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Scotland's
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THE RIGHTS AND STATUS OF
THE CHILDREN OF PRISONERS
IN SCOTLAND



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THE RIGHTS AND STATUS OF THE
CHILDREN OF PRISONERS IN SCOTLAND

Kathleen Marshall, Scotland's Commissioner for Children and Young People

(CCYP/2008/1) Laid before the Scottish Parliament by the Commissioner for Children and Young People in Scotland in pursuance of section 12 of the Commissioner for Children and Young People (Scotland) Act 2003 on 07/02/08.

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ABBREVIATIONS USED IN THIS REPORT

ACPOS Association of Chief Police Officers in Scotland

APSS Advisory Panel on Sentencing in Scotland (recommended by the Sentencing Commission for Scotland)

APVS Assisted Prisoner Visiting Scheme

BASW British Association of Social Workers

CJA Community Justice Authority

CRIA Children's Rights Impact Assessment

FCDO Family Contact Development Officer

HDC Home Detention Curfew

HMCIP Her Majesty's Chief Inspector of Prisons

NAB National Advisory Body

SACRO Safeguarding Communities Reducing Offending

SCCYP Scotland's Commissioner for Children and Young People

SER Social Enquiry Report

SPS Scottish Prison Service

UNCRC United Nations Convention on the Rights of the Child

YOI Young Offenders' Institution

SUMMARY

The Commissioner for Children and Young People (Scotland) Act 2003 requires me to promote and safeguard the rights of children under the age of 18 (or 21 if they have been in care). As part of that duty, I have to review law, policy and practice to examine their effectiveness in respecting the rights of children. I have to listen to children, and to pay particular attention to those who do not have other adequate means for making their views heard. My office is known as SCCYP (standing for Scotland's Commissioner for Children and Young People).

In this paper, I argue that the children of prisoners are the invisible victims of crime and our penal system. Their voices are silenced by the shame and stigma associated with imprisonment. They are not seen, not heard and, importantly, not guilty. I examine the laws, policies and practices that are significant for these children. I make the recommendations that aim to promote respect for these children and their rights and, through this report, I commend them to the Scottish Parliament.

How children are affected by parental imprisonment

It is suggested that about 13,500 children are affected every year by the imprisonment of a parent. However, this is probably an underestimate. The recent substantial increase in the numbers of people imprisoned will mean more children will be affected. As well as the emotional loss of contact with a parent or significant carer, children may suffer from financial disadvantage, a need to move house, bullying, shame, stigma, stress and the loss of a carefree childhood. Some may be goaded into being 'as tough' as their parent.

However, some children will experience relief where they have felt frightened of a parent.

Issues for children

- Some have frightening and bewildering experiences when their parent is arrested at home.
- Decisions to imprison a parent only rarely take account of the potential impact on children. In some cases, Social Enquiry Reports are called for and some of them will address these issues. However, in most cases there is no such report. A survey of criminal justice social workers who prepare the reports showed a great variety of approach in terms of whether and how they took account of the needs of affected children. National Standards for such reports take no specific account of the needs of children, who fall into the category of 'other factors'.
- Mothers may be more liable to imprisonment than other adults because community service alternatives may be regarded as unsuitable where there are no associated childcare facilities.
- Prison Rules make no reference to children. Where children appear in prison policies and procedures it is as potential aids to the rehabilitation of their parent rather than as persons in their own right.

- Prisoners' legal entitlement to visits is at a very low level. Individual Governors have discretion to increase it and they invariably do. The legal minimum does not reflect actual practice. The fact that the reality is not legally safeguarded opens the door for visits to be withdrawn as a punishment. This may be appropriate when a visit is seen as a privilege of the offending parent, but not where it is viewed as a right of the innocent child.
- Prisons operate to national standards and targets. The fact that these do not reflect the rights of children means that child-related facilities and programmes (such as parenting programmes) are vulnerable to cuts. Good practice tends to depend on the commitment of particular individuals and is difficult to sustain.
- Family Contact Development Officers located in prisons are valued by families and by Her Majesty's Chief Inspector of Prisons, but their future is uncertain.
- In remoter areas, police cells can be licensed to accommodate prisoners for up to 30 days. Visiting arrangements tend to be very basic, sometimes involving a conversation through the hatch of the cell door.
- Children will be affected, for good or ill, by the temporary release of a parent or a decision to operate a Home Detention Curfew associated with electronic monitoring. Children's interests should be explicitly taken into account when these decisions are made.
- Community Justice Authorities, who now operate locally to manage offenders and reduce re-offending, should be helped and encouraged to take account of the rights of children of offenders.

