIRC by Police Scotland. PIRC also has the possibility to investigate cases ex officio, if this is in the public interest.

Not all cases of assault or excessive use of force are investigated by PIRC; in certain cases, the police investigate these cases themselves. PIRC informed the delegation that any complaint against the police must firstly be made to the police, who are in principle responsible for investigating the complaint. If the person concerned is not content with the outcome, he/she can then complain to PIRC, which has a separate department for the oversight of investigations into complaints carried out by the police.

After an investigation, PIRC reports to the Crown Office; these reports contain findings and recommendations. Police Scotland has three months within which to respond and outline action taken to implement the recommendations. If criminal responsibility is found during a PIRC investigation, the case is sent to the Crown Office which decides whether or not to proceed with the prosecution of the case. If the case does not proceed to prosecution by the Crown Office, Police Scotland starts its own procedure and follows PIRC's findings and issues disciplinary sanctions, if necessary.

27. The CPT's delegation received information that PIRC investigations can take an excessively long time. PIRC can investigate a case for up to one year, then refers it to the Crown Office, which may, if relevant, refer it back to PIRC for further investigations, which can take another year.

28. An alternative route of complaints against the police is the internal complaints process led by the Scottish Police Authority (SPA), which can investigate complaints against the police, including of ill-treatment. In 2018, the authority's complaints and conduct committee had been re-established after being disbanded in 2017 amid criticism over transparency, governance, accountability and the obscure decision-making process.

¹⁶ The PIRC employs a blend of staff drawn from police and non-police backgrounds. In 2019, 60% of the PIRC's staff do not have previous experience as police officers while the remaining 40% do hold this experience. Currently, 54% of staff within the Investigations Team previously served with one of the former eight Scottish legacy forces. The remaining 46% of the Investigations Team comprises staff drawn from a variety of investigatory backgrounds, including recruits from the Fire and Rescue Service, the former UK Borders Agency, Trading Standards and the Armed Services.

¹⁷ In the first ten months of 2018, PIRC, following referral by the Crown Office, investigated a total of 14 deaths that occurred during police operations; in 2017, it investigated 13 deaths.

29. The CPT considers that for a complaints mechanism concerning alleged ill-treatment by the police to be effective, the mechanism needs not only to be independent but also readily accessible to detained persons. Complaints procedures and investigations should comply with the criteria of effectiveness: whether the persons responsible for carrying out such an investigation are independent and impartial vis-à-vis those implicated in the events and whether the investigations are carried out promptly and thoroughly.¹⁸

The CPT considers that persons complaining about alleged police abuse and ill-treatment should not firstly have to exhaust an internal police complaints' process, before being able to complain to PIRC. First, this raises questions as to the independence of the process. Second, detained persons with whom the delegation spoke were not aware of the procedure governing complaints against the police, and several expressed their lack of understanding of and trust in the system. Further, some custody staff informed the delegation that complaints against the police were only possible after the detained person had left the custody facility.

Overall, the CPT considers that the Scottish police complaints system appeared opaque and that the system, as it currently stands, raises serious issues of independence of the investigation and prompt accessibility to an independent body, particularly when the complaint is about "assault" or "excessive use of force" by police officers at the point of arrest.

The CPT is aware of discussions underway to refer all cases of alleged assault or excessive use of the police force to PIRC. The CPT considers that this would be more in line with the standards for effective investigations than the current situation referred to above. Nevertheless, this would require sufficient resources to be allocated to PIRC to fulfil any additional duties adequately. In this context, **the CPT would like to be updated on the proposal to increase the mandate of the PIRC.**

30. Moreover, the CPT is also aware that an Independent Review of Complaints led by Dame Elish Angiolini is currently underway, which is examining complaint referrals, independence of review and accessibility issues.

The CPT recommends that the Scottish authorities take measures to ensure that the system of handling of complaints made by persons deprived of their liberty, irrespective of the place or situation in which they are held and the legal framework applicable to their deprivation of liberty, observes certain basic principles: availability, accessibility, confidentiality/safety, effectiveness and traceability.¹⁹ The CPT would like to be updated on the measures proposed to ensure the police complaints procedure in Scotland complies with these basic principles.

¹⁸ See "Complaints mechanisms", Extract from the 27th General Report of the CPT, CPT/Inf(2018)4-part.

¹⁹ Ibid.

4. Conditions of detention

31. The material conditions in all the police stations visited were generally reasonable for short stays in police custody of up to 24 hours.

The single occupancy cells were of an adequate size, measuring 8m² or more. Each cell had a call bell, a concrete plinth, and a steel toilet, and detained persons were provided with a thin blue waterproof mattress and blanket, and three meals per day (including standard microwave meals with options for halal and other specific dietary needs). In all cells, artificial lighting and ventilation were sufficient; however, the majority of cells visited were fitted with opaque glass bricks permitting only very limited access to natural light and some cells had no access to natural light at all. **The CPT recommends that all police custody cells should have access to natural light** (see also paragraph 33).

32. Following a systematic risk assessment upon arrival at the police custody facility, persons who were assessed to be particularly vulnerable to self-harm were placed in observation cells equipped with CCTV cameras or in some cases a glass wall. There were also several “dry-cells” for certain suspects, without a toilet or sink for reasons of preservation of forensic evidence; these were also covered by CCTV. Vulnerable persons who were placed on constant watch were monitored by police officers via CCTV (four screens for one officer), the area for the toilet was meant to be pixelated to afford the detained person an element of privacy.

On a positive note, at most of the police stations visited (including Govan, Glasgow City Centre), the surveillance of CCTV screens occurred in a separate room, by gender specific officers, depending on the gender of the detained person. That said, at St Leonard’s Police Station, these screens were located in the main offices, and at least one of the screens had the pixelation misaligned thus revealing the female detained person using the toilet to any officer who walked past. The CPT considers that this specific situation is unacceptable. **The CPT recommends that the authorities move the CCTV monitors covering the special observation cells at St. Leonard’s Police Station into a separate room, as is the practice at Govan and Glasgow City Centre Police Stations, and dedicated officers should be made responsible for supervision, duly taking into account the gender of the observed person(s). Further, the cameras should be re-aligned to pixelate the toilet area in all cells.**

33. Shower facilities existed in all police stations visited. However, staff informed the delegation that due to operational reasons, they could not offer showers to detained persons and all detained persons with whom the delegation spoke, who had spent a weekend in a police station before going to court, complained that they had not been given the opportunity to shower, only the possibility to briefly wash themselves using a sink before attending court.

Moreover, detained persons held for longer than 24 hours were not offered access to outdoor exercise at any of the police stations visited, and many of the custody facilities visited did not have any secure outdoor space available, given their locations in the city centres. The CPT notes that the same concerns had been raised in its 2012 visit report,²⁰ and the Scottish authorities had responded that, due to the fact that there were not many persons held for longer than 24 hours, and that the numbers would even decrease, the recommendation could not be implemented for old police facilities, but would be considered for new ones.²¹

In 2018, the CPT considers that firstly, the police facilities visited remain unsuitable for detention for longer than 24 hours given the limited washing opportunities for detainees, the lack of outside exercise yards and limited access (and in some cases no access at all) to natural light in cells in police custody facilities. Secondly, the numbers of detained persons staying for longer than 24 hours in police custody facilities have not decreased and in fact are quite considerable (see paragraph 13). Thirdly, the CPT acknowledges that old custody facilities cannot be easily adapted, therefore it recommends that an alternative solution, in light of this, is to decrease the numbers of persons held for longer than 24 hours in police custody.

In light of the above, the Committee recommends that the Scottish authorities take steps to decrease the high numbers of persons held in police custody facilities for longer than 24 hours (i.e. between Friday and Monday mornings), through, *inter alia*, the opening of some Saturday courts. Further, any newly planned police custody facilities should provide for access to sufficient natural light, ventilation and outdoor exercise facilities.

²⁰ Paragraph 27, CPT/Inf (2014) 11.

²¹ Response of the Government of the United Kingdom to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to the United Kingdom from 17 to 28 September 2012, CPT/Inf (2014) 12, paragraph 13.

B. Prison establishments

1. Preliminary remarks

a. recent developments

34. The CPT recalls that justice and penal policy are devolved areas under the Scotland Act of 1998 and fall under the authority of the Scottish Government. Prisons in Scotland are the responsibility of the Scottish Prison Service (SPS), established in 1993, which operates as an Agency of the Scottish Government.

The SPS has committed itself to a forward-looking and proactive agenda for improvement of its penal policy and prison estate (comprising 15 prisons) under the banner ‘Unlocking Potential, Transforming Lives’. It has undertaken some significant reforms, including re-conceptualising the female prison estate to render it more community-facing²² and has undertaken various initiatives to stem a rising remand prison population (see below). It also plans to replace the older “Victorian” prisons (including Barlinnie, Inverness and Greenock Prisons).

Nonetheless, the number of inmates in Scottish prisons has remained, in the Scottish Cabinet Secretary for Justice’s own words, ‘stubbornly high’, at around 8,000 inmates, and reforms are still at a nascent phase. At the time of the October 2018 visit, there were over 7,900 prisoners for an official capacity of 7,900 places (i.e. an occupancy rate of 100%). After England and Wales, Scotland has the highest incarceration rate in Western Europe at 145 per 100,000 population. Overcrowding remains a problem across the Scottish prison estate, and not only in the older Victoria-era prisons; at the start of 2018, five prisons were at or beyond their capacity, rising to nine out of 15 by the end of the year.

35. The Scottish Government continues to pursue various initiatives to stem the high prison population. Building on the 2008 McLeish Report,²³ in 2011 it invested in the “Community Payback Order” to divert offenders from short-term prison sentences and the Scottish Parliament introduced a presumption against imprisonment for sentences of three months (whilst courts are still free to pass short prison sentences, the presumption requires judges to record their reasons for doing so). In 2018, sentences of three months had reduced by approximately a third, and sentences of between three and six months had fallen by 15%, whilst electronic tagging had increased and the number of community sentences had risen by 19%. The Scottish Government also informed the CPT of its intention to extend this presumption to sentences of less than 12 months, to take effect in 2019.

²² With the objectives, *inter alia*, to enable more interaction between the prison and the community, to put the social influence and interactions from the community at the heart of prison life and to facilitate links and ties with prisoner’s families.

²³ “Scotland’s Choice”, Report of the Scottish Prisons Commission, July 2008.

Further, the Scottish Government continues to invest in its programme of building new prison establishments, such as HMP & YOI Grampian Prison (which opened in March 2014 and replaced Peterhead and Aberdeen Prisons). It also has plans for the replacement of Barlinnie Prison, and the structural redesign of the female prison estate is also currently underway. Nevertheless, overcrowding remains an important issue in some prisons, and was particularly notable at Barlinnie and Edinburgh Prisons (see Section 1(b)).

36. Despite these initiatives, the prison population had not decreased. One of the reasons given to the CPT's delegation was the recent strengthening of Scottish law on sexual offending, which has resulted in a high number (1,300) of prisoners convicted of sex offences being dispersed throughout the Scottish prison estate. Further, since 2016, there is no longer an automatic release after three quarters of a prisoner's sentence has been served; both of these have apparently adversely impacted prison numbers.

37. In addition, the number of remand prisoners in Scottish prisons fluctuates between 18% and 20% of the prison population and, according to the authorities, this number continues to gradually increase.

The CPT is aware that there is considerable debate within Scotland on the use of remand in Scottish prisons.²⁴ At the same time, **the CPT would appreciate being sent an analysis of the other reasons for overcrowding in Scottish prisons, such as the increase in numbers of longer sentences, and the measures envisaged to tackle overcrowding and Scotland's comparatively high incarceration rate.**²⁵

The CPT would also appreciate being sent an update on the measures envisaged to be taken, within which timeframes, in response to the Justice Committee's recommendations in its Inquiry into the use of remand in Scotland.

38. As regards overcrowding, the CPT wishes to recall that even with an occupancy level of 95% of the total design capacity of a prison estate, it becomes nigh impossible for a prison service to deliver what is required of it, and more particularly, to ensure respect for the safety and human dignity of inmates and staff.

The CPT reiterates its recommendation²⁶ that the Scottish authorities pursue their efforts to reduce the prison population, taking due account of the relevant Recommendations of the Committee of Ministers of the Council of Europe in this area, in particular: Recommendation No. R(99)22 concerning prison overcrowding and prison population inflation; Recommendation CM/Rec (2017)3 on the European Rules on community sanctions and measures²⁷; Recommendation Rec(2003)22 on conditional release (parole); Recommendation Rec(2006)13 on the use of remand in custody; and Recommendation Rec(2010)1 on the Council of Europe Probation Rules.

²⁴ On 3 October 2018, a debate on remand was opened in the Scottish Parliament on behalf of the Justice Committee, to talk about its inquiry report on remand; <https://digitalpublications.parliament.scot/Committees/Report/J/2018/6/24/An-Inquiry-into-the-Use-of-Remand-in-Scotland#Executive-Summary>.

²⁵ 145 per 100,000 population.

²⁶ CPT/Inf (2014)11, paragraph 32.

²⁷ Adopted by the Committee of Ministers on 22 March 2017 at the 1282nd meeting of the Ministers' Deputies.

Further, the CPT would be interested to receive an update from the Scottish authorities when the extension of the presumption to sentences of less than 12 months has taken effect.

b. prisons visited

39. During the 2018 visit, the CPT's delegation visited, for the first time, Grampian Prison and carried out targeted follow-up visits to Barlinnie, Cornton Vale, Edinburgh and Shotts Prisons, focusing on inmates on protection and persons in segregation from the mainstream prisoner population (including in the Separation and Reintegration Units (SRUs)), prisoners on remand and female prisoners.

Barlinnie Prison, opened in 1882 and located in Glasgow, remains both the largest and busiest prison in Scotland, holding 17% of the entire Scottish prison population. The layout and design of the prison remained substantially as described in the CPT's last visit report.²⁸ The prison was accommodating 1,339 prisoners at the time of the visit, for a design capacity of 1,051 places: running at an occupancy rate of 132%.

Cornton Vale Prison and Young Offenders Institution, opened in 1975, is situated on the outskirts of Stirling, in central Scotland. As mentioned above, Cornton Vale Prison is the subject of a complete overhaul and was being structurally redesigned at the time of the CPT delegation's visit and thus was in a transitional phase. The plans are for a new establishment designed only for women to be opened by December 2020 on the same location as the current establishment, which itself will be closed down. The new facility will be smaller and female-centric, it will have a 20-place assessment centre and 80 places for women under a normal regime.

The official capacity of Cornton Vale has been reduced from 309 to 111 places and, at the time of the visit, it was holding 89 female adult and four juvenile and young offender inmates. The prison was running at an occupancy rate of 80%. The prison also has a mother-and-baby unit, which was not occupied at the time of the visit. The establishment's original seven accommodation units had been reduced to three, ranging from high (Ross House) to low (Peebles) supervision. Ross House (recent arrivals and high risk inmates) has a care suite for women with long-standing mental health issues (with an occupancy of 20 at the time of the visit) and a "first night in custody" unit with 14 places (with an occupancy of nine at the time of the visit). In addition, there were four pregnant women (including one juvenile of 16 years old). At the time of the visit, two of the pregnant women (including the juvenile) were at the hospital giving birth. Peebles House, a low supervision house, housed some 50 women at the time of the visit. There was also a National Top End facility for convicted female adult prisoners requiring low supervision, after which they could progress to Open House (a unit of 16 independent living units within the prison grounds but outside of the main perimeter wall).²⁹

²⁸ CPT/Inf (2014)11, paragraph 34.

