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UK National Preventive Mechanism Submission to the Independent Sentencing and Penal Policy Commission 23 May 2025

INTRODUCTORY REMARKS

The UK National Preventive Mechanism (NPM) was established in 2009 when the UK ratified the United Nations Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

OPCAT establishes the duty to prevent torture or cruel, inhuman or degrading treatment from occurring in places where people are, or may be, deprived of their liberty. The prevention of ill treatment is forward-looking and primarily about encouraging continuous improvement to create environments where ill treatment is less likely.

Any state that ratifies the OPCAT must establish an NPM with the mandate of undertaking preventive monitoring of places where people are, or may be, deprived of their liberty. Article 19 of OPCAT sets out the key criteria for an NPM, including that it must have the power to enter places of detention without notice, make recommendations to authorities, and comment on draft or existing legislation.

The UK NPM is made up of [21 statutory bodies](#) that independently monitor places of detention across the UK, including six Scottish bodies, which constitute the UK NPM Scotland Subgroup:

- Scottish Human Rights Commission (SHRC)
- His Majesty's Inspectorate of Prisons for Scotland (HMIPS)
- His Majesty's Inspectorate of Constabulary in Scotland (HMICS)
- Independent Custody Visiting Scotland (ICVS)
- Care Inspectorate (CI)
- Mental Welfare Commission for Scotland (MWCS).

The NPM Scotland Subgroup is making this submission to the Sentencing and Penal Policy Commission to fulfil our preventive function, as sentencing decisions affect people deprived of their liberty and the treatment and conditions of people in prisons.

This submission complements those of any individual NPM bodies in Scotland. It is limited in scope to issues that engage article 3 concerns: the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and the UK's positive obligations to prevent violations occurring. Other cohorts not specifically considered by this consultation (for example Order for Lifelong Restriction prisoners) are also affected by sentencing decisions and associated concerns, described below, of overcrowding, understaffing, and lack of adequate regime.

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HUMAN RIGHTS BASIS AND PRINCIPLES

The UK was an early proponent of OPCAT and was actively involved in the drafting process. It was one of the first states to notify the United Nations of the designation of its NPM. As well as the Convention Against Torture, which the UK signed in 1985, and the OPCAT, the UK has ratified multiple international and regional treaties which declare the absolute prohibition of torture, such as the European Convention on Human Rights (1951), and the International Covenant on Civil and Political Rights (1968).

To support states' fulfilment of their obligations under these treaties, various international rules have been created, such as the [Nelson Mandela Rules \(Standard Minimum Rules for the Treatment of Prisoners\)](#) and the [European Prison Rules](#), which set out accepted minimum standards of treatment and conditions in prison.

These rules establish the following principles, relevant to this submission, as a basis for accepted standards of treatment of people in prisons:

- a) All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.
- b) The rules shall be applied impartially without discrimination. To fulfil the principle of non-discrimination, prison administrations shall take account of the individual needs of prisoners.
- c) Imprisonment is an effective punishment by the very fact of depriving a person of their liberty and right to self-determination. The prison system shall not aggravate the suffering inherent in such a situation.
- d) The purpose of imprisonment is primarily to protect society against crime and reduce recidivism, which can only be achieved if the period of imprisonment is used to ensure reintegration into society. Education, vocational training, and work, as well as other forms of support should be delivered in line with the individual needs of prisoners.
- e) Prison administrations shall make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental, or other disabilities have full and effective access to prison life on an equitable basis.
- f) All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health.
- g) Prisoners should enjoy the same standards of health care that are available in the community.

This submission further stresses the following human rights principles¹:

- h) No one shall be deprived of their liberty except as a measure of last resort and in accordance with a procedure prescribed by law.
- i) The enforcement of custodial sentences and the treatment of prisoners necessitate taking account of the requirements of safety, security and discipline, while also ensuring prison

¹ From the [European Prison Rules](#)

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conditions which do not infringe human dignity and which offer meaningful occupational activities and treatment programmes to inmates, thus preparing them for their reintegration into society.