Children's rights

Children have the same rights as adults to the protection of the Human Rights Act 1998 and the Scotland Act 1998. These safeguard rights under Article 8 of the European Convention on Human Rights to respect for private and family life. It may be legitimate in some cases to deprive a child of a parent's care through imprisonment of the parent. However, because this involves a breach of the fundamental right of the child, the proportionality of the interference should be considered in each case and the impact on the child assessed and put into the balance. Where there are alternatives to prison that promote the public order agenda at least as well, while interfering less with the children's rights, these should be preferred.

Children also have rights under the UN Convention on the Rights of the Child, which has been ratified by the UK: the right to family life (article 16); to benefit from the guidance of a parent (articles 5 and 14); to know and be cared for by parents (articles 7 and 8); and to be separated from parents only where that is in the child's interests (article 9). Article 9 acknowledges that the separation might be caused by an action of the state, such as the imprisonment of a parent. Where that happens, the child should be given information about where the parent is, unless that would be against the child's interests.

And, in all cases of separation, the Convention upholds the child's right "to maintain personal relations and direct contact ... on a regular basis, except if it is contrary to the child's best interests". (article 9.3).

It is important to note the importance of fathers as well as mothers. Children's rights extend to contact with both, where that is in their interests.

Article 3.1 is particularly important and relevant. It says:

"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

This means that, when courts are considering imposing sentences on parents that will impact upon children, they must refer to, and take account of, the best interests of the children affected. It does not make children's interests the overriding concern and allows other interests, such as public order and public safety, to be taken into account. But it does insist that serious consideration, and serious weight, be given to the rights of children.

Recommendations

The report makes 28 recommendations directed towards the Scottish Parliament, Scottish Ministers, the Scottish Prison Service, Community Justice Authorities, Chief Constables, and all those involved in issues associated with the children of prisoners and debates on alternatives to imprisonment. The recommendations aim to:

- Encourage policy makers to integrate children's rights into their thinking about responses to offending behaviour;
- Encourage training to raise awareness of children's rights and needs amongst Community Justice Authorities and police officers making arrests;
- Promote an approach to sentencing that takes account of the impact on children;
- Promote appropriate community alternatives for mothers;
- Strengthen the legal entitlement to visits to match current practice and encourage an approach that recognises their importance for the rights of children;
- Encourage revision of Prison Rules and practice to acknowledge the impact on children and address their needs;
- Encourage a revision of targets and standards for prisons so that they value provision of facilities and programmes that are important for children;
- Encourage debate on the future of Family Contact Development Officers;



- Embed the rights and needs of children in decisions about temporary release of a parent or Home Detention Curfew; and
- Encourage use of the Children's Rights Impact Assessment when future policy is being developed.

We need to make children's rights a visible factor in our decision-making processes. We need to listen sensitively to children's views and experiences. We need to recognise and act on the undoubted truth that these children are not guilty of any wrong doing and should not be required to pay the price of justice. This report shows how the children of prisoners are currently not seen and not heard, and urges action to recognise the fact that they are not guilty, but need, and are entitled to, our care and concern.

1. WHY THIS IS IMPORTANT

The children of prisoners are the invisible victims of crime and the penal system. They have done no wrong, yet they suffer the stigma of criminality. Their rights to nurture are affected both by the criminal action of their parent and by the state's response to it in the name of justice. In the name of justice, the parent is removed from the family sphere, the family's standard of living reduces, and the child is exposed to bullying. The family becomes a clencher of secrets: parents from children; parents from the world; children from the world. Many children are told their parent is working away from home.

The children of prisoners are invisible in the laws and rules that shape our penal system. Where they make an appearance, it is as aids to the rehabilitation of their parent rather than as persons in their own right.

The aim of this report is to examine the situation of the children of prisoners and to make recommendations to promote respect for their rights.

This report does not argue that no-one should ever be imprisoned, nor even that no parent should ever be imprisoned. (For some children, it can be a relief that the adult is in prison.) It does make a case for adjusting our system to make sure that the rights of children affected are fully taken into account and weighed in the balance when decisions are made about imprisonment and the conditions of imprisonment. Of course, offenders themselves have to take responsibility for the impact of their behaviour on their children, but the State should avoid adding to it insofar as this is possible.