²⁹ Open House was not visited by the CPT's delegation.

Edinburgh Prison, located in the city, consists of four house blocks and accommodates all categories of inmates, except juveniles. Male prisoners are accommodated in Glenesk, Hermiston, and Ingliston and, since mid-2011, female prisoners have been accommodated in Ratho. At the time of the visit, the prison was accommodating 879 inmates, for a design capacity of 867 (excluding the SRU), 779 male and 100 female prisoners. The prison was running at an occupancy rate of 101%.

Grampian Prison and Young Offenders' Institution, which opened in March 2014, is a "community-facing institution", located a few minutes from Peterhead, in a rather remote part of the country. The prison mainly takes inmates coming from Aberdeenshire and the city of Aberdeen and caters for all categories of prisoner. The overall capacity of the establishment (excluding Cruden Hall for male juvenile offenders, which was closed at the time of the visit) was 471 places, and on the first day of the delegation's visit, it was holding 465 prisoners, including 77 male remand prisoners, 45 adult women prisoners and four juvenile and young female offenders, aged between 16 and 21 years old. The prison was running at an occupancy rate of some 98%.

The prison is composed of different halls: Banff Hall accommodates all female inmates (adult, young offenders and juveniles), including a mother-and-baby-unit, as well as two SRU cells for women. Ellon Hall consisted of three floors and was holding 403 inmates at the time of the visit. The ground floor (Ellon 1) accommodated 113 inmates including 77 remand inmates, the admission unit, as well as some persons held on non-offence protection, persons on offence-protection awaiting transfer to the third level, persons held under Rule 95 (11) segregation, convicted and long-term convicted prisoners. Turn-over on this level was very high.³⁰ Cruden Hall was originally intended for male juvenile inmates and was closed due to there being too few juveniles to justify the operational cost (male juveniles are instead transferred to YOI Polmont). There is also a semi-open Community Integration Unit, Aberlour Hall, with a capacity of eight male and two female inmates.³¹

Shotts Prison is a maximum security prison for long-term adult male prisoners. The original prison was built in 1978, extended in 1987 and was rebuilt on the same site in 2012. The Prison consists of two main residential units: Lamont Hall and Allanton Hall. The National Integration Centre within the prison houses adult male offenders who are in the initial stages of sentences of eight years or over and prepares them for eventual movement to mainstream prisons. The official capacity is 553 places and the occupancy was 540 at the time of the delegation's visit; the prison was running at an occupancy rate of around 97%. The prison's SRU has 14 cells, plus one auxiliary cell, and had an occupancy of 12 at the time of the visit. The visit to Shotts Prison focused only on prisoners held under Rule 95 and on non-offence protection prisoners.

³⁰ Ellon Hall 2 mainly accommodated short-term convicted prisoners. Ellon Hall 3 held, in addition to the sex offenders, some long-term prisoners.

³¹ Not visited by the CPT's delegation.

2. Prison establishments for men

a. ill-treatment

40. Positively, at the five prison establishments visited by the CPT's delegation, the vast majority of prisoners stated that they were treated correctly by prison officers and the delegation received no allegations of deliberate ill-treatment of prisoners by staff.

In general, relations between prisoners and staff in the prisons visited appeared positive. Further, prisoners stated that they felt reasonably safe. The exception was Grampian Prison, where the delegation noted a rather tense atmosphere between staff and inmates and some inmates and staff alike reported feeling insecure and unsafe, and were concerned by the risk of inter-prisoner violence (see below).

Nevertheless, the delegation did receive a few allegations of excessive use of force by prison officers during control and restraint operations in different prisons (Grampian, Edinburgh and Shotts). Inmates alleged that although they were compliant, an excessive level of pain was nonetheless inflicted upon them by the prison officers involved. The relevant prison authorities had investigated the allegations in all these cases, and the delegation noted that their investigations were thorough and that the officers had been removed from direct contact with inmates until the investigations were concluded. The delegation also observed for itself the relevant CCTV footage of one of the incidents that triggered such an allegation.

That said, the CPT considers that control and restraint operations do inherently pose a risk of excessive use of force if not undertaken correctly. Moreover, it is almost impossible to monitor and determine the actual level of pain inflicted in a non-planned pain-compliance operation merely from the CCTV footage review, especially when the operation involves four or more officers controlling one inmate, or if the restraint procedure is undertaken in an inmate's cell, with no CCTV coverage. Thus, in the spirit of the prevention of abuse, **the CPT recommends that the Scottish prison authorities regularly remind prison staff, including through ongoing training and refresher courses, that no more force than is strictly necessary should be used to control prisoners; such training should include a reminder about oversight measures and applicable sanctions should disproportionate force be found to have been used.**

The CPT also invites the Scottish authorities to consider taking measures to ensure that body-cameras are worn by front-line prison staff and turned on for all control and restraint operations.

41. The Scottish authorities informed the CPT that there had been a recent gradual rise of inter-prisoner and inmate-on-staff violence. This was officially attributed to a combination of the increase in use of Novel Psychoactive Substances (NPS) (see below), mental health issues and issues regarding organised crime.

Overall, the CPT delegation did not observe a stark year-on-year increase of inter-prisoner violence from interviews with inmates and staff, or from an examination of records, violent incidents and discipline registers, with the exception of Edinburgh Prison. All the prisons had put in place relatively sophisticated measures to record and to track patterns of inter-prisoner violence.

42. Inter-prisoner violence was noticeable at Edinburgh Prison and had been flagged by the management and the SPS as a growing issue, notably in relation to serious prisoner-on-prisoner assaults. From 1 April to 23 July 2018, there had been 183 recorded incidents of inter-prisoner violence, five of which were classed as serious (involving weapons and scalding with boiling liquids), with 18% of the incidents linked to serious organised crime groups.

The delegation was also concerned by the situation at Grampian Prison, where even though the rates of inter-prisoner violence did not appear to be more prevalent than at the other prisons visited, there was, however, a tangible perception of a general lack of safety held by some staff, as well as by some inmates. According to them, this perception was mainly due to frequent staff turnover, staff absences and some new and inexperienced staff resulting in a sense of unease about safety levels (see Section 5(a)).

The CPT examines violence in prisons through the prism of three criteria: recording incidents of violence, responding to such incidents and specific measures taken to reduce violence. The CPT notes that inter-prisoner violence in Scottish prisons, while on the gradual rise, is currently still at a relatively low level. It notes that the Scottish prisons visited are properly recording incidents of violence and reacting and responding to such incidents; nevertheless, it considers that further proactive steps are needed to contain the violence and prevent it from increasing.

The CPT recommends that the Scottish authorities take concrete steps to ensure that a greater investment in preventing violence is undertaken at both Edinburgh and Grampian Prisons; as well as by the establishment of measures designed to help stem and prevent future violence, such as the use of follow-up reports on violent incidents and individual concern files.

43. Linked to the gradual rise of inter-prisoner and inmate-on-staff violence is the issue of the large amounts of synthetic drugs flowing into Scottish prisons. The relative ease of access to almost undetectable NPS renders policing drug flow and abuse in the prison estate a complex and challenging task. The Scottish authorities acknowledged that they needed to improve ways to identify and stem the in-flow of NPS, in particular, into their prisons.

The CPT considers that tackling the increasing drugs problem should indeed be a main priority for the SPS, as the increasing flow of NPS into prisons has a huge influence on daily life in prison, including impacting the functioning of the normal regime. Prisoners informed the CPT's delegation that it was easy to obtain drugs. For example, these were often soaked into paper and sent in letters by post to prisoners; a method that is virtually undetectable, and then the paper was smoked upon receipt. While nearly all the prisons visited, save for Cornton Vale Prison, were facing this problem, it was most notable at Barlinnie Prison and to a slightly lesser extent, Grampian Prison. The CPT's delegation observed for itself the effects of the drugs as regards inter-prisoner violence, assaults on staff, the sense of safety in the prison, and a consequent increase of drug-related medical interventions required.

The CPT urges the authorities to continue to invest in measures designed to effectively identify the drugs flowing into prisons, stem and prevent abuse within the prison and invest further in substance addiction programmes in Scottish prisons. (See also the drug abuse strategy required, outlined in Section 4(f)).

b. conditions of detention and regime for male prisoners

i. material conditions

44. At the time of the CPT's 2018 visit, there was ongoing discussion in the media as to the future of *Barlinnie Prison*, built 140 years ago and described as the "beating heart" of the Scottish prison estate; it was reported that it was due for closure and complete refurbishment. The authorities informed the delegation that there were indeed plans to refurbish the Prison but to ensure that the design capacity did not exceed a thousand places; however, the timing for the refurbishment had not yet been finalised.

The CPT would appreciate being provided with an update on the plans for the replacement of Barlinnie Prison once the timing and scale of the refurbishment have been finalised.

45. Overcrowding adversely impacted the material conditions at Barlinnie Prison, which had deteriorated since the CPT's previous visit in 2012. Many cells, that had been designed for single occupancy measuring between 6 and 8.5 m² including the partitioned toilet, were now being used for double occupancy, especially in Halls C and D; this provided very cramped conditions for two inmates. In Halls A, C and D, the majority of inmates had less than 3m² each of living space in doubled-up cells of 6m².

While there was adequate lighting, including access to natural light, and sufficient ventilation, the cells, especially in the Admissions Unit, were not in a satisfactory state of repair and were dirty and cramped.

Further, while all cells were equipped with a call system, many of them were not functioning in Halls A and D. Where call bells were functioning properly, several inmates alleged long waiting times of up to two hours for call bell responses, leaving them concerned about what might happen in an emergency.

The CPT has long considered, as a minimum standard, that there should be 6m² of living space for a single-occupancy cell (not including the sanitary annexe) and 4m² of living space per prisoner in a multiple-occupancy cell (not including the fully-partitioned sanitary annexe). Nevertheless, this is a minimum standard and the CPT encourages all Council of Europe member states to apply a desirable higher standard, in particular when constructing new prisons, namely that it would be desirable for a cell of 8 to 9m² to hold no more than one prisoner, and a cell of 12m² no more than two prisoners.³²

The CPT recommends that in light of the plans to refurbish Barlinnie Prison that the Scottish authorities ensure that cells of 8m² hold no more than one prisoner, and cells of 12m² hold no more than two prisoners. It also recommends that the call bells throughout the prison and especially in Halls A and D are regularly tested and that response times to call bells are tracked and monitored by management.

³² CPT/Inf (2015) 44, Living space per prisoner in prison establishments: CPT standards, 15 December 2015.

46. Each Hall at Barlinnie Prison had its own exercise yard, many of which were basic concrete yards with no means of rest or shelter from the weather. Inmates were provided with warm, but non-waterproof, jackets in inclement weather.

The CPT recommends that the redesign and refurbishment plans for Barlinnie Prison should take into account the need for shelter against inclement weather and seating facilities in the exercise yards.

47. As described in the CPT's 2012 visit report, prisoners at Barlinnie Prison, upon entering and leaving the establishment still transit through the reception unit where they are placed in one of 66 cupboard-like cubicles (measuring some 1m² and referred to as "dog-boxes" by inmates).

The CPT criticised the use of these boxes in 1994, 2003 and 2012³³ and recommended that they be replaced with larger holding facilities. The United Kingdom authorities previously informed the CPT that it was accepted that the "reception cubicles were far from ideal in a modern penal system and that the Scottish Prison Service will initiate a review and bring forward an options appraisal to replace the current cubicles".

The CPT continues to consider that holding a newly-arrived prisoner in one of the 1m² small cubicles for up to two hours is unlikely to alleviate the feelings of anxiety that he/she might well be experiencing, and in its view could amount to degrading treatment. The CPT considers that after 24 years it is high time for action to be taken to replace the existing cubicles by larger holding facilities without further delay.

At the end of the visit, the Committee's delegation invoked again Article 8, paragraph 5, of the Convention and requested that it be provided with a response within three months as to the action taken to remedy this issue.

48. By letter dated 27 January 2019, the Scottish authorities responded that replacement plans for Barlinnie Prison were underway with a full design model for HMP Glasgow under development. Nonetheless, the authorities informed the CPT that Barlinnie Prison "will carry out a full review of the reception facilities, including the holding cubicles. They will take technical advice regarding feasible options and develop a business case for consideration, providing financial resources are available to support any agreed redevelopment. If funding is unavailable for any remedial work, the use of the reception cubicles will continue to support the operational function of the reception within HMP Barlinnie. However, the time individuals spend in the reception cubicles will be kept to a minimum, with appropriate staff supervision and access to facilities."

The CPT acknowledges that this is a temporary situation, until HMP Glasgow is built; nevertheless, in the meanwhile, the situation remains as described above and the **Committee urges the Scottish authorities to take some simple but the necessary steps to renovate the reception area at Barlinnie Prison; a simple solution to expanding the cubicles would be to remove the wall between every two cubicles (i.e. to reduce the overall capacity to some 33 cubicles).**

³³ CPT/Inf (96) 11, paragraphs 357 to 359; paragraph 81, CPT/Inf (2005) 1; and paragraph 75, CPT/Inf (2014) 11.

49. The material conditions at *Edinburgh Prison* were generally adequate. Inmates were accommodated in single and double occupancy cells (measuring some 10m² including the sanitary annexe). The cells were suitably furnished and had adequate lighting, including access to natural light, and ventilation and were in a decent state of repair.

50. At *Grampian Prison*, the material conditions were modern and airy and were generally of a reasonable standard, having recently been built, and the cells measured some 11m². Each cell was suitably furnished, possessed a fully partitioned sanitary annexe and had sufficient artificial lighting and ventilation as well as plentiful access to natural light.

At the start of the delegation's visit, the prison was not overcrowded,³⁴ and 90% of the cells were used for single occupancy. Nonetheless, during the visit, 17 new inmates (including three women) arrived and needed accommodation. The Prison authorities decided that nine 11m² double cells in Ellon 1, with bunk beds, had to be tripled up with mattresses on the floor in order to make room for the new arrivals temporarily. There lacked sufficient floor space in the cells for an extra mattress, which was instead placed under the bunk beds; this meant that some inmates were required to sleep under the bunk beds. There was very little head-room and it was particularly claustrophobic and disorientating. This situation lasted, in several cases, for two nights or more.

By letter dated 27 January 2019, the Scottish authorities responded to the CPT's Preliminary Observations stating that arrangements had been put in place to support HMP Grampian with population issues, which should avoid the need to "triple-up" double occupancy cells. This includes that, on agreed nights, courts divert to other establishments, and transfers of population when numbers approach safe operational capacity. Further, there was now an approved SPS National Population Management Plan in place, supported by a model to manage prison numbers through the controlled movement of prisoners to suitable accommodation across the prison estate.

The CPT welcomes this response. It also acknowledges that this situation was temporary before the relevant transfers could be arranged. Nevertheless, it notes that an entire hall (Cruden Hall) that could be immediately operational remained empty,³⁵ while inmates had to sleep on mattresses under bunk beds in Ellon Hall in very cramped conditions. It also notes that prison population numbers in general are not likely to decrease in the near future, and a repetition of a situation like this cannot be excluded.³⁶

In light of this, the CPT recommends that the Scottish authorities should take steps to maximise the utilisation of the available space in Cruden Hall (such as designating half of the Hall for non-juvenile inmates), including ensuring a sufficient staff complement to re-open that Hall. This reorganisation could also take the strain off the staff in Ellon 1 who have to juggle and balance the needs of a plethora of different categories of inmate, which was inevitably negatively impacting the functioning of the normal regime (see paragraphs 50 and 51 below).