OVERVIEW OF SENTENCING CONCERNS

The UK NPM has serious concerns about the persistent overpopulation of Scotland's prisons, leading to overcrowding, which inhibits the Scottish Government from adequately fulfilling human rights obligations to which the UK has agreed to provide treatment and conditions in prison that respect the inherent dignity and the needs of prisoners and wider society. Given the decreasing incidence of recorded crime in Scotland, it is clear that the increasing overpopulation of the prison estate relates to other factors, including sentencing (type and length), remand and bail, and recall.

Several local and international human rights bodies have made recommendations in relation to the urgent need to address overpopulation and use non-custodial measures. It is our assessment that to date the State has failed to make meaningful progress towards these goals². In our 2022 submission to the Bail and Release consultation³, we highlighted that:

The [Committee for the Prevention of Torture (CPT)] recommended an approach to imprisonment that is not purely punitive but rather focuses on rehabilitation and reintegration into the community. While there has been progress to introduce measures to promote rehabilitation in Scotland, these have limitations and should be expanded. The committee also recommended that urgent measures be taken to tackle the overcrowding in prisons and more investment made in countering the different factors playing into the steady increase in the prison population.

In that submission, we made a key recommendation for the Scottish Government to undertake 'concerted and coordinated action between the executive, police, prosecution services and the courts to give full effect to the presumption of liberty.'

Our position, and our concerns around the negative impact of prison overpopulation and related overcrowding, remain unchanged. In the sections below we detail our concerns and share our views on what can be done to alleviate the current Scottish prison population crisis.

PRISON OVERPOPULATION AND OVERCROWDING

Scotland is among the countries with the highest prison population per 100,000 people, ranking as "very high" in the Council of Europe's Annual Penal Statistics 2023, indicating that Scotland's prison population rate is more than 25% higher than the European median value⁴. Increasingly long sentence tariffs, an increase in the number of people serving longer sentences, increased recalls

² This assessment is asserted our 2024 joint report with SHRC: [Review, recommend, repeat: An assessment of where human rights have stalled in places of detention](#)

³ [Scotland Subgroup response to Bail and Release Consultation – National Preventive Mechanism](#)

⁴ [Council of Europe Prison Population Statistics 2023](#) The score of "very high" indicates that Scotland's score is more than 25% higher than the European median value.

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and measures that broaden the scope of sentences that must be served entirely in prison, have increased population pressures in Scotland, particularly in the adult male estate. At the time of writing, 73% of all prisoners in Scotland are living in prisons over their capacity. The majority of these prisoners are male⁵. We recognise plans are underway to build HMP Glasgow, with an anticipated capacity of 1344⁶, but given that Barlinnie's current population at time of writing was 1303⁷, HMP Glasgow risks being near capacity (or even over capacity) from the day it is planned to open in 2028.

The extent of Scotland's prison overpopulation is arguably understated, by virtue of several of Scotland's prisons being kept in operation despite no longer being deemed fit-for-purpose to house prisoners. Several of Scotland's prisons have significant long-standing issues in their infrastructure and state of repair, including HMP Barlinnie⁸, HMP Perth, HMP Inverness and HMP Greenock⁹. If we remove these prisons from the overall prison estate capacity, we find that the true overpopulation of the prison estate could be as high as 2,348¹⁰.

⁵ Source: SPS Daily Population Tracking Report for 12 May 2025; Nine prisons are over capacity, housing 585 prisoners more than their combined capacity. Eight prisons are under capacity, the majority of which is accounted for by the Open Estate (HMP Castle Huntly) with 130 open places, HMPYOI Polmont with 56 open places, and HMPYOI Stirling Women's Prison with 33 open places, and HMP Greenock with 18 open places. The four prisons most under their capacity all partially or entirely house female prisoners, young offenders and/or low supervision or open estate prisoners who have moved along the progression pathway, further demonstrating that overpopulation disproportionately affects adult male prisoners.