¹ There is a wealth of literature on the efficacy of imprisonment and alternatives to prison. For a recent Scottish example see *Alternatives To Prison: Report of a Conference Organised by Encounter and The Royal Society of Edinburgh, 7 – 9 December 2006* (2007) (Edinburgh: The Royal Society of Edinburgh).

2. CHILDREN'S RIGHTS

Children have the same human rights as anyone else to respect for their private and family life. Family life is interrupted by the imprisonment of a parent. Article 8 of the European Convention on Human Rights forbids interference with family life unless it can be shown to be authorised by law, necessary to achieve another legitimate end, and proportionate to that other end.

Public safety and the prevention of disorder or crime are identified by the Convention as legitimate ends. Deprivation of family life through imprisonment may therefore be justified if it can be shown that imprisonment keeps the public safe or prevents crime, and if the benefit gained from it is so great as to justify the price paid by the child. This links the children's rights issues into the wider debate about the effectiveness of imprisonment in terms of public safety and public order. It would be inappropriate to spend too much time on that issue in this report, but it is appropriate to refer to it. Where there are alternatives to prison that promote the public order agenda at least as well, while interfering less with children's rights, these should be favoured over imprisonment.¹

Recommendation 1: Addressed to all involved

The debate on providing alternatives to prison should take specific account of the impact of imprisonment on the children of offenders.

Children’s rights are more fully set out in the 1989 United Nations Convention on the Rights of the Child (UNCRC), which the UK ratified in 1991. This Convention also protects rights to family life (article 16). It proclaims the child’s right: to benefit from the guidance of a parent (articles 5 and 14); to know and be cared for by parents (articles 7 and 8); and to be separated from parents only where that is in the child’s interests (article 9). Article 9 goes on to acknowledge that the separation might be caused by an action of the state, such as the imprisonment of a parent. Where that happens, the child should be given information about where the parent is, unless that would be against the child’s interests. And, in all cases of separation, the Convention upholds the child’s right:

“to maintain personal relations and direct contact ... on a regular basis, except if it is contrary to the child’s best interests.”²

Article 3.1 is particularly important and relevant. It says:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

This means that, when courts are considering imposing sentences on parents that will impact upon children, they must refer to, and take account of, the best interests of the children affected. It does not mean that the impact on the children must be the decisive consideration. In family and child care law, Scotland, like many other countries, exceeds the standards of the Convention by making the child’s interests ‘paramount.’ The Convention does not insist on paramountcy in broader, societal contexts, and allows other legitimate considerations, such as public safety and public order, to play a part. But it does insist that serious consideration, and serious weight, be given to the rights of the children.

The Scottish Prison Service is also affected by article 3.1. As an administrative authority, it too should identify the interests of children affected by its actions and weigh them as a primary consideration in its policies and practices.³

Article 12 of the Convention adds that, where decisions are being made that affect children, they have a right to express their views and have them taken into account. This must, of course, be done sensitively; but it must nevertheless be done. Appendix 1 sets out some insights arising from SCCYP’s work on issues relevant to interviewing children affected by parental imprisonment.

² General Assembly of the United Nations (1989) UN Convention on the Rights of the Child, art. 9.3.

³ The UN Committee on the Rights of the Child criticised Norway for failures to respect article 3: “...the Committee is concerned that in the context of the role of municipal authorities the best interests of the child are not always taken into full consideration and, further that the best interests of children with an imprisoned parent ... are not always a primary consideration.” See UN Committee on the Rights of the Child (2000) Concluding Observations of the Committee on the Rights of the Child: Norway, CRC/C/15/Add.126, paragraph 22 (Geneva: UN Committee on the Rights of the Child).

When the UN Committee on the Rights of the Child considered the UK's Second Report to it in 2002, its Concluding Observations noted that:

“The Committee encourages the State party to incorporate into domestic law the rights, principles and provisions of the Convention in order to ensure that all legislation complies with the Convention and that the provisions and principles of the Convention are widely applied in legal and administrative proceedings. The State party is also encouraged to provide training in the provisions of the Convention and to disseminate the Convention more widely.”⁴

Recommendation 2: Addressed to all involved

Law, policy and practice in relation to criminal justice and imprisonment should be amended to take account of the rights of children affected by the imprisonment of a parent or carer.

If good practice is to be sustainable, it needs to be grounded in the rights of children, reflected in the processes leading to a decision to imprison or release a parent, and also in the targets and priorities set for the Scottish Prison Service, the broader range of justice agencies and health and welfare systems. Good practice needs to be adequately funded and appropriately monitored. It is important to insist on the *rights* of children to avoid any impression that these initiatives are options or even luxuries.