³⁴ The capacity was 471 places and occupancy of 465 prisoners at the time of the visit; see Section 1(b) 'Prisons visited' above.

³⁵ The number of male juvenile inmates was on the decrease nation-wide; the prison management informed the delegation that when there were male juveniles, they were usually transferred to HMP & YOI Polmont, given their small numbers.

³⁶ See Section 1(a).

51. Each prison visited had exercise yards for the relevant category of inmate. However, in each of the prisons visited, the outdoor exercise yards possessed no shelter from poor weather for the inmates and few benches or other means of rest. The CPT takes note of the response outlining security concerns provided by the Scottish authorities to the CPT's previous recommendation on this issue after its 2012 visit.³⁷ Nonetheless, the CPT notes that solutions have been found in various other Council of Europe member states that mitigate concerns as to security risks posed by installing shelters and means of rest in prison exercise yards, when configured carefully. **The CPT recommends that a shelter and a means of rest be installed in the outdoor exercise yards.**

ii. regime

52. Overall, in several of the prisons visited, the CPT's delegation noted that the regime had been restricted notably due to overcrowding and staff shortages. This resulted in many prisoners being locked-up in their cell for extended periods of the day.

53. At *Barlinnie Prison*, the delegation focused on Halls C (untried prisoners) and D (admissions, non-offence protection and vulnerable inmates) in particular.

It found that the concerns raised in 2012 of the mediocre regime for remand prisoners, where many inmates were confined to their cells for periods of up to 22 hours a day,³⁸ had deteriorated further in 2018. The vast majority of inmates interviewed in Halls C and D spent 22 to 23 hours per day in their cells. Their situation was compounded by the fact that a large majority of these inmates were doubled-up in cells, that provided them with very cramped living conditions of less than 3m² per person.

As in 2012, remand prisoners informed the delegation that they had to choose between one hour of outdoor exercise and one hour of gym every day. While recreation time was officially granted for 45 minutes every day at the Recreation Hall, staff report that this was often cancelled (on average once per week) due to staff shortages. Inmates informed the delegation that, in practice, recreation time was the exception rather than the norm. Overall, remand prisoners were getting, at best, two hours unlocked from their cells per day.

As a rule, remand prisoners were not required to work; however, in Hall C, 22 remand inmates worked at the time of the visit (including in the barbershop, cleaners, hairdressers, and as painters). At Induction, remand prisoners were asked whether they wanted to participate in education and on average only ten remand prisoners in Hall C were following an education programme or course. However, due to the limited offer of regular purposeful activities, most remand prisoners had little to do to structure their days and spent around 22 to 23 hours per day in their cells, with nothing to do other than sleep, watch television or read.

³⁷ Response of the Government of the United Kingdom to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to the United Kingdom from 17 to 28 September 2012, CPT/Inf (2014) 12,

³⁸ Paragraph 41, CPT/Inf (2014) 11.

54. At *Edinburgh Prison*, sentenced prisoners spent the majority of their day (over eight hours) unlocked and had association time every evening. Further, there was a high number of sentenced inmates attending work placements (bike workshops, catering, gardens, laundry, cleaning, hairdressing, waste management, woodcraft and arts and craft, etc.), the gym, the library or in education: on the day of the delegation's visit 575 of the 724 prisoners³⁹ were working or involved in activities. By contrast, in *Glenesk Hall* remand prisoners were unlocked for three to four hours during the day for exercise, recreation and communal meals and only a few remand prisoners worked or had access to any purposeful activities.

55. At *Grampian Prison*, sentenced prisoners also spent the majority of their day (some eight hours) unlocked. On the day of the delegation's visit around half of all the prisoners were involved in a work placement or activities (laundry, cleaning, waste management, life skills, hairdressing, gardens, kitchen, etc.), the well-equipped gym, the library or in education.

By contrast, only 16 of the 77 remand inmates in *Ellon 1* were working at the time of the delegation's visit and were thus able to spend a reasonable part of the day unlocked. The majority of remand inmates were not working and thus had around three to four hours unlocked from their cells per day (for exercise, recreation and communal meals). Further, as *Ellon 1* was used to holding an array of different categories of prisoners, many inmates with whom the delegation spoke alleged that exercise, work and recreation time was being cut relatively often because of insufficient staff numbers to manage each different category of prisoner safely (see paragraph 49 and Section 5(a)).

56. In general, the CPT's delegation noted that the situation for remand prisoners had become significantly worse since 2012. In contrast to the regimes offered to sentenced prisoners across the male prison estate, remand prisoners often spent long periods of time locked up in their cells with little to do to occupy themselves or to structure their days.

The overall situation for remand prisoners was further exacerbated in that remand could last for long periods of time; the maximum length of remand in Scotland is 110 days but can be extended and inmates could, and some did,⁴⁰ spend up to two years on remand.

57. **The CPT recommends that the Scottish authorities take action at Barlinnie, Edinburgh and Grampian Prisons to develop the number of purposeful activities on offer to remand prisoners and to improve the daily programme for these inmates; the objective should be to ensure that all prisoners spend a reasonable part of the day (8 hours or more) outside of their cells, engaged in purposeful activities of a varied nature (work, preferably with vocational value; education; sport; recreation/association).**

³⁹ Of the total 879 inmate population, 155 were remand prisoners, most of whom (133/155) did not work.

⁴⁰ According to information given by staff at Barlinnie Prison.

iii. non-offence protection prisoners⁴¹

58. Prisons have a primary duty to prevent harm coming to prisoners placed into segregation for protection reasons not related to their offence. It is often the case that the need to take protective measures in favour of certain inmates may inevitably have negative repercussions on the activities they can be offered. The CPT's delegation found this indeed to be the case across the prisons visited during its 2018 visit. In general, the regime for non-offence protection prisoners was extremely restrictive.

59. *Barlinnie Prison* had a separate unit for non-offence protection prisoners in Hall D2, with an occupancy of 37 at the time of the delegation's visit. Depending on the nature of the risk posed to them, these prisoners can stay on a non-offence protection regime for a part or for the duration of their sentence; with the result that some inmates remain in specific non-offence protection conditions for long periods of time. In at least three cases, in Hall D (ground floor), the delegation spoke with inmates who were spending 24 hours a day locked up in doubled-up cells, for fear of their own safety, as they did not believe that prison staff could ensure their protection if they left their cells.

The regime consisted of one hour of communal outdoor exercise, and the possibility to go to the gym for up to one and a half hours per day on weekdays and to partake in educational programmes together with other protection prisoners, have 45 minutes of association time along the landings within the unit, and use the library twice a week, as well as receiving visits and phone-call entitlements. Three protection prisoners also worked as cleaners.

Positively, a number of inmates had contact with a psychologist, psychiatrist or social worker and some were on the suicide prevention programme called "Talk to Me". Many of the non-offence protection prisoners spoke positively to the delegation about their experiences in the Hall. The delegation regarded this unit in Hall D2 at *Barlinnie* in a comparatively favourable light compared to the regimes afforded to non-offence protection prisoners in other prisons visited.

60. At *Edinburgh Prison*, non-offence protection prisoners at *Glenesk Hall* were theoretically offered three hours of unlocked time (one hour of shower and phone access in the mornings, one hour of outdoor exercise after lunch, and one hour's recreation time in the afternoons). However, in practice, many of the non-offence protection prisoners with whom the delegation spoke had allegedly been locked up for 23 to 24 hours per day, had not been offered any recreation time, and were very rarely offered exercise, and if they were, it was before 7.30 a.m.; a couple of inmates alleged that they had not been offered any exercise at all.

⁴¹ Prisoners who have voluntarily requested protective measures be taken by the prison management to ensure their safety for reasons not associated with their crime (for example, rival gang members); often these prisoners are protected by placement on a separate regime and limited contact with other prisoners assessed to pose a safety risk to the relevant prisoner.

61. *Grampian Prison* had not established a dedicated non-offence protection unit, instead inmates on protection were held in Ellon 1. The delegation was informed that every three months, non-offence protection cases were reviewed, with a hearing of the prisoner concerned; if a prisoner wished to leave the non-offence protection regime, a risk-assessment would be conducted. At the time of the visit, all non-offence protection prisoners were there at their own request.

During the visit, the delegation met many inmates held in non-offence protection at Ellon 1,⁴² with durations varying between a few days to one month. In theory, they should be afforded one hour of outdoor exercise. Nonetheless, the majority of persons in non-offence protection with whom the delegation spoke alleged that they had not been systematically offered one hour of outdoor exercise, and one inmate alleged that he had been allowed out only twice for ten minutes each time during the course of his stay under the protection regime. They alleged that they rarely were permitted to associate with other risk-assessed prisoners on the landings and that they had not been allowed to go to the library, despite their requests. They spent nearly 24 hours per day locked in their cells either with one other inmate or alone; exacerbated for several of them in that they had no functioning remote control for their televisions, and thus these were stuck on one channel, which many of them found intensely frustrating.

In addition, the Grampian Prison authorities should check that all television sets are properly functioning and that inmates have their own functioning remote controls.

62. The prison management informed the delegation that persons segregated under Rule 95 were only kept in cells in the mainstream halls for the initial 72 hours; persons under Rule 95 (11) (extension) would reportedly be brought to the SRU. Nevertheless, the delegation in fact found three inmates who were held in Ellon 1 in single cells under Rule 95 (11) at the time of their visit.⁴³ Such persons alleged that they had not been regularly offered outdoor exercise (nor any activities) and, when they were, it was often very early in the morning. They had no human interaction or contact except conversations through the hatch of their cell doors.

Operationally, staff could not readily bring non-offence protection prisoners for outside exercise because the only individual exercise yards were in the SRU. This meant that in effect segregated inmates who were held outside of the SRU were rarely able to go for outside exercise. The considerable strain placed on staff to manage the movements and regimes for the different categories of inmates while maintaining the safety of segregated prisoners, was the reason given by staff for such restricted regimes.

63. At the end of the visit, the delegation invoked Article 8, paragraph 5, of the Convention and requested that the Scottish authorities ensure that all inmates (including segregated and non-offence protection prisoners) are offered at least one hour of outdoor exercise every day. The CPT considers that the aim should be for all segregated prisoners to be offered at least two hours of meaningful human contact⁴⁴ every day and preferably even more.

⁴² The delegation also noted that there were a number of offence protection prisoners who were awaiting transfer to Ellon 3; they too were experiencing the same poor regime as the non-offence prisoners.

⁴³ They had been segregated since 2, 6 and 17 October respectively (i.e. between one and three weeks).

⁴⁴ For a more detailed understanding of what constitutes “meaningful human contact” please see ‘Essex paper 3: Initial guidance on the interpretation and implementation of the UN Nelson Mandela Rules’, page 88.

By letter dated 27 January 2019, the Scottish authorities responded that the SPS accepted this recommendation and that a Governor's and Manager's Action Notice would be issued to all establishment senior management teams to remind them of the legal requirement to provide exercise or, where weather permits, to spend time in the open air for not less than one hour every day. **The CPT welcomes the response by the authorities. The CPT trusts that this Action Notice has now been dispatched, and urges the Scottish authorities to take measures to ensure that it is complied with in practice.**

64. Overall, the CPT acknowledges that a primary duty of the prison authorities is to prevent harm coming to the prisoners under their care, and that the need to take protective measures for certain inmates may adversely affect the activities they can be offered. However, the prisoners concerned should not be left to languish in their cells for 23 hours or more per day in conditions akin to solitary confinement, in that they were not unlocked from their cells other than for a few moments a day. It is the CPT's long-held view that solitary confinement is both undignified and detrimental to a person's physical and mental well-being (see also Section 2I below).

The CPT recommends that the Scottish authorities revise the regime for non-offence protection prisoners and for inmates held outside of the SRU⁴⁵ on extended Rule 95 orders at Grampian Prison to ensure that they are afforded at least two hours of meaningful human contact each day.

65. Moreover, as mentioned in 2012,⁴⁶ for those prisoners placed on protection for more than a few weeks, additional measures should be taken in order to provide them with appropriate conditions and treatment; access to activities, educational courses and sport should be feasible.

The CPT recommends that the Scottish authorities take appropriate steps to provide prisoners in all Scottish prisons placed on non-offence protection for more than a short period with a range of purposeful activities, education and sport and, where security permits, enable these prisoners to spend a reasonable part of their day unlocked and in contact with other risk-assessed inmates.

This might require a review of the variety of different categories of inmates held in Ellon 1 at Grampian Prison and consideration of using Cruden Hall to separate out, and more adequately cater for, the needs of the different categories of inmate.

⁴⁵ See Section 2(c)(ii) for issues relating prisoners held under "Rule 95" in the SRU.

⁴⁶ Paragraph 43, CPT/Inf (2014) 11.

c. segregation of prisoners

i. introduction

66. As noted above, a focus of the CPT's 2018 visit was the treatment of the different types of involuntarily segregated inmates in Scottish prisons. The delegation visited the male Separation and Reintegration Units (SRU), in Edinburgh (Saughton), Barlinnie, Grampian and Shotts Prisons.⁴⁷ It also visited the only female SRU at Cornton Vale Prison.⁴⁸

67. Prisoners in Scotland whose behaviour is judged to be prejudicial to the good order and discipline of the running of the prison may be removed from association upon order of the Prison director, and located in a 'separation and reintegration unit' under Rule 95 of the Prisons and Young Offenders Institution (Scotland) Rule 2011. A prisoner may be "removed from association" for reasons of maintaining good order and discipline, protecting the interests of other prisoners and ensuring the safety of other persons.

The order may not last longer than 72 hours, after which any extension must be authorised by the Scottish Justice Minister in writing. The extension may be for a period of no more than one month but any number of further extensions for successive periods of one month may be granted. The prisoner must be informed in writing of any extension and the reasons explained to him/her, and he or she is entitled to make representations to the Prison director prior to any extension being made by the Scottish Ministers. A "Rule 95" prisoner may be allowed to associate with other prisoners for the purpose of taking part in education, activities, work and exercise.

68. While such orders have an initial term of 72 hours, many in practice are extended under Rule 95 (11). This results in an indefinite amount of time in segregation and often long periods of time spent away from the mainstream prison population for some prisoners who meet the criteria for repeated segregation.

The Scottish authorities have established the Prisoner Monitoring and Assurance Group (PMAG) to manage prisoners who stay for long periods of time in segregation in the Scottish prison estate. PMAG is an advisory body, which is chaired by the Assistant Director of Operations.⁴⁹ The PMAG, which meets monthly, is constituted to provide advice to Governors and assurance to the Director of Operations in relation to the following cases: the management of prisoners who have been removed from association for three consecutive months or more; the management of prisoners who have been held in a SRU for three consecutive months or more, who refuse to return to mainstream circulation; and the management of prisoners, who the Deputy Governor wants to refer to PMAG for advice (this can include those prisoners who are approaching three months in a SRU or any other operational issue).

⁴⁷ See Section 2(c)(ii).

⁴⁸ See Section 3 (c).

⁴⁹ Its Membership is comprised of the Deputy Governors or Assistant Directors of HMPs Addiewell, Barlinnie, Open Estate, Edinburgh, Glenochil, Greenock, Kilmarnock, Low Moss, Perth, Shotts, and any other Deputy Governor who has a case for consideration.

Further, by letter dated 27 January 2019, the Scottish authorities acknowledged that practices for inmates in SRUs may vary across establishments, and, informed the CPT that, as a result, a short life working group had been formed to review SPS SRU guidance and provide recommendations that promote positive conditions for those in SPS care held in SRUs. **The CPT welcomes this information and would like to receive a copy of the recommendations made by this group.**

69. In 2017, 35 inmates in long-term segregation were reviewed by the PMAG; in 2018 (January until October), 36 inmates were reviewed by the PMAG. Long-term segregated prisoners are transferred across the SRUs to ensure that they are offered a fresh start and interact with new staff.

