

COVID-19 COMMITTEE

SUBMISSION FROM THE LAW SOCIETY OF SCOTLAND

Dear Convenor

**The Coronavirus (Scotland) Acts (Amendment of Expiry Dates) Regulations 2020 (the Regulations)
Detention of Young Persons**

When I appeared before the Committee recently, I undertook to write in connection with a question which was asked about the numbers of young people being detained. I apologise for the delay.

We refer to the recently published Scottish Prison Service's (SPS) statistics (as at 18 September 2020). These show that in the age group categories of 16/17 and 18-20, there were 22 and 202 persons respectively detained within prisons. 15 and 82 of these prisoners respectively were untried prisoners.¹ This shows an increase over the period since March 2020 which is reflective of a general rise in the Scottish prison population over the period of the pandemic. These numbers have risen because of pandemic related backlogs in criminal cases in both summary and solemn cases.

The Scottish Courts and Tribunal Service² recently published their plan *COVID-19 Respond, Recover and Renew – Supporting Justice through the pandemic and beyond*. That plan outlines how to recover, involving an increase in the number of cases being dealt with in the courts to deal with the backlog. That should reduce the numbers held on remand.

When focusing on young persons, what the SPS figures do not disclose is the kind of alleged offences for which these young people have been remanded. However, the number of High Court cases now going through the courts, being the most serious cases to be heard, are continuing to increase with the welcome introduction of the use of cinema complexes, adding to the court estate. Pilot summary schemes such as in Hamilton³ are providing ways to address the backlog. With progress, at summary and solemn level, that should help to tackle the numbers being held on remand.

The remanding of young persons to prison, pending trial is the result of a judicial decision. A range of factors fall to be assessed by the judge when making the decision to remand such as the risk of the accused failing to attend for trial and achieving the protection of the public. There is a presumption against remanding in custody which must also be factored into judicial decision -making. There is also a right to appeal any decision to remand rendering such decisions subject to review.

We recognise the concerns outlined by the Commissioner for Children and Young People. The effect on young people's rights are significant. The factors affecting them such as, for example, lack of visits (closed in respect to the latest restrictions), the effect on their

¹ <https://www.sps.gov.uk/Corporate/Information/SPSPopulation.aspx>

² <https://scotcourts.gov.uk/about-the-scottish-court-service/scs-news/2020/08/16/covid-19-scts-moving-forward>

³ <https://scotcourts.gov.uk/about-the-scottish-court-service/scs-news/2020/09/14/pilot-to-help-manage-court-backlog>

education, and mental health issues were identified for England in the Report “Children in Prison During the Coronavirus Pandemic⁴.” These similar issues apply in Scotland too. There is a risk of untired prisoners acquiring COVID-19 when detained within prison. Such deaths have been reported.⁵ There is a need to keep those falling within the remand population under careful scrutiny, especially those in the younger age bracket so that they are deprived of their liberty only as a measure of last resort, and where it is absolutely necessary. Where the relevant factors apply, any remand needs to be for the shortest appropriate period.

I hope this is helpful to the Committee.

Yours sincerely,

Michael Clancy.

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⁴ <https://howardleague.org/wp-content/uploads/2020/05/Children-in-prison-during-covid-19.pdf>

⁵ <http://www.sps.gov.uk/Corporate/News/News-7065.aspx>