This paper therefore analyses current procedures with reference to the rights of the children of prisoners. It suggests a way forward to promote those rights, informed by visits to selected prisons and discussions with the Scottish Prison Service, Her Majesty's Chief Inspector of Prisons, members of the legal profession, and organisations concerned with the families of prisoners, including representatives of the families themselves.

This paper takes into account the views and experiences of children and young people as ascertained by other agencies. Much valuable work has been done on this and it would have been intrusive and unnecessary to have replicated it.

⁴ UN Committee on the Rights of the Child (2002) Concluding Observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland. CRC/C/15/Add.188 (Geneva: UN Committee on the Rights of the Child).

3. HOW MANY CHILDREN ARE AFFECTED?

It is thought that about 13,500 children in Scotland are affected by the imprisonment of a parent,⁵ but there may be many more. It is hard to be accurate, partly because information is not collected in a way that makes that figure easy to gather; but also because the actual legal relationship of adult to a child might not be a reliable indicator of the role played in a child's life. Many children are born to unmarried parents, and many live in reconstituted families where a significant carer has no legal relationship to them. On the other hand, some parents with an established legal relationship may not actually be significant figures in the child's life.⁶ It is important to note that, in identifying the human rights of the child in terms of the Human Rights Act 1998, and article 8 of the European Convention on Human Rights, the actual relationship is significant, even where no legal ties exist.⁷ The word 'parent' in this paper should therefore be interpreted as including any significant carer for the child.

The total average daily population in prison establishments in the years 1997 to 2007 is as follows⁸:

Year	Number
1997/98	6,059
1998/99	6,029
1999/2000	5,975
2000/01	5,883
2001/02	6,186
2002/03	6,475
2003/04	6,621
2004/05	6,779
2005/06	6,857
2006/07	7,183

The SPS has noted that there had been a huge increase in prisoner numbers over the previous 10 years, mostly young offenders and young adults on short sentences.⁹ In 2006/07, the average daily population in Scottish prisons reached its highest level ever recorded, totalling 7,183. Scottish Government statistics show that the average daily prison population increased by 19% in the 10-year period 1997-2007. The female prison population showed a staggering 90% increase over the same period.¹⁰ During a visit to Cornton Vale Women's Prison, the Commissioner was told that 60% of inmates had children under the age of 18. At the time of the visit, in June 2007, the total women prisoner population was 376. 134 of them had not been convicted. The Governor observed that the number held on remand had increased dramatically over time. Many of them would not get a custodial sentence.



⁵ Figure suggested on the website of Families Outside: www.familiesoutside.org.uk.

⁶ If Recommendation 11 of this report were implemented, requiring child impact assessments at the point of sentencing, this would promote greater certainty about the numbers of children affected.

⁷ This approach has been taken by the European Commission and Court of Human Rights in a number of cases, for example: *Boyle v. The United Kingdom* (1994) A 282-B, Application 16580/90 (friendly settlement); *Keegan v Ireland* (1994) A 290, paras 46-55; *Söderbäck v Sweden* 1998-VII, 3086.

⁸ Scottish Executive (2007) *Prison Statistics Scotland, 2006/07*. Statistical Bulletin CrJ/2007/7 (Edinburgh: Scottish Executive National Statistics).

⁹ Comment by Scottish Prison Service during a meeting with the Commissioner, 16 October 2006.

¹⁰ Scottish Executive (2007) *Prison Statistics Scotland, 2006/07*. Statistical Bulletin CrJ/2007/7 (Edinburgh: Scottish Executive National Statistics).

Any increase in the number of prisoners means an increase in the number of children affected. It also leads to overcrowding which can have an additional adverse impact. HMCIP has frequently commented upon this, including the impact on visiting.¹¹ In his Annual Report for 2005-06, the Chief Inspector noted:

“Overcrowding is not merely as bad as ever: it becomes worse year after year.”

He lists “The nine evils of overcrowding”. One of them is specific to families:

“Family contact and visits will be restricted.”

However the other eight “evils” will have an indirect impact on families insofar as they neglect or exacerbate the prisoner’s condition and state of mind.¹²

In his Annual Report for 2006-07, the Chief Inspector observed:

*“In last year’s Annual Report I wrote of “the nine evils of overcrowding”. None of them has gone away and our prisons are more overcrowded than they were last year.”*¹³

Parliamentary attention has previously been drawn to the impact on staff and prisoners.