⁶ [HMP Glasgow given the go-ahead | Scottish Prison Service](#)

⁷ SPS Population Tracker, 12 May 2025.

⁸ HMIPS's most recent [inspection report on HMP Barlinnie](#), published on 8 April 2025, provides stark evidence of the issues caused by overpopulation in prisons that are no longer fit-for-purpose to meet prisoners' needs (p. 5, emphasis added):

*HMP Barlinnie dates back to 1882...[W]ith high narrow walkways and narrow steep flights of stairs in the main residential areas, which prisoners are expected to negotiate safely carrying trays of hot food, **the prison infrastructure represents a barrier to safety and acceptable living standards.** Our 2019 inspection report identified Letham Hall...which houses the National Top End, as being in a state of disrepair. Five years later, despite some refurbishment, it remained in a wretchedly poor state. Moreover there were only five accessible cells, which is inadequate for a population that is regularly over 1300, particularly when Scotland has an ageing and more infirm prison population. **The need for a replacement prison...HMP Glasgow therefore remains overwhelming and urgent.***

*The other deeply concerning factor was the unacceptable level of overcrowding...Unfortunately, at the time of our inspection it was more than 30% above its design capacity with **almost two thirds of prisoners having to share cells designed for one person.***

Overcrowding makes it harder to access basic entitlements, and the prison was not able to offer daily showers.** It also makes it harder for staff to build and retain positive relationships with new arrivals, and the additional daily transactional work in dealing with more prisoners than a prison is designed to accommodate can put a strain on services and relationships. That may in part explain the most worrying aspect of our pre-inspection survey, where **more than half (55%) of prisoners said they had witnessed staff members abusing, bullying, threatening, or assaulting another prisoner, and 42% reported that staff had abused, bullied, threatened, or assaulted them.

⁹ See [HMIPS Publications](#) for recent inspection reports, which describe major concerns around these prisons' infrastructure and state of repair.

¹⁰ SPS Population Tracker, 12 May 2025: Total prison places (7,773) minus capacity from the four prisons (2,013) equals a fit-for-purpose capacity of 5,760. The prison population on 12 May was 8,108. $8,108 - 5,760 = 2,348$ overcapacity.

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The Committee for the Prevention of Torture (CPT) has reported on decades-long trends of prison overcrowding across Europe and has cited resolving overcrowding as key to the effective prevention of inhuman or degrading treatment. According to the European Court of Human Rights, violations of Art. 3 ECHR (prohibition of degrading and inhumane treatment or punishment) may arise not only by positive acts of ill treatment by State authorities over prisoners, but also through the imposition of degrading detention conditions, or through lack of action in the face of allegations of ill treatment between prisoners. For example, the situation of prisoners held in overcrowded, dilapidated prison facilities, with too little living space and insufficient privacy, have been considered a violation of Art. 3, despite the fact that authorities did not *intend* to humiliate the prisoners.

The commission has asked for submissions to highlight relevant past recommendations which should be prioritised for implementation. The UK NPM's first annual report (2009-10)¹¹, we have expressed concerns about the rising prison population and the overcrowding of prisons, warning that prisons may find themselves increasingly unable to deal with problems caused by overcrowding because of decreasing resources. The report noted:

Many of the members who visit prisons have expressed concerns about the rising prison population and the overcrowding of prisons. This has an adverse effect on all aspects of a prisoner's life, including safety, the prison regime, their ability to maintain sufficient contact with their family and their preparation for release. Prisons may find themselves increasingly unable to deal with problems caused by overcrowding because of decreasing resources... There is a fear that the progress that has been made in recent years in the treatment and conditions for all detainees may not only stall, but that standards may actually begin to fall. In prisons, for example, inadequate funding will impact all aspects of detention. It will adversely affect the standard of accommodation, the prisoner's time out of cell and the provision of education and rehabilitative programmes.