Many of the inmates interviewed by the CPT's delegation, across the five SRUs visited were being segregated for extremely long periods of time, for several months and occasionally years, either in "carousel" (moved between different prison SRUs) or a "yo-yo" situation (repeatedly moved between the SRU to the mainstream and then back to the SRU). The Scottish authorities shared the durations of stay of the ten longest-staying prisoners in the SRU system with the CPT; the three longest were 1433, 1384 and 1043 days respectively.

70. The CPT's delegation and many stakeholders, including prison staff, the SPS and now also the Scottish Courts,⁵⁰ openly acknowledge the challenge of juggling the needs of certain vulnerable prisoners requiring the SRU environment for their own or others' protection, with how to ensure that prolonged segregation does not isolate and institutionalise them, which would make it difficult for them to cope in the mainstream population when the time comes for them to reintegrate. The CPT's delegation found that many SRU prisoners spent only a few nights out of the SRU before either requesting to be returned, or for breaching discipline in order to be returned to the comparative quiet, calm atmosphere that SRUs may provide.

In addition, by contrast, some other inmates were being held in the SRU for protection reasons because their safety simply could not be guaranteed in the mainstream population, despite the inmates' desire to live on an ordinary regime and in normal prison conditions.⁵¹

71. The CPT has long held the view that prolonged segregation carries with it risks to the prisoners' mental health as well as the possibilities of prisoners becoming institutionalised in the different and more closed environment of the SRUs, and not wanting to go back to the mainstream population. The carousel of constant SRU prisoner transfers also has an impact on staffing requirements and creates a burden for the small SRUs, which operate most of the time at full capacity.

⁵⁰ See the Supreme Court judgement of *Shahid (Appellant) v Scottish Ministers (Respondent) (Scotland)*, [2015] UKSC 58, on appeal from: [2014] CSIH 18A, <https://www.supremecourt.uk/cases/docs/uksc-2014-0273-judgment.pdf>.

⁵¹ For example, see the Appellant in the above cited case, who in October 2018, still remained segregated; he has been in segregation since the initial order was issued in 2005, save for a period between February 2016 - June 2018.

The CPT considers that currently there lacks a middle ground step-down facility in prisons, in-between the SRU and mainstream environments, for those inmates who simply cannot deal with the high-stimulus environment of mainstream prison accommodation, but who should not be isolated in SRUs constantly.

72. The delegation drew some general systemic findings from its visit to the SRUs and to the segregated offence and non-offence protection inmates in the five Scottish prisons visited.

Overall, on a favourable note, the delegation noted that the staff/inmate relations in the SRUs were positive, that efforts to re-integrate prisoners were being made and found that that these prisoners benefited from individual attention and assessments during their stay in the relevant SRU (and received more individualised attention from staff than they had received in the mainstream prison population). Positively, the delegation also noted that SRU prisoners were afforded a generous amount of telephone time.

Nevertheless, various areas required improvement. Firstly, cumulatively a lack of access to association and activities⁵² meant that in practice segregated inmates were deprived of regular meaningful human contact rendering the segregation akin to solitary confinement.

Secondly, many SRU inmates had been segregated for so long that they had lost confidence and trust in the procedural case management of their segregation and its extensions. The CPT's delegation noted some clear cases where there had been gaps in the procedure and that the paperwork for extensions had not been done quickly enough, with the result that extensions had thus become unlawful for certain specific periods of time.⁵³

Thirdly, the SRUs lacked adequate psycho-social support systems to fully engage with segregated prisoners.

73. The CPT subscribes strongly to the evidence that prolonged isolation can have an extremely damaging effect on the mental, somatic and social health of those concerned.⁵⁴ This damaging effect can be immediate and increases the longer the measure lasts and the more indeterminate it is. Thus the CPT considers that solitary confinement should only be used to an absolute minimum, to ensure that when it is used it is for the shortest necessary period of time, to make each of the segregation regimes as positive as possible, and to guarantee that procedures are in place to render the use of this measure fully accountable.

⁵² Even the layout of exercise yards in the SRUs visited (with the exception of Barlinnie Prison) did not allow for joint exercise or conversation (after due risk assessment).

⁵³ See, for example, the procedural violations found in Supreme Court judgement of *Shahid (Appellant) v Scottish Ministers (Respondent) (Scotland)*, [2015] UKSC 58, on appeal from: [2014] CSIH 18A, <https://www.supremecourt.uk/cases/docs/uksc-2014-0273-judgment.pdf>; further, procedural gaps were also seen by the CPT's delegation in Shotts Prison.

⁵⁴ See CPT/Inf(2011)28-part2, Solitary confinement of prisoners, and others such as Grassian S, 'Psychiatric effects of solitary confinement', *Journal of Law and Policy*, Vol. 22, 2006, pp. 325-383 (Psychiatric effects of solitary confinement); Craig Haney, 'Mental health issues in long-term solitary and "supermax" confinement', *Crime & Delinquency*, Vol. 49, No. 1, 2003, pp. 124-156; Sharon Shalev, A sourcebook on solitary confinement, Mannheim Centre for Criminology, London School of Economics 2008 (A sourcebook on solitary confinement); UN General Assembly, 66th Session, Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, 5 August 2011, A/66/268 (Special Rapporteur on Torture report 2011). See also Rule 44 of the Mandela Rules.

In addition, the CPT considers that all prisoners, including those in conditions of segregation, should be afforded, as a bare minimum, at least two hours of meaningful human contact a day, be that on the telephone to family, in appointments with internal or external staff or visitors, in activities, education or exercise with other risk-assessed prisoners.

74. The CPT's delegation also found that many of these prisoners had become institutionalised into the SRU environment and did what they could to remain in the comparative quiet and ordered atmosphere, despite living in virtual solitary confinement. The result was that every SRU visited by the CPT's delegation was at almost full occupancy. Moreover, persons held on extended Rule 95(11) orders who would otherwise have been held in the SRU were being held in their own cells in the main part of the prison (and also were faced with equally poor regimes (see above Section 2(b)).

With prison population numbers unlikely to reduce and a steady number of segregated carousel prisoners who pass through each SRU for several months at a time before transfer to the next one, the CPT considers that the Scottish authorities need to seek alternative solutions to break the cycle and reduce the number of prisoners held in prolonged segregation in the current SRU system.

The CPT recommends that the Scottish authorities consider developing step-down facilities to provide a feasible alternative to prolonged segregation in SRUs. In this vein, it invites the Scottish authorities to consider investing more in the concept of the establishment of more small therapeutic units that can provide a robust psycho-social support system to engage with these prisoners and help facilitate the reintegration process and to take off the strain from the current - over-used and nearing full capacity - SRUs.

With this in mind, the aim should be for the Scottish authorities to ensure that the regimes in the Separation and Reintegration Units across Scottish prisons enable all prisoners - no matter what their category - are offered at least two hours of meaningful human contact each day.⁵⁵

The longer the measure of Rule 95(11) segregation continues, the more resources should be made available to attempt to (re)integrate the prisoner into the main prison community.

⁵⁵ See, in this regard, pages 88 and 89 of the Essex paper 3 on the "Initial guidance on the interpretation and implementation of the Nelson Mandela Rules" (Penal Reform International/Human Rights Centre, Essex University, February 2017). The term "meaningful human contact" is referred to as "the amount and quality of social interaction and psychological stimulation which human beings require for their mental health and well-being. Such interaction requires the human contact to be face to face and direct (without physical barriers) and more than fleeting or incidental, enabling empathetic interpersonal communication. Contact must not be limited to those interactions determined by prison routines, the course of (criminal) investigations or medical necessity."

ii. separation and reintegration units for male prisoners

75. The SRU at *Barlinnie Prison* consisted of 21 cells, of which 12 were operational, four were being used for storage, one was used for phone calls and one was designed as a ‘safer’ cell (that had no ligature points or electrical sockets and was used for a temporary ‘cooling off’ period after a violent incident), and one ‘silent’ cell.⁵⁶ At the time of the visit, the SRU held eight prisoners. Inmates could be placed in the SRU if they were held under an “extended Rule 95 order” (i.e. longer than 72 hours).

The cells were adequately equipped (bed, mattress, concrete table and a plastic chair and a television) and possessed in-cell sanitation (toilet and wash basin). Artificial lighting and ventilation were adequate, and there was access to natural light. There was a new call bell system recently installed with separate emergency and interphone buttons. The cells were in a reasonable state of repair and generally clean. Inmates were offered one shower daily.

Prisoners placed in the SRU for reasons of good order could spend up to one hour a day in the unit’s gym, which was equipped with six work-out machines, and were offered one hour of outdoor exercise every day in one of the two fully-enclosed exercise yards, separated from each other by a metal fence and covered above by metal netting. Positively, the delegation noted that after risk-assessment, several of the SRU inmates were permitted to converse with one another across the fencing during outside exercise. Nevertheless, the yards lacked shelter and a means of rest, although the inmates were given jackets to wear outside.

76. At *Edinburgh Prison*, the SRU consisted of 14 cells (12 ordinary cells, one safer cell and one special cell) and an enclosed exercise yard. The SRU was full at the time of the delegation’s visit with twelve inmates being held therein. The cells measured some 10m² and were equipped with an affixed metal table and stool, a metal toilet and wash basin, shelf and metal bed with a mattress. Inmates were required to wear SRU clothing. Televisions were provided for those inmates held on “extended Rule 95” orders.

The SRU was used for those inmates on the disciplinary sanction of three-day cellular confinement, initial Rule 95 orders (up to 72 hours) and for extended Rule 95(11) orders. Inmates were invited to attend case conferences regarding potential extension of their Rule 95 segregation orders, but many with whom the delegation spoke had lost confidence in the system did not wish to partake in the meetings. On the other hand, many wanted to stay due to having become institutionalised into the SRU regime and fear of the high stimulus environment on the mainstream wings (see above). Staff repeatedly found that some inmates were not able to cope with reintegration in the mainstream and did what they could to return to the SRU.

⁵⁶ (The silent cell had not been used in five years; its use was upon written authorisation from the Minister upon Rule 97 of the Prisons and Young Offenders Institutions (Scotland) Rules 2011.)

Staff appeared committed and engaged with the inmates during the delegation's visit, and efforts were being made to reintegrate the SRU prisoners into the mainstream. Nevertheless, the regime at the SRU was poor. Inmates were offered one hour of outdoor exercise in small enclosed exercise yards. Each yard had concrete walls separating the yards and preventing any interaction between the prisoners. Other than this, they had nothing else with which to purposefully fill their days. While in theory inmates could partake in education and activities with other risk-assessed prisoners, the inmates with whom the delegation spoke alleged that in practice they were locked up for 23 to 24 hours a day in their cells, and rarely had contact with anyone else and had little to no access to any regular psycho-social support.

While the longest serving SRU inmates had been there for 10 months, the majority of the inmates were on a "carousel" SRU rotation: many of those interviewed had been rotating around different SRUs for several years.

77. The SRU at *Grampian Prison* consisted of 10 cells, and one silent cell (used regularly for periods of up to 24-hours). All of these had access to natural light, had sufficient artificial lighting and ventilation, and were adequately equipped (bed, chair, desk, all affixed to the floor). The cells also had a fully-partitioned sanitary annexe, with a toilet, wash basin and shower, and were in a decent state of repair. There were electrical sockets in the ordinary SRU cells and televisions were also available, as well as a kettle. Inmates were also permitted to decorate their cells. A separate bathroom contained a shower and toilet and an ablutions area. All cells were equipped with call buttons. At the time of the visit, the unit was full and accommodated 10 prisoners, one of whom was serving a disciplinary sanction of three days' cellular confinement and the remainder were held under Rule 95 for reasons of good order, for periods of between one and two months.⁵⁷

The unit possessed three outdoor exercise yards, divided from each other with concrete walls to prevent prisoner contact. Most prisoners were only permitted to exercise individually. Persons held under "extended Rule 95" orders were permitted access to the unit's reasonably-equipped gym every day and to the library, as well as being afforded regular visits and telephone time. Those inmates held on the disciplinary sanction of three days of cellular confinement were not permitted to access the gym or library.

78. The SRU at *Shotts Prison* consisted of 14 ordinary cells, one silent and three special cells (for prisoners considered disruptive or prisoners on a dirty protest).

All the cells had access to natural light, had sufficient artificial lighting and ventilation, and were adequately equipped (bed, chair, desk, all affixed to the floor) and a call bell; cells also had a toilet and shower, and were in a decent state of repair. Televisions were also available, as well as a kettle. The three special cells designated for disruptive prisoners or prisoners on a dirty protest were equipped with washable walls, plastic washbasin and toilet, a plastic block bed with a mattress, a call bell and protected plug sockets (enabling them to watch television). Inmates placed in special cells were visually checked every 15/30/60 minutes depending on the level of risk that they posed.

The SRU had three concrete exercise yards completely enclosed and separated from one another by concrete walls, ensuring no contact between inmates.

⁵⁷ Until their current Rule 95 orders expire, when their orders of segregation might be extended, either to be spent in Grampian Prison SRU or rotated to another prison's SRU.

79. At the time of the visit, the unit was accommodating 12 inmates, two of whom were being held under Rule 95 (1) for 72 hours, which would be followed immediately by a disciplinary sanction of three days' cellular confinement and the remainder were held under Rule 95 (11) or (12) for reasons of good order. Two inmates were refusing to return to the mainstream population and were, according to staff, held on a breach of disciplinary order, which resulted in a sanction of 14 days. The silent cells (used for temporary cooling-off periods for disruptive SRU inmates) were used once or twice per year. The majority of the inmates (seven of twelve) had been in the SRU for over a month on extended Rule 95 (11) or (12) orders.

The regime afforded to the inmates in the SRU was poor. Inmates were offered one hour's outside exercise alone, daily access to the gym alone for up to one hour and entitled to visits and telephone calls, and occasional visits to the library; no work placements, activities or education classes were available to them. Most spent around 22 to 23 hours locked in their cells, watching television or DVDs, with very little to structure their days and lacked regular meaningful human contact.

80. The CPT has long considered that prisoners placed in administrative solitary confinement for preventative purposes (i.e. prisoners removed from association under ordinary or extended Rule 95) should have an individual regime plan, geared to addressing the reasons for the measure. This plan should attempt to maximise contact with others – staff initially, but as soon as practicable with appropriate other prisoners – and provide as full a range of activities as is possible to fill the days. There should be strong encouragement from staff to partake in activities and contact with the outside world should be facilitated. Throughout the period of administrative solitary confinement, the overall objective should be to persuade the prisoner to re-engage with the normal regime.

Such an approach was barely in evidence at the prisons visited by the CPT in 2018. Nearly all of the prisoners were confined to their cells for 22 or 23 hours a day, and some for nearly 24 hours, with minimal contact with staff and no opportunities to associate with other prisoners on a progressive basis, no regular meaningful human contact in conditions akin to isolation, many for prolonged periods of time.

The CPT recommends that the Scottish authorities revise the regime in the Separation and Reintegration Units at Barlinnie, Edinburgh, Grampian and Shotts Prisons to ensure that all prisoners are afforded at least two hours of meaningful human contact each day, including being offered purposeful activities of a varied nature.