S2M-3800 Patrick Harvie (Glasgow) (Green):

Congratulations to Project Happy – That the Parliament congratulates Project HAPPY (Help and Protect Prisoners’ Youngsters) for raising £11,000 to provide a free minibus transport service for prisoners’ children and families from Glasgow city centre to HM Prison Kilmarnock and back every Saturday and Sunday, 52 weeks of the year; commends the former children of prisoners for setting up the project to meet the needs of current prisoners’ youngsters; encourages families to use this service, and urges the Scottish Executive to pay attention to the results of this 12-month pilot project and to do more to support the children and families of prisoners by extending the service to HM Prisons Cornton Vale and Shotts.

Supported by: Shiona Baird, Chris Balance, Mark Ballard, Ms Rosemary Byrne, Frances Curran, Rob Gibson, Robin Harper, Rosie Kane, Eleanor Scott, Ms Sandra White, Fiona Hyslop, Nora Radcliffe, Mr Adam Ingram, John Swinburne, Donald Gorrie, Linda Fabiani.

Lodged on 10 January 2006; not current as of 28 March 2006.

¹¹ For example, see the Overview in HM Chief Inspector of Prisons for Scotland (2006) *Annual Report 2005-06* (Edinburgh: Scottish Executive).

¹² Families Outside regularly responds to concerns of families about the mental health of imprisoned relatives.

¹³ HM Chief Inspector of Prisons for Scotland. *Annual Report 2006-07* (Edinburgh: Scottish Executive) p. 5.



**S2M-4785 Stewart Stevenson
(Banff and Buchan) (SNP):**

Record Prisoner Numbers — That the Parliament notes the continuous increase in prisoner numbers in Scotland’s prisons from an average of 5,362 in 2000-01 to an actual number of 7,178 as at 1 September 2006, an increase of over 33.86%; recognises that the record increase in prisoner numbers over the last six years has taken place during a period of sustained operational efficiency cuts that have resulted in significant reductions in the Scottish Prison Service (SPS) staff complement at all SPS establishments; acknowledges the additional strain placed on staff and the prison system by such record prisoner numbers; recognises that such overcrowding in Scotland’s prisons is having a detrimental effect on the health and safety of staff and prisoners, and calls on the Scottish Executive to review urgently the current operational budget allocation of the SPS.

Supported by: Michael Matheson, Donald Gorrie, Murdo Fraser, Brian Adam, Shiona Baird, Bruce Crawford, Mr David Davidson, Fergus Ewing, Rob Gibson, Patrick Harvie, Fiona Hyslop, Mr Kenny MacAskill, Jim Mather, Alex Neil, Christine Grahame, Mr Adam Ingram, Mr Bruce McFee, Tommy Sheridan, Karen Gillon, Dave Petrie, Ms Maureen Watt, Eleanor Scott, Miss Annabel Goldie, Mr Stewart Maxwell, Mr Ted Brocklebank

Lodged on 12 September 2006; not current as of 19 December 2006.

This report is concerned about overcrowding particularly with regard to its implications for children.

Recommendation 3: Addressed to the Scottish Parliament

That Parliament take note of and seek to address the impact of the increasing prisoner population on the rights of children in Scotland and, specifically, the impact of prisoner overcrowding on the rights of the children of offenders.



4. METHODOLOGY

Work on this report started with a review of what was already known about the issue.

Building on this, the Commissioner:

- Undertook a children's rights analysis with reference to the UN Convention on the Rights of the Child;
- Met agencies working in the field;
- Met officials of the Scottish Prison Service (SPS) and Her Majesty's Chief Inspector of Prisons (HMCIP);
- Attended relevant conferences;
- Visited a number of prison establishments;
- With the help of the British Association of Social Workers (BASW), conducted a small survey of criminal justice social workers about their practice in preparing Social Enquiry Reports (SERs); and
- Conducted desk research on prison inspection reports and sentencing proposals.

Relevant organisations were invited to comment on aspects of a draft report and some attended a Stakeholder meeting on 6 November 2007.

¹⁴ A useful report referring to much of this work is Loucks, N. (2004) *Prison Without Bars: Needs, support and good practice for work with prisoners' families* (Edinburgh: Families Outside).

¹⁵ SACRO now presents itself as Safeguarding Communities Reducing Reoffending.