The situation has not improved since we published that report 15 years ago. In a 2024 joint report with the Scottish Human Rights Commission¹², we found that despite longstanding and consistent concerns about prison overcrowding being raised by UN Committees, the CPT and UK NPM constituent bodies, no clear plan to tackle prison overcrowding had been developed by duty bearers. The state of overcrowding led a High Court judge to refuse to extradite an Irish National to Scotland in 2023 on humanitarian grounds, noting that prison overcrowding would see him locked up for 22 hours a day with less than three square meters of space. In 2024, the CCPR expressed concern about the cumulative effects of chronic overcrowding, poor living conditions and the lack of purposeful regimes on prisoners, recommending that the State increase efforts to improve conditions of detention¹³.

¹¹ [UK NPM First Annual Report, 2009-10](#)

¹² See especially pages 20-21 of the full report: Review... Recommend... Repeat...: An assessment of where human rights have stalled in places of detention at [Absolute rights in places of detention - SHRC](#).

¹³ See [CCPR Concluding observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland \(2024\)](#).

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The impact of prison overpopulation and overcrowding cannot be overstated, affecting every aspect of prison functioning. For instance, prison overpopulation means that many people deprived of their liberty are forced to live in conditions which do not meet minimum standards for dignity and humane treatment, including cells built for one person holding two and even three prisoners at a time. Further, overpopulated prisons put prisoners and staff at greater risk of violence. This on its own is a significant concern, and it also has knock on effects, including higher staff turnover and the loss of experienced staff. Inadequate staffing levels, a chronic issue in Scottish prisons, mean that prisons are often unable to offer the quality regime, programmes and services required to promote wellbeing and rehabilitation.

Prison rules are clear that conditions and treatment within prison are not to exacerbate the penal nature of imprisonment. A core element of rehabilitation is a functioning regime that provides opportunity to develop interests, skills, and education. Excessive time locked in cell, lack of purposeful activity and interventions, and a poor regime were reported by prisoners to contribute to frustration and anxiety, and limited the quality of staff-prisoner relations, all contributing to higher risk of self-harm.

Given the population pressures and staffing shortages described above, prison regimes rarely rise to the level expected and required to promote wellbeing and rehabilitation. Scottish prisons are frequently criticised for offering only limited regimes, whether on a long-term basis, or at frequent intervals when staffing shortages demand it. This means prisoners have access to little or no meaningful or purposeful activity¹⁴, locked in their (often overcrowded) cells for most of the day.¹⁵

However, current sentencing practices and lengths mean there are not enough qualified staff to deliver this individualised and purposeful regime for prisoners. Moreover, the sentencing of many prisoners who would be more effectively rehabilitated in other settings means that there are many prisoners that most prison officers are inadequately trained to support.

Mental health issues are also prevalent in Scottish prisons, and are exacerbated by overcrowding, obstacles to progression, excessive time locked in cell, restricted regime and/or widespread drug use found at their prisons. Recent figures show that suicides in prisons are on the rise, with at least 17 apparent suicides in the Scottish prison estate in 2024, which is the highest number of self-inflicted deaths in the past ten years (and likely in recorded history)¹⁶.

It is difficult for prison staff to meet the level of mental health need, as, like prison officers, mental healthcare teams are understaffed. Prison rules and international standards require the safeguarding of all prisoners in their care, and prisoners must have access to the health services available in the country without discrimination on the grounds of their legal situation. Across the

¹⁴ Such as physical, social, educational, work or rehabilitative activities.

¹⁵ See e.g. [HM Chief Inspector's Annual Report 2023-24.pdf](#), [HM Chief Inspectors Annual Report - 2022-23.pdf](#)

¹⁶ [Nothing to See Here? Deaths in Custody and their Investigation in Scotland in 2024 - SCCJR](#)

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prison estate (for men and women) low staffing levels and limited regimes contribute to poor mental health, increasing risk of self-harm.