The longer the time spent in segregation, the more developed the regime on offer to inmates should be; in light of the situation of the prolonged “carousel” SRU prisoners, the purposeful out-of-cell time and the regimes on offer should be as long and as varied as possible.

It also recommends that the Scottish authorities take the necessary steps to put in place well-developed individual regime plans tailored specifically for persons held in segregation under Rule 95 with a view to assisting them to return to a normal regime, in light of the above remarks.

Further, the CPT would appreciate being sent more information on the due process safeguards regarding the use of disciplinary sanctions of 14 days' segregation for those inmates in the SRU who refuse to reintegrate into the mainstream prison population.

3. Prisons establishments holding women and female juvenile inmates

a. preliminary remarks

81. There has been a growing realisation in Scotland that the specific needs and challenges faced by women offenders were not being adequately addressed and that deep structural change was required. In 2010, the situation in the only dedicated women's prison and female young offenders' institution (YOI) in Scotland (Cornton Vale Prison and YOI) was described by the Chief Inspector of Scottish Prisons as being in a "state of crisis". In response, the Scottish Government established the Commission on Women Offenders in June 2011 to look at ways to improve outcomes for women in the criminal justice system; it delivered its final report in April 2012.⁵⁸ The authorities also transferred considerable numbers of women from Cornton Vale Prison to Greenock and Edinburgh Prisons.

Since then, the Scottish Government has been proactively pursuing an agenda for re-conceptualisation and structural reform of the female prison estate in Scotland. In 2017, the Scottish Government started implementing the SPS Strategy Framework for the Management of Women Offenders in Custody, with the aim to provide offender services for women in custody that recognise their particular risks and needs.

More recently, approximately 100 women were transferred from Cornton Vale Prison to HMP & YOI Polmont, resulting in an improvement in the conditions in which they were held, including better access to in-cell sanitation.⁵⁹ In the longer term, the Scottish Government aims for a reduction in the number of women imprisoned and has set an objective of 230 places within the new strategy. The strategy also includes plans for Cornton Vale Prison to be replaced with a smaller national custody facility for women (due to be opened in 2020) and five smaller Community Custody Units, two of which will be in Maryhill and Dundee (set to open by 2021), to allow women to serve their sentence closer to their home and enable them to maintain family and community links.

82. The number of women held in custody in October 2018 was 390. Given that the new configuration of the female custodial estate will provide only 230 places, the authorities acknowledge that more work is still required to reduce the numbers of women in custody. Until the redesign of the female prison estate has become fully operational, women are still held in Edinburgh, Greenock, Polmont, Cornton Vale and Grampian Prisons.

The CPT's delegation had an opportunity to examine the current treatment of women prisoners and female young offenders and juveniles in three prisons in Scotland (Cornton Vale, Edinburgh and Grampian Prisons) in the course of the 2018 visit, and to consider the various measures underway to improve their situation and address their specific needs.

83. Positively, at the women's prison establishments visited by the CPT's delegation, the vast majority of prisoners stated that they were treated correctly by prison officers and the delegation received no allegations of deliberate ill-treatment of prisoners by staff.

⁵⁸ Available at <http://www.scotland.gov.uk/Resource/0039/00391828.pdf>.

⁵⁹ HM Inspectorate of Prisons For Scotland, Follow-Up Inspection, Cornton Vale: 1-4 February 2011, Paragraph 2.5.

b. admissions and reception

84. Cornton Vale and Grampian Prisons are the two admission points for women prisoners into the prison estate. The vast majority of women prisoners in Scotland are first admitted in Cornton Vale Prison. Once admitted to Cornton Vale Prison, they are officially meant to be assessed within 48 to 72 hours before the decision is taken upon where in the Scottish female prison estate they will be placed. However, if a woman has to be held in an observation cell, the time before she is transferred to another facility can also be longer.

85. According to staff, Cornton Vale Prison had a “trauma-informed” admission procedure, and the delegation noted that the admission forms used for a first assessment of women were relatively detailed and comprehensive. Nevertheless, of the nine women that went through the admission process on the day of the delegation’s visit, the prison management could only find two files where the forms were partially completed but neither contained additional narrative or details about the women. Moreover, none of the admission forms contained questions relating to previously experienced gender-based violence. Further, the Prison Rules⁶⁰ regulating the admission process do not contain gender specific provisions for women, other than for pregnant women (Part 13).

While new committals were usually seen by a nurse upon admission (see Section 4(c)), the majority of women with whom the delegation spoke had not seen any other member of staff, such as a social worker or a psychologist. Only one woman had seen a social worker, who helped her establish contact with her children. Further, the women inmates had allegedly not been asked anything about previously experienced violence upon arrival at Cornton Vale Prison.

86. The CPT considers that the Prison Rules and admission process should be reviewed to ensure that they meet the general requirement laid down in the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the “Bangkok Rules”) of October 2010, notably Rules 2(1) and 6(e).⁶¹ This requires looking at their particular vulnerabilities at the time of admission. At Cornton Vale Prison, there was little evidence to show that screening for sexual abuse or other forms of gender-based violence inflicted prior to admission was being undertaken systematically. Such screening is essential as violence experienced prior to admission is likely to have a direct correlation with the woman’s behaviour and even offending behaviour, and should clearly impact on the way in which the care plan for the woman in question is drawn up for her stay at Cornton Vale Prison (i.e. whether she needs specialised psychological support or counselling).

Further, given the vulnerability of certain women prisoners entering prison, it is vitally important that the admission process is carried out properly whenever women are admitted to Cornton Vale Prison and that a comprehensive “trauma-informed” admission procedure is thoroughly undertaken. The delegation noted that at Cornton Vale this was not happening.

⁶⁰ The Prisons and Young Offenders Institutions (Scotland) Rules 2011.

⁶¹ Adopted by UN General Assembly resolution 2010/16, A/C.3/65/L.5, on 6 October 2010.

The CPT recommends that the Scottish authorities further develop the admission process at Cornton Vale and Grampian Prisons to take into account the vulnerabilities of women prisoners. This should include screening for sexual abuse or other forms of gender-based violence inflicted prior to entry to prison and ensuring that such information is considered in the drawing up of a care plan for the woman in question. Further, steps should be taken to ensure that the admission procedure is always comprehensively carried out.

c. segregation, discipline and the Separation and Reintegration Unit (SRU)

i. *introduction*

87. The rules, procedures and accompanying safeguards for the segregation of women away from the mainstream prisoner population are outlined in Section 2(c)(i) above, and apply equally to female inmates as they do to male inmates.

88. At *Edinburgh Prison*, women who committed a breach of discipline might be confined to their cells or have certain privileges suspended but there was no formal segregation unit. If a female inmate needed to be segregated, posed an increased risk of self-harm or was considered particularly vulnerable, she would be transferred to Cornton Vale Prison. At *Grampian Prison*, while there was a specific cell used for segregating female prisoners, any serious breach of discipline or a woman deemed to be a high risk to the safety of herself or others would be transferred to the SRU or Ross House at Cornton Vale Prison.

ii. *segregation*

a. *the SRU*

89. The segregation unit at Cornton Vale Prison (known as “the Dumyat” SRU) consisted of six cells (each measuring some 10m²), all of which were equipped with a bed, chair, locker and a shelving unit, as well as a fully partitioned in-cell sanitation and a shower annexe. Access to natural light was adequate and ventilation was sufficient. All six cells were occupied at the time of the delegation’s visit.

The unit had two small exercise yards, divided by a fence (to enable a degree of association), both of which possessed a means of rest and shelter from inclement weather.

Two of the six cells were “safer cells”, designed for inmates posing an exceptional level of high risk who needed constant or regular observation. For safety reasons, these two cells did not have electrical sockets, which meant that the occupants could not have access to a television or a kettle. The CPT is of the view that the two safer cells should not be counted within the ordinary capacity of the SRU, and should only be used for the purpose originally foreseen, to monitor those at exceptionally high risk of self-harm; **it trusts that the official capacity of the SRU at Cornton Vale will be revised.**

90. At the time of the delegation's visit to the Dumyat, three of the women inmates were held under extended Rule 95 and three under Rule 41 (Accommodation in specified conditions for health and welfare reasons).⁶² Two inmates had been placed on Rule 41 for two months and one for one month; three inmates had been placed under Rule 95 for varying periods ranging from three days, one month and five months respectively.

The prison management explained that isolation was only applied as a last resort and that efforts were made through regular case conferences and management plans to return these prisoners to normal association as soon as possible.

However, the regime afforded to women at the SRU was extremely limited. Inmates were offered one hour of outside exercise alone and time on the telephone every day but had no purposeful activities to structure their days and no association time with other inmates or staff. The women were locked alone in their cells for 23 to 24 hours each day.

The CPT recommends that the Scottish authorities put in place a psycho-social support system for prisoners held for longer than two weeks in Cornton Vale Prison's SRU and provide them with greater opportunities for association and engagement in purposeful activities.

The aim should be for all prisoners under Rules 95 and 41 to be offered at least two hours of meaningful human contact⁶³ every day and preferably even more.

The longer the measures of segregation continue, the more resources should be made available to attempt to (re)integrate the prisoner into the main prison community.

91. The three inmates held under Rule 41 were followed by the prison mental health team, but did not engage with them; all three had had brief interruptions to their stay at the SRU to go to outside hospitals under the Mental Health Act but were returned to prison as they were deemed to have "personality disorders" rather than treatable "psychiatric illnesses".

The CPT's psychiatrist interviewed many of the women who were segregated both in the SRU and in Ross House (see Section (b) below), and considered that several of these women appeared psychotic. One woman refused any human contact, another refused to dress and remained naked every day, another smeared her walls with blood and excrement, one regularly set her hair on fire, another had bitten her arm through the skin and muscle down to the bone. Some of the women had rare human contact other than observation through hatches in the cell door. One woman could only be handled by staff with protective clothing due to the risk posed to staff.

⁶² Rule 41, 2011: "The Governor must order that a prisoner be accommodated in specified conditions where a healthcare professional (a) advises the Governor that it is appropriate to do so in order to protect the health or welfare of the prisoner or any other prisoners; and (b) informs the Governor of the care and treatment planned for the prisoner while the prisoner is accommodated in specified conditions. [...]"

⁶³ See Essex Paper 3 of February 2017 on the "Initial guidance on the interpretation and implementation of the UN Nelson Mandela Rules" and in particular pages 88 and 89.

92. The following cases of female prisoners met by the CPT's delegation are particularly illustrative:

Inmate (Ms. Y) was placed in the SRU on 4 September 2018, under Rule 41 and was due to stay there until the order expired on 6 November 2018. The inmate was a double amputee.⁶⁴ At the time of the delegation's visit, her cell was covered in blood, excrement and urine and could only be entered by staff with protective clothing, as she could (and did) assault staff with her prosthetic limbs. As a result, contact between the inmate and staff (including meals) was usually via the hatch in her cell door. When the CPT met with her in her cell, it was evident to the delegation's psychiatrist that she was psychotic and needed treatment in a hospital. Nevertheless, this woman had been referred to an outside hospital in April 2018 under the Mental Health Act, but had been sent back to Cornton Vale Prison under the premise that she suffered from a personality disorder and not a psychiatric illness; thus should remain in prison.

Inmate (Ms. Z) was placed in the SRU on 17 September 2018, under Rule 41 and was due to stay there until 20 October 2018, unless the order was extended. At the time of the delegation's visit, this woman chose to remain continuously naked, refusing to put on clothes; she remained wrapped in blankets in her SRU cell, not wishing to leave the cell. Staff informed the delegation that while she had access to the prison's mental health team, she never engaged with them. When the CPT met with her in her cell, it was evident to the delegation's psychiatrist that she was psychotic and needed treatment in a hospital. She had been referred to an outside hospital under the Mental Health Act, and had gone once in 2018, but had been sent back to Cornton Vale Prison under the premise that she suffered from a personality disorder and not a psychiatric illness. In light of this situation, it was envisaged that she would be in the SRU for a while longer, as she could not cope with the ordinary regime in the mainstream prison population.

Inmate (Ms. A) was placed in the SRU on 17 October 2018, with the order expiry date on 2 November 2018. She had previously entered the SRU on 2 October and staff had tried to reintegrate her into the mainstream population shortly afterward, but she could not cope. When the CPT's delegation interviewed her she was incoherent and unable to respond, instead she spoke of hearing voices and being generally disoriented. She also had had access to the prison's mental health team, but she did not engage with them. It was evident to the delegation's psychiatrist that she was psychotic and needed treatment in a hospital. Staff informed the delegation that she would most likely be referred to an outside hospital under the Mental Health Act, but they were unsure for how long she would be there. It was clear that if and when she returned she would most likely go back to the SRU.

93. These above-mentioned women, and others like them, were requiring urgent medical care and psycho-social support. Instead, most of them were being isolated in a prison setting on extremely restrictive regimes, either in the SRU or on extended Rule 95 orders on the ground floor of Ross House, run by prison and not health-care staff.

⁶⁴ One leg and one foot had had to be amputated.

The prison management and the staff alike acknowledged that the women in the SRU suffered from serious mental illnesses and, as the only SRU in Scotland for women, the SRU had become the place of last resort for highly vulnerable women from around the Scottish prison estate. All stake-holders interviewed noted that there were insufficient places in the SRU to cater for the number of women who needed intensive care and observation and were of the opinion that several of these women should be in a psychiatric facility instead.

94. Regardless of whether Prisoners “Y”, “Z”, “A” and others segregated under Rule 41 (health reasons) and repeated extended Rule 95 orders were mentally ill or suffered from personality disorders, it was clear that placement in the segregation unit was not conducive to improving their behaviour. Many women prisoners who suffer from severe personality and behavioural disorders, often have a history of self-harming, abuse, trauma and abandonment. In the absence of programmes designed for these women, they often find themselves being held in a segregation unit for prolonged periods of time.

As recommended in 2012, for those female prisoners with personality/behavioural disorders who are not eligible for transfer to a psychiatric hospital, an alternative to placement in the segregation unit must be found. At present, the different needs of prisoners with behavioural disorders at Cornton Vale Prison in terms of psycho-social support, counselling and treatment are not being sufficiently met as indicated by the number of acts of self-harm.⁶⁵ In the CPT’s view, a multifaceted approach, including the recruitment of clinical psychologists to design programmes for persons with behavioural disorders, would represent a step in the right direction towards managing such prisoners outside of segregation (in this vein, see also Section 4(e)).

The CPT recommends that the Scottish authorities take the necessary steps towards addressing the specific needs of female prisoners with personality/behavioural disorders through introducing therapeutic tailor-made programmes.

The Scottish authorities, the SPS, the NHS, the judiciary, and social services need to work together to protect these women inmates, suffering from personality and behavioural disorders, and/or having a history of self-harming, abuse and abandonment. Where such prisoners are not eligible for transfer to a psychiatric hospital, a multi-faceted approach should be adopted, involving clinical psychologists in the design of individual programmes, including psycho-social support and treatment.

In this respect, the CPT recommends that the Scottish authorities establish clear protocols and operating procedures among the SPS, NHS, the judiciary, and social services to ensure that vulnerable women who cannot be treated under the Scottish Mental Health Act are afforded the necessary care in an appropriate environment, in the light of the remarks made above. The SRU and Ross House of Cornton Vale Prison are not suitably equipped or staffed at present to provide proper care for such vulnerable women as those described above.

⁶⁵ For a female prisoner population of approximately 100, there was a total of 42 incidences of self-harm at Cornton Vale Prison from January to October 2018: one attempted suicide, four burns, 10 cuts, 17 ligatures, one overdose and nine swallowed items.