¹⁶ Service provision has often been the focus of this work, for example, parenting programmes have been run by Aberlour Childcare Trust, Relate, The Wise Group and Families Outside. In Barlinnie this work has been done in partnership with the Scottish Prison Service as part of the Routes Out of Prison Partnership which is funded up to March 2008. From 2005-2006, The Robertson Trust funded three pilot projects to support prisoners and families. These were delivered by The Lighthouse Foundation at Kilmarnock, by HOPE at Barlinnie and by the Families United Programme One Stop Child Care (now smilechildcare) at Edinburgh. CHILDREN 1ST have pioneered family group conferencing at Cornton Vale women's prison. SACRO and Project Happy provide transport services.

5. REVIEW OF PAST WORK ON THE ISSUE

The Commissioner contracted Ewart Communications to produce a background paper to set the context for its work on this report. This concluded that there was a large body of research, within the UK and abroad, spanning at least 20 years which identified issues, sets out examples of good practice and highlighted difficulties.¹⁴

In the early 1980s, the Scottish Council for Civil Liberties set up "Families Outside" to work with the families of prisoners. When funding dwindled, the project was incorporated into the SACRO portfolio. SACRO's expanded name at that time was the Scottish Association for the Care and Resettlement of Offenders.¹⁵ In 1990, Save the Children supported the establishment of the Scottish Forum on Prisoners and Families. Over the following 10 years, the Forum attracted resources for research and the setting up of the Scottish Prisoners Families Information Line. The Forum was renamed Families Outside in 2002 and continues to deliver the helpline service as well as training, research, awareness raising and development.

Other agencies such as the Prison Reform Trust, have addressed these issues, and more general child welfare agencies have developed projects to tackle specific issues.¹⁶

There have been some positive changes as a result of all this work. For example:

- Increased contact through the use of phone cards;
- Assistance with travel costs; and
- The introduction of Family Contact Development Officers as part of the prison staff.

There have also been some imaginative schemes focusing on family visits.¹⁷ However, they tend to have been the fruit of the work of some committed individuals and have proved difficult to sustain when personnel have changed.¹⁸ Apart from a very low level, basic entitlement, visiting rights and visiting arrangements have been seen as a local matter, up to the discretion of individual Governors. Whilst this discretion generally leads to local visit entitlements that exceed the legal minimum, this approach has also meant that services for families have often been about one-off projects which cannot be sustained for staffing or financial reasons.¹⁹

In 1998, the Scottish Forum on Prisoners and Families published “Children Visiting: Prisons A Good Practice Guide.”²⁰ This 186-page document sets out how to deliver high quality childcare and appropriate facilities at establishments throughout Scotland. For example, it acknowledges that the purpose is to get the best out of the visit experience for all those concerned and that providers need to work with the best interest of the child in mind. The guidelines are not meant to be prescriptive but are designed to address the needs of children visiting. However, effective delivery requires a supportive culture and sufficient resources.

Families Outside have embarked on a project, “It’s No Holiday”, including a DVD and guidelines for professionals launched in 2006 and utilised in training for a range of staff including prison officers, children’s panel members and social workers.

The organisation is aiming to embed this material and its message in the training framework of all relevant staff and is seeking support for a strategic approach to this. Families Outside will also be developing information and materials specifically aimed at the needs of children and young people affected by imprisonment.

Project Happy is a small, voluntary organisation founded and directed by people with experience of the imprisonment of a parent. It runs a free minibus service for families visiting Kilmarnock Prison.

¹⁷ For example, the development of a more welcoming pre-visit waiting area for families at Edinburgh and Perth Visitor Centres, and the work of the Lighthouse Foundation and Hope.

¹⁸ A research-based insight referred to by Loucks, para. 6.3. The examples of the Shotts crèche and the Polmont Parenting programme referred to at 10.2 and 9.6 below may also be relevant.

¹⁹ Ewart, C. (2006) *The Human Rights of Children Whose Parents are in Prison – A Way Forward for SCCYP* (Glasgow: Ewart Communications) p. 8.

²⁰ Morrison, C. & McCulloch, C. (1998) *Children Visiting Prisons: A Good Practice Guide, Scottish Forum on Prisons and Families* (Edinburgh: TASC Agency).

6. HOW ARE CHILDREN AFFECTED?

The impact on children of the imprisonment of a parent or other family member is well documented.²¹ The text below is intended merely to set a general context for what follows.