Prison overpopulation also undermines systems that have been put in place to alleviate population pressures, such as the progression system. While this system was designed to enable prisoners to progress to more open conditions, such as into the Open Estate, the pressures of the overpopulated prison estate have left staff with insufficient training on the progression system and a lack of time to support prisoners' progression activities. HMIPS's 2024 Thematic Report on Progression found that "[s]taff at all levels evidenced a lack of knowledge and concomitant ability" with regards to the progression system, and both prison overpopulation and under-staffing were cited as underlying factors inhibiting a working progression system. This is clearly evidenced by the longstanding under-utilisation of the Open Estate, which, at the time of writing, had 130 open prisoner places, despite the Scottish prison estate's chronic state of overpopulation.

These are just some examples of how prison overpopulation creates a cycle in which prisons are not able to offer safe, humane conditions, adequate rehabilitative efforts, progression or release planning, all of which can contribute to recidivism, further exacerbating overpopulation and creating additional demands for the wider criminal justice system, families and communities.

The NPM notes that looking at the issue of overcrowding only from the perspective of space (i.e. not taking into account other factors such as sentencing policy and practice) will not solve the problem. It is not only the number of people in a space that affects crowding; the physical quality of that space, the capacity of staff to support them and a preparedness for the increasingly complex needs of individuals deprived of their liberty are all essential to ensure the fulfilment of the right not only to be free of ill treatment, but all the component rights such as rights to privacy, to an adequate standard of health and the inherent dignity of the human being.

Moreover, as far back as the NPM's first annual report, we expressed concern at the high number of prisoners with mental health issues held in segregation units, often for prolonged periods, often awaiting transfers to a more appropriate environment. These concerns persist today, and raise significant concerns, including around social isolation, lack of meaningful activity, and continuous segregation amounting to solitary confinement contribute to inhuman and degrading treatment or punishment. Despite often-good relationships between prisoners and staff, poor conditions and limited regime were reported in segregation units in prisons across Scotland last year. While basic requirements are typically met – most prisoners in segregation were allowed a shower, 30 minutes of exercise and one telephone call a day – this is below the minimum of what the NPM would expect.

It is our position that changes to sentencing policy and practice are key to addressing overpopulation and breaking the cycle of overpopulation. We hope that the Sentencing and Penal Policy Commission will recommend changes which will lead to new policies and legislation which promote dignity, humane treatment, physical and psychological safety and rehabilitation, enabling prisons to release better citizens who have greater capacity to contribute to their communities and Scottish society.

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We encourage the Sentencing and Penal Policy Commission to include consideration of the effect prison overpopulation has on prison conditions, on the rights of prisoners, and on the fulfilment of the rehabilitative function in its recommendations.

WHAT CAN BE DONE?

The Scottish prison estate is overall not adequately equipped, staffed or funded to provide dignified, rehabilitative regimes which enable successful progression and reintegration into the community for the more than 8,200 individuals they currently house. In our 2022 Bail and Release consultation response, we emphasised the need to reduce the size of the Scottish prison population, shifting the focus of our criminal justice system from an overreliance on custody, to delivering a range of credible community alternatives. We continue to support this approach and encourage the Sentencing and Penal Policy Commission to consider bold solutions to address the longstanding issue of overpopulation.

A reduced population will allow staff more time to engage with prisoners with regards to rehabilitation and progression, releasing better citizens who can reintegrate into their communities. It will also give staff the time to address the needs of complex prisoners, enabling Scotland to better fulfil the standard of individualised support.

In approaching sustainable reduction of the prison population, we encourage the Sentencing and Penal Policy Commission to consider new sentencing pathways for individuals for whom a prison will never be an appropriate setting, and who require a therapeutic setting to facilitate their rehabilitation. These may be individuals with specific mental health needs, or aging and elderly prisoners whose age-related needs (e.g. mobility, healthcare) cannot be adequately met in the current prison estate.