95. Overall, the CPT has serious concerns about the treatment of women prisoners held in segregation at Cornton Vale Prison, both within the SRU and Ross House, where at least five of the segregated women clearly were in need of urgent care and treatment in a psychiatric facility, and should not have been in a prison environment, let alone segregated for extended periods in solitary confinement under Rules 95 and 41 (accommodation in specified conditions for health or welfare reasons). The CPT considers that the SRU of Cornton Vale and Ross House were totally inappropriate environments for holding seriously mentally ill women. While the staff were clearly caring in challenging and often stressful working conditions, they were not trained in mental health and they were not health-care professionals, which is what these women urgently needed.

Further, while male prisoners in a similar situation can be transferred to a high secure psychiatric facility, in Scotland there is still no such possibility for women prisoners (and the possibility of effecting a transfer to Rampton Hospital in England rarely occurred in practice, due to jurisdictional complexities). The absence of a high-security mental health facility for women in Scotland appeared to be playing a key role in the decision to keep the women at Cornton Vale Prison, in segregation under Rule 41.

In the light of these findings, the delegation invoked Article 8, paragraph 5, of the Convention and requested that the Scottish authorities provide immediate enhanced care and support by mental health care staff for these severely mentally-ill women with a focus on providing a more therapeutic environment, and ensuring they have more out- of-cell time and meaningful human contact.

96. By letter dated 27 January 2019, the Scottish authorities responded by outlining the procedure and safeguards established in Rule 41 of the Prisons and Young Offenders Institutions (Scotland) Rules 2011, including the procedure around the care plan system (that specifies suitable out of cell activities for the individual and identifies the responsibilities of staff members) and how the care plans are overseen by Local Multi-Disciplinary Mental Health Teams (including representatives from the NHS, SPS, psychology and chaplaincy). Further, the authorities informed the CPT that Action 15 of Scotland's Mental Health Strategy 2017-27 outlines the Scottish Government's clear commitment to funding 800 additional mental health workers in key settings, including prisons, ensuring that local provision and support is at the heart of its plans. Funding for this commitment will reach £35 million by 2022. Moreover, the authorities specified that NHS Forth Valley, as lead authority for health provision in HMP Cornton Vale, had secured additional funds to provide increased mental health services and develop SPS staff in supporting women with mental health issues in custody to engage in out-of-cell activities.

The Scottish authorities informed the CPT in the same letter that there are a small number of women who require high secure psychiatric inpatient care. The current pathway is to Rampton Special Hospital in England. In May 2018, at the request of NHS Chief Executives, the Forensic Network established a national short life working group to explore female pathways across the forensic mental health estate at all levels of security, including those at a high level. The group is expected to report to NHS Chief Executives in March 2019 with its findings and recommendations. **The CPT would appreciate being sent an update on this as soon as possible.**

The CPT welcomes the response by the authorities and the commitments set out in the Mental Health Strategy 2017-2027 and the securing of additional funds to provide increased mental health services and develop SPS staff in supporting women with mental health issues. In light of this, **the CPT recommends that urgent consideration be given to developing a small specialised psychiatric unit within Scotland to care for such women, in order to close the gap concerning the lack of high-secure psychiatric places for women inmates with severe mental health needs and to ensure that access to mental health treatment is provided on the same basis as for male prisoners.**

In the meanwhile, the CPT would appreciate being informed about whether considerations have gone into moving such women to a medium-secure hospital such as Rowanbank psychiatric facility.

Finally, the CPT requests a specific update on the three above-mentioned women held in Cornton Vale's SRU under Rule 41 on the date of its delegation's visit; it trusts that immediate action will be taken by the Scottish authorities to facilitate their care an appropriate environment (i.e. outside of a prison environment).

b. Ross House: segregation and discipline issues

97. Ross House has a mental health care suite for women with long-standing mental health issues, which had an occupancy of 20 women at the time of the delegation's visit; some of these women were being held under Rule 41 orders. Within Ross House were several "safer cells", which were used for women who were considered to be suicidal. For example, at the time of the visit, two women were being held in safer cells to prevent (further) self-harm, one had on the previous evening set fire to her own hair, and the other had bitten her own arm so severely that she had bitten through skin and muscle tissue down to the bone. One of these women had been placed on self-harm watch necessitating checks every 15 minutes for the time that she posed an exception level of self-harm risk.

At the time of the visit, four women were being held in Ross House under Rule 95 of the Prison Rules, for 72 hours and were segregated in their own cells. However, in practice several of these women were in fact held continuously for seven to nine days in segregation: first for three days under Rule 95, then for one to three days in cellular confinement as a disciplinary punishment, and then for another three days under Rule 95. During this time, the women concerned were kept in their cells for more than 23 hours per day.

The delegation examined the disciplinary and separation records and interviewed the women and staff involved and was concerned by two main issues. First, that the segregated women had not been fully informed of the reasons for their continued segregation after the expiry of their period of cellular confinement for a disciplinary offence. A small slip of paper placed under their door informed them of the fact of continued segregation this time under Rule 95, and gave them very limited time to appeal (a matter of minutes). The CPT considers that the inmates involved should be fully informed of and kept updated of the reasons for any continuation of their segregation and given adequate time to appeal the measure.

Second, it appeared to the delegation that a practice was developing of the systematic use of three full days of Rule 95(1) for reasons of investigation into an alleged disciplinary violation (including, in one case, disobeying a prison officer order). The CPT acknowledges that it may be necessary to impose special measures (including segregation from other prisoners) to prevent violence and maintain internal order and security. However, it fails to see the need for systematically imposing such as measure for every kind of alleged disciplinary offence.

The CPT would appreciate the comments of the Scottish authorities on these two issues. It also recommends that due process is followed with any extensions of any sort of segregation and that the relevant prisoners are given sufficient time to both understand, and appeal, the reason for the extension.

d. conditions and regime

i. *conditions of detention*

98. At *Cornton Vale Prison*, the living conditions in the accommodation unit of Peebles were reasonably good, whereas those in Ross House were less so.

In Peebles House (holding low-risk inmates), the accommodation was adorned with paintings, decorations, communal dining facilities and several small but well-presented recreation/association rooms. Each room could be individually decorated and many had paintings, crafts and photographs hanging up. There were well manicured lawns and nice outdoor spaces. The room doors were unlocked at night and women could move freely within the House; each room had an intercom to alert staff if necessary and CCTV covered the corridors.

By contrast, in Ross House, the single-occupancy cells (measuring some 7m²) were sparsely furnished, had opaque windows restricting access to natural light and only limited artificial lighting and some were dirty. The cells were not decorated and were generally worn from graffiti and daily wear and tear. Ventilation was sufficient and the cells had their own sanitary annexes. On a more positive note, Ross House also had a bright and airy communal central section with tables and chairs for joint eating, a servery and a recreation room upstairs.

The CPT recommends that the above-mentioned deficiencies in Ross House be remedied.

99. At *Edinburgh Prison*, all women arrived from Cornton Vale Prison where the admission procedures were carried out. Despite the redesign of the female prison estate, the authorities confirmed that it was unlikely that there would be enough new places for female offenders in the new small community custody units or the new female establishment at Cornton Vale, thus it was envisaged that Edinburgh Prison would probably continue to hold female offenders until the overall number of female offenders in Scotland dropped to below 300 (currently around 400).

Despite being designed as a male prison, the material conditions at Edinburgh Prison for women were generally adequate. Women, both sentenced and remand, were accommodated in Ratho Hall, which consisted of 86 cells arranged over three floors with a design capacity of 105 places and which was holding 100 at the time of the delegation's visit. Most cells were for single use (measuring some 9m²) and were suitably furnished and had good lighting, including adequate access to natural light, and sufficient ventilation and were in a decent state of repair. The cells were also equipped with a fully-partitioned sanitary and shower annexe. Other than the two safer cells, each cell had its own television. Communal tables and stools affixed to the floor were available for communal dining, with a servery on each landing. There was also a gym and a library for female inmates.

100. At *Grampian Prison*, women were accommodated over two floors in Banff House; the material conditions were modern and airy and were generally of a good standard having recently been built. Most cells were for single occupancy, measuring some 9m², with the exception of four larger double-occupancy cells. Each cell was suitably furnished, possessed a fully partitioned sanitary annexe and had sufficient artificial lighting and ventilation as well as good access to natural light. Communal spaces had tables, sofas and chairs, and a servery, as well as pay phones.

ii. regime

101. At Peebles House in *Cornton Vale Prison*, the vast majority of the women worked in the gardens, the kitchen or as cleaners spending most of their day outside of their rooms.

For the vulnerable and high risk inmates held at Ross House, the regime was somewhat different. The regime allowed the inmates eight hours or more unlocked from their cells (with short periods of lock-up after lunch and at tea time) along with a range of work, education and activities on offer (fitness, gym and outdoor exercise, animal handling, games and quizzes and various evening classes (art, craft, cookery)). Nevertheless, the delegation found that none of the women with whom it spoke partook in any activities; all alleged extreme boredom (despite spending long periods of time unlocked from their cells), were not interacting with staff (see Section 5(a)) and several alleged that they were not offered outdoor exercise or access to the gym. Many of the women spent much of their time sitting in the communal space with nothing to do to structure their days.

In addition, the prison did not offer any offending behaviour programmes for women as none of the women detained in Cornton Vale had a sentence exceeding four years.

The CPT recommends that the Scottish authorities develop more meaningful and structured activities for all categories of prisoners in Ross House to enable structure to be given to the generous time allocated out of cell during the day. Additionally, all prisoners should be systematically offered the possibility of outside exercise. Lastly, the CPT encourages the Scottish authorities to consider extending the reach of offending behaviour programmes for women with sentences of less than four years.

102. In Ratho Hall at *Edinburgh Prison*, many of the women spoke positively of the staff, the prison and of generally feeling safe, despite the prison's carceral layout, as compared to their more negative experiences at Cornton Vale.

There were a variety of work and activities on offer to women inmates, including arts and crafts, work in the gardens, cleaning and hairdressing, painting and in woodcraft). Nevertheless, some 50 of the 100 women were not involved in any work or activities at the time of the delegation's visit, despite many wanting to be. Further, there were no women-specific programmes delivered at the prison. Many women with whom the delegation spoke were locked up for extended periods of time, some 19 to 20 hours per day. Staff and women inmates alike noted that the regime situation for male prisoners was comparatively better and the prison authorities acknowledged that they found it a serious challenge to enable equal access for women to regime activities and the gym, primarily due to the staffing needs for prisoner movements.

The CPT recommends that the Scottish authorities increase the places available for work and purposeful activities for all categories of women prisoners at Edinburgh Prison to ensure that all women prisoners can benefit from these on an equal basis to male prisoners. This may require increasing the staffing complement.

103. There was a rather limited selection of work and activities on offer to women at Banff House in *Grampian Prison*. These included some education classes, card-making, work in the gardens, as cleaners and hairdressers, work in waste management, in the kitchen and laundry. That said, while the range of activities was limited, around 70% of the women worked or were involved in an activity and were unlocked from their cells for over eight hours a day. Those who did not work were unlocked for some six hours per day. Further, the new female offending programme had started with 1:1 attention for a couple of the women and was set to roll out to more women in the near future.

The CPT invites the Scottish authorities to continue their efforts to offer work and purposeful activities for all women inmates at Grampian Prison.

It also would appreciate being sent updated information and statistics on the female offending programme.

104. There were three 17 year-old female juvenile inmates held at Grampian Prison. These juveniles were held in a small separate section of the main women's hall, with a distinct common area adjacent to their individual cells. The juvenile cells and common area were identical to the rest of the female unit but were sparsely furnished, undecorated and entirely carceral. Adult women offenders were not permitted into the section, but the juveniles were permitted out to attend the servery and collect medication.

The juvenile inmates with whom the delegation spoke complained about extreme boredom. While they benefited from some six hours unlocked from their cells, their days were empty and unstructured. No regular juvenile-centric programmes or activities tailored to their specific needs were offered to them. These juveniles were also in need of more psychological and social/welfare support; several said that they had been abused and/or had recently lost parents and relatives. They lived alone in their section and were solely reliant on each other for company. The potential for inter-juvenile bullying or intimidation was high, and it was clear that one of the three juveniles was too fearful to speak to the delegation openly in front of the other juveniles. When speaking to the delegation, the juveniles proactively asked for more activities to structure their day and more support from the prison authorities, who allegedly treated them in much the same way as the adult females.

The CPT has long advocated that all detained juveniles who are suspected or convicted of a criminal offence should be held in detention centres specifically designed for persons of this age, offering a non-prison-like environment and regimes tailored to their specific needs and staffed by persons trained in dealing with the young.

In light of this, the CPT recommends that the Scottish authorities revise the way in which they are holding female juvenile inmates at Grampian Prison and Young Offender Institution and take concrete measures to turn the juvenile section into a truly juvenile-centred unit. This should be composed of a small well-staffed unit, with regular attendance by personal officers and staff with specific juvenile-centric training, and should offer psychological, post-trauma and social/welfare support. Juveniles should be unlocked for the majority of the day and provided with a range of purposeful activities throughout the day, and staff should promote a sense of community within the unit. Staff should also be constantly vigilant for signs of possible inter-juvenile bullying.

4. Health-care services

a. introduction

105. In Scotland, the operation and responsibility for health care was transferred from the prison services to the National Health Service (NHS) in November 2011; prisons were placed under the responsibility of the local Health Board and local Integration Joint Board, which was charged with ensuring that the health-care service in a prison was adequately resourced and properly staffed.

In 2018, seven years on, the expectation is that the post-transfer phase would have already had time to properly bed in and that the health-care system provided to prisoners would be fully functioning. Nevertheless, the CPT's delegation saw signs of several systemic issues that highlighted some key deficiencies of the provision of health care by the NHS to prisoners. These issues are not new, and many have been raised repeatedly as concerns by various national stakeholders. In 2016, a Scottish Parliamentary Inquiry was set up to examine how health and social care is delivered in prisons and the cost of the service, to review access to health and social care and medicines in prisons, highlight current and future pressures on the service and to examine the effectiveness of health and social care in prisons. The Parliamentary Committee published its findings on the state of the health-care system in Scottish prisons on 10 May 2017.⁶⁶

The Parliamentary Inquiry's conclusions were that the promised improvements had not materialised and the Committee did not accept the expectation that progress and change within the health service could take a long period of time. The Committee was disappointed to discover the unique opportunity to address health inequalities within the prison environment was not being taken. It recommended that the Scottish Government prepare a strategic plan covering prison social and healthcare. The plan should set out how the aims of parity of health care within and outside prisons will be fully met within the next two years including addressing the real challenges the ageing population will bring.⁶⁷

106. In 2017, the Health and Justice Collaboration Improvement Board was established to draw together senior leaders from Health, Justice and Local Government to lead the creation of a much more integrated service response to people's needs where Health and Justice services intersect. By letter dated 27 January 2019, the Scottish government informed the CPT that there were current work streams looking at different strands of health-care delivery in custody and these included clinical IT, revised Memorandum of Understanding, and leadership and governance. These groups would produce guidance and policies that would address many of the systematic deficiencies highlighted by the CPT's delegation in its Preliminary Observations.

The CPT welcomes this information and **requests that the Scottish authorities send it a copy of both the Health and Justice Collaboration Improvement Board's guidance and the strategic plan covering prison social and health-care, along with outlined concrete measures on how it will be addressing the deficiencies highlighted in the 2017 Parliamentary Report on the state of the health-care system in Scottish prisons.**

⁶⁶ Parliamentary Report on the state of the health care system in Scottish prisons, 10 May 2017.