Apart from the shock of a parent suddenly becoming absent, there may be practical difficulties such as:

- Press and media coverage, particularly in local newspapers which have ‘court round ups’.
- Financial problems: wages disappearing; falling behind with loan payments; benefit implications; costs associated with visits. There is an Assisted Prisoner Visiting Scheme (APVS) which allows reimbursement of costs in some cases, however, research shows that many families are not aware of the scheme or find it confusing.²²
- Having to move house because of problems within their neighbourhood caused by the victim living locally, or because the prisoner’s family need to be closer to the wider family or the prison.
- Children being bullied at school because of the actions of their parent and sometimes being goaded into being ‘as tough’ as the incarcerated parent.
- A public perception that families too are culpable in varying degrees for the criminal actions of the individual.
- Stress on children associated with visiting.
- Reduction of parenting time.

- The loss of a carefree childhood, affected by the stress of the remaining adult. Older siblings may take on caring responsibilities.

On the other hand, for some children, there may also be relief that a threatening person has been removed from their environment.

6.1 What children say

A number of reports have sought to find out about children’s experiences and views.

“More than a Box of Toys”²³ (1997) is a report on the experiences of children and young people visiting Scottish prisons and provides useful quotes and analysis. It confirms that “when a family member is removed to prison, there are economic, psychological and social repercussions for those who are left behind.”²⁴ There is stress in dealing with the courts as well as the separation. Finding the time and making arrangements to visit the prisoner are also problematic, given that many prisoners have faced social exclusion and their families may not have the resources to sustain visiting. Infants and children may fail to bond and teenagers can be bewildered with the ‘wrong doing’ and its effects. There is also a problem with behaviour which can be particular before, during and after visits. The actual visiting experience can be quite stressful.

²¹ For example, Loucks, N. (2004) *Prison Without Bars: Needs, support and good practice for work with prisoners’ families* (Edinburgh: Families Outside); McCulloch, C. & Morrison, C. (2001) *Teenagers with a Family Member in Prison: A Study by the TASC Agency on behalf of the Scottish Forum on Prisons and Families* (Edinburgh: Scottish Forum on Prisons and Families); and Buist, M. (1997) *More Than a Box of Toys* (Edinburgh: Scottish Forum on Prisons and Families, and Save the Children).

²² Loucks, N. (2004) *Prison Without Bars: Needs, support and good practice for work with prisoners’ families* (Edinburgh: Families Outside) para. 4.54.

²³ Buist, M. (1997) *More Than A Box of Toys*. (Edinburgh: Scottish Forum on Prisons and Families and, Save the Children).

²⁴ Buist, p. 3.

“Teenagers with a Family Member in Prison” is a study on behalf of the Scottish Forum on Prisons and Families, published in 2001. Teenagers were asked why they were reluctant to visit a relative in prison, and also about matters relevant to effective service planning and development. The report concluded that:

*“Most young people experienced major trauma as a result of their relative’s arrest and imprisonment. The initial feelings, of separation, longing, embarrassment, sudden responsibility and the general upsetting of routine, far from being transitory, tended to remain with the young people.”*²⁵

*“The way young people speak of the imprisonment of a relative is akin to the way people speak of loss or bereavement. Perhaps if a young person’s parent dies, there is more likelihood of adults attributing a change in behaviour or attitude to the bereavement. None of the young people interviewed experienced this kind of support from adults other than from within the family.”*²⁶

“I was 15 and my Dad got sent to prison. You’d think someone would’ve sat down and said to me “is something wrong?” Mad isn’t it?”

Male 15 (Page 30)

“The hardest thing was no seeing him – and wanting him.”

Female 12 (Page 28)

“Sometimes it’s hard to tell my Mum what I’m thinking – she wouldn’t understand. She’s got enough on her plate.”

Female 12 (Page 31)

“I started fighting and always getting into trouble. I want to, it gets my anger away. I just want to shout at anyone I don’t like now. I only went to school on and off after [Dad went to prison]. I just kept getting punished no-one had tried to help. Now I’m expelled for good. One day in the third class that morning I got called out of the class. The Head Teacher said “You’re suspended”. I said “What for?” and she said “for no being here.” Daft, pure silly.”

Gender and age not attributed (Page 28)

²⁵ McCulloch, C. & Morrison, C. (2001) *Teenagers with a Family Member in Prison*, (supra), page 27.

²⁶ McCulloch & Morrison, p. 31.