Emphasising the human rights principle that *no one shall be deprived of their liberty except as a measure of last resort*, as well as evidence that short sentences are less effective than other sentences (e.g. community-based or suspended sentences) in reducing reoffending¹⁷, we would also propose the commission examine whether the presumption against short sentences (PASS) could be further embedded into judicial decision making. It is widely recognised that short sentences disrupt lives and often pass the devastating effects of imprisonment onto families while offering little rehabilitative benefit. While concerns about sentence up-tariffing are recognised, there is no conclusive evidence that up-tariffing has occurred in Scotland due to PASS, which saw consistent reductions in short sentences at the outset of the policy, with the proportion of custodial

¹⁷ See, e.g. [The Effectiveness of Sentencing Options on Reoffending](#), p. 35-36: “Eaton and Mews (2019) found that “short term custody with supervision on release in 2016 was associated with a statistically significant increase in proven reoffending compared to if community orders and/ or suspended sentence orders had instead been given.” And “an analysis published in 2020, using a definition of desistance based on reoffending risk found that “offenders who completed a custodial sentence of six months or less never reached the general criminal risk of the general population within the window of observation (from 2000 to end of 2018), regardless of age at sentence.” In other words, those subject to short custodial sentences appeared to remain at greater risk of reoffending than the general population.”

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sentences that were less than 12 months decreasing 83% in 2010-11 to 75% in 2019-20¹⁸. However, the trend seems to have shifted in recent years, with short custodial sentences rising in 2021-22 and more sharply in 2023-24¹⁹. At the same time, there has been an overall reduction in application of community sentences 11% between 2013-24 and 2022-23²⁰. We would suggest that the underlying factors in the recent increases in short sentences, as well as the decreased use of community sentences be examined and addressed²¹, and encourage the commission to continue exploring options to reduce the use of short custodial sentences in favour of more rehabilitative alternatives.

Strategies to reduce the remand population to only those where a reason for the removal of liberty can be clearly articulated should also be considered, including examining potential changes to the threshold for successful bail applications. This will require wider systemic action from duty-bearers to establish alternatives to remand in the community, where appropriate.

The commission may also wish to consider other avenues which have been used to maintain safe populations in other institutions such as schools and hospitals. These facilities have a mandatory population cap or limit, ensuring they can deliver on their mandated functions to a satisfactory level – something which is often not possible in overpopulated prisons.

We continue to support the adequate resourcing of the Scottish Prison Service, Community Justice and Justice Social Work, proper staffing of which are vital if we are to support the rehabilitation, progression and release planning of those in custody, to fully utilise the Open Estate, and to reduce reoffending.

Finally, we urge the commission to consider and regularly review the concerns raised and recommendations made by domestic scrutiny bodies²² and international treaty bodies²³ with regards to prison overpopulation and overcrowding.

The UK NPM and NPM Scotland Subgroup would be happy to support the review with further evidence and hope to see recommendations that enhance the UK's compliance with its agreed international obligations.

May 2025

[END]

¹⁸ [Table 10\(a\) People receiving a custodial sentence by main crime/offence and length of sentence, 2019-20\[1\] - Criminal Proceedings in Scotland, 2019-20 - gov.scot](#)

¹⁹ [Scottish Prison Population Statistics 2023-24](#)

²⁰ [Scottish Prison Population Statistics 2023-24](#); the statistics do show a large increase in Restriction of Liberty Orders (RLOs), which have steadily increased by 209% over 10 years.

²¹ For example, the successful reduction of short custodial sentences relies on adequate support for non-custodial programmes and awareness of the availability and benefits of these options.

²² Including, but not limited to, the six Scottish NPM constituent bodies: SHRC, HMIPS, HMICS, ICVS, Care Inspectorate and MWCS, [NPM bodies – National Preventive Mechanism](#)

²³ Relevant international treaty bodies, and many of their recommendations, are summarised in [Review... Recommend... Repeat... An assessment of where human rights have stalled in places of detention](#) (2024)