⁶⁷ Conclusions, Parliamentary Report on the state of the health care system in Scottish prisons, 10 May 2017.

107. The CPT's delegation noted that in many of the prisons visited the relations and co-operation between the NHS Scotland and the SPS appeared reasonable, save for a few areas of disagreement in some prisons concerning the distribution of medication and supervision of its intake. Nevertheless, the CPT considers that joint improved co-operation was still needed on various issues. These included issues such as a need for a strengthened multi-disciplinary approach to tackling the in-flow of NPS into the prison system and the prevention of bullying for prescribed medication, victim support and proportional responses to perpetrators (see below).

Overall, the CPT's delegation noted a few systemic issues that highlighted certain key deficiencies of the provision of health care by the NHS to prisoners, such as the incompatibility of the electronic systems used in the prisons and in the community, difficult access to addiction services' files and the absence of an electronic prescribing system, all leading to possible discontinuity of care when prisoners arrive or leave the prison system (see below).

b. health-care in general

108. The CPT's delegation noted that prisoners could have access to a nurse swiftly and to a doctor within a reasonable time and that nursing staff levels were, with a few exceptions, adequate in the establishments visited. Nevertheless, it noted a considerable deterioration since 2012 in the presence of general practitioners at each prison visited by the delegation and in the numbers of psychiatric sessions available to inmates.

At *Barlinnie Prison*, there was the equivalent of one full-time general practitioner (GP) during week days and one part-time GP on a Saturday (08.00-12.00).⁶⁸ A 24-hour nursing presence was assured by a complement of four manager nurses, 20 primary care practitioner nurses, eight nurses for addictions, three mental health nurses and five health-care assistants. A psychiatrist from a pool of general and forensic psychiatrists visited the prison on a rota for two full days per week, and there were two full-time clinical psychologists at the prison. Other specialists (such as for dentistry, optometry, blood-borne viruses) visited on a regular basis. All positions were filled and there were no vacancies.

At *Cornton Vale Prison*, health-care staffing included one visiting part-time general practitioner or one visiting advanced nurse practitioner (two full days per week), six mental health nurses, two primary care nurses, one lead addiction nurse and one addiction health care assistant, three health-care assistants (covering 2.5 posts), two part-time pharmacy assistants, one health-care manager, one team leader for primary care, and a specialist sexual and reproductive health nurse visited once per week.⁶⁹ One psychiatrist visited the establishment for the equivalent of one and a half days per week, a clinical psychologist visited once per week, a dentist was present one day every two weeks, a mid-wife and occupational therapist visited once per week and other specialists (gynaecologist, optician, hepatology nurse, and podiatrist) visited bi-monthly. Vacant posts included a team leader for mental health and addiction and a prison health-care addiction worker.

⁶⁸ For an occupancy of 1,339 prisoners, at the time of the delegation's visit.

⁶⁹ For an occupancy of 93 prisoners, at the time of the delegation's visit.

At *Edinburgh Prison*, there was only one part-time shared GP with Addiewell Prison (full time equivalent of 0.6 and 0.4 at each prison respectively)⁷⁰ and one advanced nurse practitioner, who substituted for the lack of a full-time GP⁷¹ and who was supported by two trainee nurse practitioners.⁷² The prison informed the delegation that they were having difficulties filling the vacant GP post, so had to rely on an advanced nurse practitioner instead. The health-care team also included a healthcare manager, around 17 nurses for primary care (two senior charge nurses, two deputy charge nurses, 13.2 primary care nurses), five mental health nurses, three addiction nurses and five health care assistants and two pharmacy technicians. There were also regular visits by specialists (including physiotherapy service, a part-time visiting consultant psychiatrist (who visited once per week), an addiction psychiatrist (once per month), a part-time clinical psychologist (0.5 full-time equivalent), dentist, gynaecologist, optician, physiotherapist, infectious diseases specialist, palliative care nurse, chiropodist). There was a vacant post for an addiction nurse.

At *Grampian Prison*, there was a pool of GPs equivalent to one full-time GP visiting the prison on rotational basis on week days and part-time on Saturdays;⁷³ there were 19 nurses (two charge nurses (managerial staff), three senior staff nurses, one mental health nurse (with four vacancies open), three substance abuse nurses, 10 primary care nurses and five healthcare assistants.⁷⁴ A psychiatrist visited the prison for half a day a week and a clinical psychologist was present at the prison two times a week. Several specialists visited the prison on a regular basis, including a dentist.

At *Shotts Prison*, there was the equivalent of a GP on weekday mornings, performed by a pool of part-time doctors, and 18 full-time nursing staff, of whom five were primary care nurses (supported by one healthcare assistants on primary care), two were mental health nurses and six for addictions, (supported by three healthcare assistants on addiction), as well as a health-care manager, two clinical managers, two charge nurses and a pharmacy assistant.⁷⁵ One primary care nursing post was vacant. A part-time psychiatrist visited the prison for one day per week,⁷⁶ and a clinical psychologist visited twice per week. Specialists visit the prison on a regular basis (including a dentist, podiatrist, hepatology specialist and optician).

109. Moreover, the CPT's delegation noted that at all the prisons visited, with the notable exception of Barlinnie, there was not one competent person with a recognised nursing qualification on the premises to provide first aid day and night; no health-care staff were present in the prisons after 9.30 p.m.. However, in all of the prisons visited, custodial staff were trained to use a defibrillator.

⁷⁰ In 2012, there was a team of five general practitioners (two of whom were part-time).

⁷¹ At the time of the visit, there was one vacant post of general practitioner.

⁷² For an occupancy of 879 prisoners, at the time of the delegation's visit.

⁷³ 09.00 until 12.00.

⁷⁴ For an occupancy of 465 prisoners, at the time of the delegation's visit.

⁷⁵ For an occupancy of 540 prisoners, at the time of the delegation's visit.

⁷⁶ For two sessions of a total of seven hours, which covered an average of 7 to 8 patients.

110. In light of the prisoner population numbers, their often complex health-care needs and, in particular, the extensive mental health issues existent among the prisoner population, **the CPT recommends that the Scottish authorities increase the health-care staffing resources in the establishments visited to ensure that:**

- **at Barlinnie Prison, three full-time posts of GP should be provided (i.e. increased by two full-time equivalent of GPs) and the mental health nurse positions should be increased by three (i.e. to a total of six);**
- **at Cornton Vale Prison, one full-time post of GP should be provided and the presence of the dentist should be increased to full-day weekly visits. Further, the vacant posts for a team leader for mental health and addiction and a prison health-care addiction worker should be filled;**
- **at Edinburgh Prison, for the size and diverse needs of the mixed category prisoner population, two full-time posts of GP should be provided (i.e. increased by 1.5 full-time equivalent of GPs) and the presence of a psychiatrist should be increased. Further, the vacant post for an addiction nurse should be filled;**
- **at Grampian Prison, an additional full-time GP should be provided and the presence of the psychiatrist should also be increased. Further, there is a need for a dentist to spend a full day a week in the establishment. Also, the vacant posts for four addiction nurses should be filled; and**
- **at Shotts Prison, the presence of GPs should be increased to the equivalent of one and a half full-time posts (i.e. increased by one full-time GP) and a further two psychiatric sessions should be provided. Also, the vacant post for a primary care nurse should be filled.**

Further, at Cornton Vale, Edinburgh, Grampian and Shotts Prisons, there should be preferably a person with a recognised nursing qualification to provide first aid at night.

On a positive note, at Edinburgh Prison, a number of nurses, including all five mental health nurses, were qualified in non-medical prescribing.⁷⁷ **The CPT considers that this good practice would be of benefit to others and invites the Scottish authorities to consider replicating this across the penitentiary system.**

111. The health-care facilities in all of the prisons visited were generally of a high standard and were well equipped and maintained, with the exception of the Health-care Centres in Barlinnie and Cornton Vale Prisons that were rather limited in space and did not meet the high standards set for newly built prisons.

112. The CPT has long considered that that prison health-care services can make a significant contribution to the prevention of ill-treatment of detained persons through the systematic recording of injuries, whether vis-à-vis new arrivals or following a violent episode in prison. In the former respect, while prisoner medical information at admission was recorded (see below), the delegation observed that there was no specific system in place to record injuries reported by the prisoner or observed by the health-care staff upon the prisoner's arrival.

⁷⁷ i.e. non-GPs who are licenced to prescribe a range of medication.

As for the recording of injuries after a violent episode in prison, there was a small space available for the health-care staff to make comments on the violent incident forms. Nevertheless, upon examination of the entries, it was clear that often health-care staff observed the inmate through a hatch or open door rather than conducting a proper physical medical examination; often entries read simply 'no injuries observed'. There was no specific register or form for injuries reported or observed in the Vision system (the inter-prison health-care recording system for prisoners' somatic care).

The CPT considers that where an inmate presents injuries, in addition to a description of any injuries, the doctor should note down a full account of the statements made by the person concerned which are relevant to the medical examination. Further, the doctor should indicate the consistency between any allegations made and the objective medical findings; this will enable the relevant authorities to properly assess the information set out in the record. Such an approach was not being followed in the prisons visited.

113. The CPT recommends that the record of injuries drawn up after the medical screening and included in the Vision system should contain:

- i) an account of statements made by the person which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment),**
- ii) a full account of objective medical findings based on a thorough examination, and**
- iii) the health-care professional's observations in the light of i) and ii), indicating the consistency between any allegations made and the objective medical findings.**

The record should also contain the results of additional examinations carried out, detailed conclusions of specialised consultations and a description of treatment given for injuries and of any further procedures performed.

Recording of the medical examination in cases of traumatic injuries should be made on a special form provided for this purpose, with body charts for marking traumatic injuries that will be kept in the medical file of the prisoner. Further, it would be desirable for photographs to be taken of the injuries, and the photographs should also be placed in the medical file. In addition, a special trauma register should be kept in which all types of injury observed should be recorded.

The record should also contain the results of additional examinations performed, detailed conclusions of any specialised consultations and an account of treatment given for injuries and of any further procedures conducted. The same approach should be followed whenever a prisoner is medically examined following a violent episode in prison.

The existing procedures should be reviewed in order to ensure that whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a prisoner (or which, even in the absence of allegations, are indicative of ill-treatment), the record is immediately and systematically brought to the attention of the police, regardless of the wishes of the person concerned. Health-care staff must advise detained persons of the existence of the reporting obligation, explaining that the writing of such a report falls within the framework of a system for preventing ill-treatment and that the forwarding of the report to the competent prosecutor is not a substitute for the lodging of a complaint in a proper form.

114. As regards the electronic medical records, prisons have a GP IT system called “Vision”,⁷⁸ which differs from the Vision system used by GPs in the outside community. The CPT’s delegation noted that while the prison Vision system was informative, it only included information related to prison health issues. It appeared to operate in a silo and did not include medical records from NHS GP surgeries; prison health-care staff were not able to access prisoners’ GP records in the community and vice versa, save for the occasional access to the GP Emergency Care Summary (ECS) and Clinical Portal, if the patient came from the same NHS. This presented a considerable challenge for prison health-care staff to ensure adequate continuity of care for inmates, and was all the more surprising given the transfer of the prison health-care system to overall NHS responsibility in 2011.

In addition, access to records from addiction services was difficult for the prison health-care staff to obtain, and consequently there were gaps in the continuity of medication upon admission to the prison. The lack of uninterrupted continuity of opiate replacement therapy is illustrative of this. While inmates could be prescribed the opiate replacement therapy (usually methadone) that they had been on before imprisonment, considerable delays were regularly incurred before it could restart in prison, often due to challenges in accessing the relevant information from relevant external GPs or the addictions services. The delegation saw in several cases that there had been a gap in continuity of medication, and prisoner patients suffered considerably from withdrawal symptoms, or in one case, from a delay in anti-convulsive medication, which had significantly increased the risk of seizures for the patient.

Further, when the medical experts in the CPT’s delegation requested statistical information of certain diseases or treatment, this information was not possible to obtain within the current system.

115. Equally, the delegation noted that prison health-care staff cannot electronically prescribe medication, all information on prescribing, dispensing and administration is undertaken on the manual “Kardex” system on the prison wings. Health-care staff informed the delegation that this was a significant challenge given the number of patients and the extent of prescribing required, with around 75% of prisoners estimated to be in receipt of prescription drugs, and around 50,000 items dispensed monthly.⁷⁹ Further, the delegation was informed that prescribing records cannot be shared between prisons, which caused problems when prisoners were transferred. Staff noted that the current practice was time consuming and could result in delays.

⁷⁸ Health care in Prisons, the Scottish Parliament Report, paragraph 62.

⁷⁹ Health care in Prisons, the Scottish Parliament Report, May 2017.

The CPT recommends that the Scottish authorities establish systems to facilitate the sharing of medical records amongst the relevant medical services for the benefit of the overall care of prisoners. Consideration should be given to merging the information into one unified electronic system, to ensure swift and easy access to relevant medical information for prison health-care staff and to enable adequate continuity and equivalence of care for inmates, both to and from the outside community. In this vein, it also recommends the establishment of an electronic prescribing system for medication (i.e. replacement of the Kardex system) linked to the overall prison medical recording system as well as to the wider external NHS for more efficient use of health-care staff's time, to prevent delays in access to medication and to ensure adequate continuity of care for inmates after admission and upon release from prison.

c. screening on admission and suicide prevention

116. In all the prison establishments visited, prisoners were medically screened by a nurse within 24 hours of admission, which usually included a detailed list of questions about the inmates' medical history, a urine test and written permission to be in contact with the treating doctor in the community as well as any other key contact persons. Prisoners would also be seen by a doctor or advanced practitioner nurse the day after their admission, if necessary. The medical screening process was detailed and thorough, save for a few exceptions. These exceptions included some aspects of continuity of medication and the reporting and recording of injuries (mentioned above). Further, the admission screening for female prisoners did not systematically address sexual abuse and other gender-based violence.

All prisoners were offered testing on admission to prison for blood-borne viruses and sexual health (Hepatitis B, Hepatitis C, HIV, syphilis, chlamydia and gonorrhoea). If a patient was exposed to Hepatitis C, follow-up tests and treatment were offered. Access to DAA (Direct-Acting Anti-viral) treatment for Hepatitis C was rapid within the prison. A Hepatitis B vaccination was also offered.

The CPT recommends that the admission screening should include a history of any sexual abuse and other gender-based violence and that this should inform any care plan established for the woman to ensure appropriate care and prevent re-traumatisation (see also Section 3(b) above).

117. The reception and first night procedures, including medical screening, have an important role to play in suicide prevention; performed properly, these can identify at least some of those at risk and relieve some of the anxiety experienced by all newly-arrived prisoners. Positively, the admission screening in all the prisons visited included a detailed focus on mental health.

If an inmate had been identified as being at risk of self-harming or at risk of committing suicide at admission or later, new a multi-disciplinary prevention of suicide and self-harm programme called "Talk to Me", which replaced "ACT2Care",⁸⁰ was set in motion and regular observations and intervention from a multi-disciplinary approach ensued. The care under the "Talk to Me" programme was impressive and was fully operational in each of the prisons visited by the CPT's delegation.

⁸⁰ "Assessment, Context, Teamwork"; the former prevention of self-harm and suicide system.

d. deaths in prison

118. According to the Scottish authorities, there were 55 deaths in custody from January 2017 to October 2018. After every death in custody a “DIPLAR” (Death in Prison Learning Audit Review) took place within three weeks ensuring that a lessons-learned process was carried out after the death of a detained person. This involved the participation of a variety of services, including the NHS and SPS. Every death in custody (police and prison) was also automatically referred to the police for investigation and then on to the Crown Office and Procurator Fiscal Service for the opening of a Fatal Accident Inquiry (FAI).

Interlocutors with whom the delegation met criticised the excessive lengths of time that the FAIs took to be opened and concluded. The Scottish authorities informed the CPT that only eight FAIs had been concluded from January 2017 until October 2018 and, at the time of the delegation’s visit, more than 44 remained to be held.

The CPT considers that while it is positive that the DIPLAR and FAI systems are in place, **it recommends that the authorities review the operation of the overall FAI system to find solutions to speed up the process.**

e. psychiatric and psychological care

119. The CPT recalls that there is high incidence of psychiatric symptoms among prisoners. Consequently, a doctor qualified in psychiatry should be attached to the health-care service of each prison, and some of the nurses employed there should have had training in the area of mental health.

The CPT observed positively that in each of the prisons visited there were a number of mental health nurses (with the exception of Grampian Prison where only one mental health nurse was present), and all establishments had the input of a psychiatrist although in certain prisons that presence should be increased (see Section 4(b)).

Prisoners complete the self-referral forms for psychiatric/psychological treatment. The first triage was made by mental health nurses. The second triage was undertaken by the multi-disciplinary mental health team. There was a large number of prisoners requesting psychiatric/psychological interventions. The clinical psychologists were able to comply with the requirements to see a prisoner within 18 weeks from the point that a prisoner was officially referred to psychological support, which was the same as in the community.

Access to a psychiatrist was also decided by the multi-disciplinary mental-health team. Waiting time for access to a psychiatrist differed in the prisons visited. In some prisons, psychotic patients were seen by a psychiatrist in two weeks, in others waiting times were much longer. At Grampian Prison, the CPT's delegation met a female prisoner who had undergone the amputation of a leg during imprisonment without receiving any mental health support, despite the fact that she had made several requests for this. She was on high doses of psychoactive medication, including antipsychotic medication prescribed before imprisonment, and her therapy was being continued without any review. The loss of a limb can be devastating and is likely to cause significant disruption to many aspects of a person's life. The CPT considers that the absence of any mental health support represented a form of medical negligence and **recommends that this person, as well as others who might be in similar situation, be given rapid access to the mental health team.**

120. Prisoners suffering from severe mental illnesses should be treated in a closed hospital environment. For male prisoners, transfer to high and medium security psychiatric facilities, such as Carstairs State Hospital and Rowanbank Clinic, was possible. Nevertheless, for female prisoners the situation is entirely different, as highlighted in paragraphs 95 and 96 above.

Moreover, transfers to medium or low-secure facilities also appear to be subject to long delays. By way of illustration, the CPT's delegation spoke with a woman inmate (Ms. B) at Cornton Vale Prison, who was waiting for transfer to a low-secure hospital. On 28 May she was assessed for transfer under the Mental Health Act to Ayr Hospital and it was agreed that she was suitable to be hospitalised. When the CPT's delegation visited Cornton Vale Prison on 19 October, Ms B. was still waiting for the transfer; the day before the visit, she had set fire in her cell.

The CPT recommends that prisoners suffering from severe mental illnesses be transferred to a closed hospital environment for treatment, without delay.

f. substance abuse

121. As mentioned above, there was widespread availability of drugs, and in particular, Novel Psychoactive Substances (NPS) (formerly known as "legal highs") within the prison system including at each of the prisons visited by the delegation (albeit to a lesser extent at Cornton Vale Prison). The authorities have been putting measures in place to counter the in-flow of NPS into the prison system, including a blanket ban of NPS in 2016.⁸¹ However, to date this has had little effect on reducing the supply within prisons.

Despite the official ban of NPS, the prison system was still awash with this almost undetectable drug. The authorities were starting to take measures to counter this, but acknowledged that identification remained challenging.

⁸¹ Legislation: Psychoactive Substances Act 2016. In May 2016 the Psychoactive Substances Act was passed, making it a criminal offence to possess or supply psychoactive substances in a custodial institution. The maximum sentence is 7 years' imprisonment and an unlimited fine, with an aggravating factor for a supply offence to a prison. To further address the dangers posed by such substances, the Misuse of Drugs Act was amended in December 2016 to make all third generation synthetic cannabinoids (a group of psychoactive substances) a Class B drug. The Act carries a heftier sentence of 10 years' imprisonment for those found in possession of psychoactive substances.

122. The CPT considers that the presence in prison of inmates with drug-related problems gives rise to a number of particular difficulties for the prison authorities. These include health and security issues, as well as the choice of forms of assistance which are to be offered to the prisoners concerned. Further, the widespread availability of illicit drugs within a prison is bound to have very negative repercussions on all aspects of prison life, and may undermine the motivation of prison officers.

The approach towards substance misuse in prison should be part of a national drugs strategy, and should have as its goals, inter alia: eliminating the supply of drugs into prisons; dealing with drug abuse through identifying and engaging with drug misusers, providing them with treatment options and ensuring there is appropriate throughcare; developing standards, monitoring and research on drug issues; and the provision of staff training and development.

The CPT would like to be informed of what concrete measures the prison authorities intend to take to tackle NPS, within a wider anti-drug strategy, in the Scottish prison system.

The CPT recommends that the Scottish authorities develop a peer-led programme of substance misuse education in each prison to educate prisoners, particularly new arrivals, about the dangers and other consequences of synthetic cannabis use.

123. The CPT's delegation received several allegations at every prison visited that there was an issue of inter-inmate bullying for prescribed medication. Some prisoners were allegedly pressurised into asking for prescription drugs, which they were then forced to hand over to other inmates (in particular, gabapentin and pregabalin) or they had their prescribed in-possession drugs stolen from them by other inmates (in particular, mirtazapine and quetiapine).

Moreover, in some cases, inmates queuing in front of pharmacies in the halls could see inside the consultation room (despite the presence of mirrored glass) and observed other prisoners taking their medication. The procedure could facilitate bullying; it also breaches the principle of patient confidentiality. From interviews with inmates, the CPT's delegation gained the distinct impression that bullying for prescribed medication was a widespread problem and was a largely 'taken for granted' aspect of prison life.

The CPT recommends that the Scottish authorities review the way in which prescription drugs are distributed and their intake supervised; as well as ensure the enforcement of sanctions against of perpetrators who bully and/or steal medication from other inmates.

In addition, the CPT recommends that the prescription policy should be revised. The misuse of gabapentinoids within the prison population is well documented. In February 2015, UK prisons reported high numbers of prisoners being prescribed gabapentinoids in a manner not in keeping with best clinical practice.⁸²

⁸² Advisory Council for the Misuse of Drugs; Letter RE: Pregabalin and Gabapentin Advice 2016. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/491854/ACMD_Advice_Pregabalin_and_gabapentin.pdf (accessed 13/11/17).

124. At all of the prisons visited a similar approach was taken towards addressing drug misuse. Each prison also had mandatory and voluntary drug testing policies in place. Upon admission, nurses attempted to ascertain prisoners' drug/substance abuse habits and a decision was taken by the health-care team as to whether to place a prisoner on a detoxification/substitution programme. The delegation noted that accessibility to - and information about - these were clearly posted on the wings. Harm reduction education was available to inmates, if inmates took part in the addiction programmes (see above).

As regards Opioid Agonist Therapy, if a person had been on methadone or buprenorphine prior to entering the prison, the community addiction centre would be contacted and the prisoner usually enrolled in prison on the same opiate replacement therapy that he/she had been prescribed before incarceration. That said, as mentioned above, due to the complex nature of contacting external GPs, delays often occurred hindering the continuity of methadone substitution therapy. In Barlinnie, Compton Vale and Grampian Prisons, for example, the continuation of methadone maintenance therapy was discontinued on weekends for prisoners who entered the prison on a Friday. Staff informed the CPT's delegation that while the IT system allowed for access to a summary of the GPs' file from the community, it did not allow access to the addiction services' files and the prescription of methadone, and it was impossible to get in touch with the addiction services in community over the weekend to get a confirmation of the fact that a person was indeed on the maintenance treatment programme. Instead, dihydrocodeine was prescribed for withdrawal symptoms, by a GP or addiction nurse.

As mentioned above (Section 4(b)), the CPT considers that a unified electronic medical documentation and prescription system, linked to the external health-care providers, would enable faster access to Opioid Agonist Therapy.

125. Although injecting drug use did not represent a severe problem in the prisons visited, the injecting as well as cleaning equipment were not accessible to prisoners. Harm-reduction education was available if prisoners took part in the substance abuse programme.

At the prisons visited, there was a strictly followed Protocol on the 'management of offenders at risk due to substance use' (MORS). The prisoners suspected to be under influence of NPS or any other drugs were kept in the surgeries under medical supervision; Health-care staff monitored the level of consciousness every 15 minutes as well as pulse, respiration, temperature and pupil response.

The CPT recommends that the Scottish authorities put measures in place to ensure that inmates can continue their substitution programme from the day of their admission to prison; and that a needle-exchange programme be introduced in the prison system.

5. Other issues

a. prison staff

126. Positively, the Scottish authorities have clearly invested resources into the process of recruitment and training of prison staff. In general, staffing numbers in the prison establishments visited were adequate, with a good officer gender balance. The staffing numbers for 2018 were approximately the same as in 2017 in terms of retention of front-line custodial staff,⁸³ which was positive in light of national budgetary constrictions.

It is commendable that in most of the prisons visited, save for a couple of exceptions, inmates spoke positively of staff-inmate relations. Maintaining adequate staffing numbers of properly trained front-line officers is essential for maintaining good order and overall prison safety.

127. By contrast, the delegation observed some rather cold and distant staff-inmate relations at Ross House in Cornton Vale Prison and in Ellon 1 at Grampian Prison, and several inmates spoke of the lack of dynamic staff-inmate relations.

The CPT's delegation also noted that at Grampian Prison, there was a shortage of prison officers due to an unusually high rate of staff absences,⁸⁴ as well as a considerable number of officer vacancies (accounting for approximately a third of all operational vacancies nation-wide, according to the SPS), in addition to a number of new and still inexperienced staff within the staffing complement. Some prisoners complained to the delegation that their work placements or exercise times were often cancelled if staff had to attend to other business or were absent.

The CPT delegation acknowledges the challenges of juggling the complex needs of the range of different categories of inmate held in Ellon 1 (see Section 3(d)). Nevertheless, in the CPT's view, the development of constructive relations between staff and inmates, based on the notions of dynamic security and care, would not only help the prison authorities to combat inter-prisoner and prisoner-on-staff violence, but would also enhance control and security and render the work of prison officers more rewarding.

The CPT recommends that the staffing situation is addressed at Grampian Prison to ensure that activities and exercise entitlements are not curtailed due to short staffing or absences.

It also recommends that the Scottish authorities develop the notions of dynamic security among the penitentiary staff working in the male halls of Grampian Prison by organising appropriate in-service training courses which focus in particular on inter-personal skills.

⁸³ In 2017 there were 3,145 (with 53 vacancies) prison officers and first-line managers; in 2018 there were 3,090 (50 vacancies).

⁸⁴ 20% of staff were absent on the day of the delegation visit in October 2018. Further, the information provided to the CPT by the SPS indicated that Grampian Prison accounted for a third of all operational vacancies.

b. contact with the outside world

128. As highlighted in 2012,⁸⁵ according to Articles 63 and 64 of the 2011 Scottish Prison Rules, sentenced prisoners are entitled to visiting times of not less than 30 minutes per week or 2 hours in a 28-day period, and remand prisoners to at least 30 minutes on any weekday.

The CPT continues to consider that all prisoners should be entitled to the equivalent of at least one hour of visiting time every week. Consequently, **it recommends that Article 63 of the Prison Rules be amended accordingly.**

Prisoners had access to the telephone on a daily basis in the prisons visited and written correspondence did not pose a problem and does not call for any particular comment.

c. complaints procedures

129. The prison complaints procedure remained as described in the CPT's report on its 2012 visit⁸⁶ with a system of minor complaints on Prisoner Complaint Form 1 (PCF1) forms, which were generally resolved at the level of the Residential First Line Manager level and more serious complaints (made on PCF2 forms), which were addressed to the prison director. Health-care complaints are dealt with by a separate NHS complaints procedure. In Grampian Prison, for example, the delegation noted that often prisoners had used the incorrect form, and staff had proactively forwarded these on nonetheless to the director. A system was in place to ensure that the complaints were responded to at the appropriate level and reasonably swiftly at each prison visit.

While some inmates stated that they had no trust in the system, in practice, the delegation noted that inmates were clearly aware of the internal complaints procedure, complaints forms and boxes were readily available to them and from an examination of a selection of recent complaints submitted, staff and management responses were written, substantive and relatively swift.

⁸⁵ Paragraph 82, CPT/Inf (2014) 11.

⁸⁶ Paragraphs 83 to 85, CPT/Inf (2014) 11.

APPENDIX I:

List of the establishments visited by the CPT's delegation

Prisons

- HMP Barlinnie
- HMP and YOI Cornton Vale
- HMP Edinburgh
- HMP and YOI Grampian
- HMP Shotts

Police Custody Facilities

- Fraserburgh Police Station
- Glasgow City Centre Police Office
- Govan Police Station
- Peterhead Police Station
- St Leonard's Police Station

APPENDIX II:

**List of the national authorities, other bodies
and non-governmental organisations
with which the CPT's delegation held consultations**

A. Scottish authorities

Humza YOUSAF	Cabinet Secretary for Justice
Christina McKELVIE	Minister for Older People and Equalities

Scottish Prison Service (SPS)

Colin McCONNELL	Chief Executive
Eric MURCH	Director of Corporate Change (since retired)
Jim KERR	Director of Operations

Police Scotland

Paul ANDERSON	Assistant Chief Constable
Garry McEWAN	Chief Superintendent
Simon JEACOCKE	Superintendent

NHS Scotland

Alex McMAHON	Director of Nursing, NHS Lothian and Interim Chair of the National Prisoner Healthcare Network
Hannah CORNISH	Seconded from NHS Scotland to the Scottish Government

Scottish Government

Neil RENNICK	Director of Justice
Duncan ISLES	Head of Human Rights Policy, Equality, Human Rights and Third Sector Division
David HOLMES	International Human Rights Policy Coordinator, Equality, Human Rights and Third Sector Division

Lisa TAYLOR Team Leader, Prison Policy, Community Justice Division

Neil DEVLIN Head of Police Powers, Police Division

B. Ministry of Justice of the United Kingdom

Alice ADAMSON Deputy Director, Global Strategy and Rights, International and Rights Directorate

Alison STRADLING Head of United Nations Human Rights Treaties, Global Strategy and Rights, International and Rights Directorate

Sergio MORENO Senior Policy Advisor, UN treaties and Security, Global Strategy and Rights, International and Rights Directorate

C. National Preventive Mechanism (NPM) & Oversight bodies

HM Inspectorate of Prisons (Scotland)(HMIPS)

Wendy SINCLAIR-GIEBEN Her Majesty's Chief Inspector of Prisons for Scotland

Kerry BROOKS HMIPS

HM Inspectorate of Constabulary (Scotland)(HMICS)

Gill IMERY Her Majesty's Inspector of Constabulary for Scotland

Laura PATON Lead Inspector

Scottish Human Rights Commission

Sean GRIFFIN Legal Officer

Diego QUIROZ Scottish Human Rights Commission

Police Investigations & Review Commissioner (PIRC)

Keith HARROWER Senior Investigator

D. Civil Society Organisations

Howard League, Scotland.



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