It would, however, be a mistake to assume that all children want more contact with imprisoned parents, or that they would always benefit from it. Some children are afraid of their parent. Some opportunities for contact are exploited by parents for their own ends. But neither should this darker side be allowed to skew the picture. The best interests of each child should inform each decision, wherever those interests lie; and the assessment of interests should be informed by the child's views. When children feel very vulnerable, it can be difficult to find out what those views are. Children will often tell ChildLine things they would not tell anyone else. The figures below show the number of calls made to ChildLine since 2002 where reference was made to a relative in prison.²⁷

Table 1: Calls to ChildLine referring to 'prison' or 'jail'

Year	Number of Calls	Source of Calls
2002-03	91	Scotland
2003-04	83	Scotland
2004-05	143	Quarter of UK
2005-06	132	Quarter of UK

The following is a summary of some of the scenarios presented by these children:

- Drink to forget about abuse by imprisoned Dad.
- Behavioural problems – Mum in jail.
- Bullied because Dad in jail.
- Scared of contact when Dad released.
- Cry all the time since Stepdad back home after a long spell in prison.
- Abuse by sibling while Mum in prison.
- Dad forces child to take drugs to mother in prison.

- Runaway from care – Dad in jail; Mum on drugs.
- Afraid to tell that not being fed in case parents sent to jail again.
- Mum in jail; Stepmother beats her.
- Received letters from relative imprisoned for abusing her.
- Everyone knows child was abused by father. Mum blames child for the imprisonment. Other children tease the child.
- Regular beatings by Dad with prison history.
- Sibling imprisoned for attack on abusive Dad.
- Abuse by ex-prisoner boyfriend of Mum.
- Feels guilty because Dad might be imprisoned for abusing her.
- Violent boyfriend – ex-prisoner – demanding under-age sex.
- Feels “used” by Mum who is frequently in prison – only in touch when she wants something.
- Physically abused by Mum while Dad in jail.
- Depressed because brother jailed for drug dealing.
- Dad in jail. Child felt threatened by Stepdad.

The imprisonment of a parent or carer can clearly have a significant impact on a child's welfare. While this report focuses mainly on the justice system, it is important to recognise the responsibilities of the broader welfare system to identify and respond to these needs. Children clearly value ChildLine, which is a confidential helpline staffed by trained counsellors. But children may need dedicated support to allow them to speak frankly about the issues and be helped to work through them.

²⁷ It is difficult to identify the Scottish figures since 2004 when ChildLine's recording systems changed. The figures shown reflect the fact that the Glasgow Centre of ChildLine answers a quarter of all UK calls. Some callers may have a parent in prison outside of Scotland.

Recommendation 4: Addressed to Scottish Ministers and Local Authorities

In order to raise awareness of this often neglected group of children, local and national guidance on children who may be “in need” in terms of section 22 of the Children (Scotland) Act 1995, should refer explicitly to the children of prisoners as potentially falling into this category.

It is also clear from what children say that decisions to release a parent from prison also need to take account of the interests and views of children. This includes decisions to release a prisoner subject to a Home Detention Curfew (HDC). A child who feels uncomfortable or unsafe at home may search for other options that put him or herself at risk. These matters are discussed in section 12.

6.2 Mothers and fathers – any different?

The UNCRC asserts the right of the child “as far as possible ... to know and be cared for by his or her parents” (article 7.1). Where children are separated from parents, they have a right “to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests” (article 9.3). The views of the children will be a relevant factor in determining where their best interests lie (article 12).

The Convention does not discriminate between mothers and fathers. However, the prison system reflects the attitudes – and experience – of society that mothers tend to be the primary carers in most cases. There are more child-related facilities at Scotland’s only all-female prison at Cornton Vale, near Stirling, including the possibility for mothers and babies to remain together up to 18 months or two years.

There are additional facilities for 7 to 10 female prisoners at Inverness. Until recently, small numbers could also be accommodated at Aberdeen and Dumfries. The female facilities in these last two establishments are currently closed, temporarily at least. The Commissioner was advised that there was a longer term plan to move towards community prisons under the new Community Justice Authorities, with consideration being given to holding prisoners of all types of sentence length, male and female. The advantage in terms of family relationships is that they would be easier to visit. The disadvantage is that they might not be able to replicate the specialist services currently available at Cornton Vale.

The Chief Inspector of Prisons has commented on this dilemma, noting the preference women prisoners express for a local placement to facilitate family contact, but the price they pay in terms of lack of services for themselves.²⁸

Para. 10.4 describes the very limited visiting arrangements at the legalised police cells used for short sentences in some of the more remote parts of Scotland. One would hope that any new community prisons would have better facilities than that. It seems clear that the rights of children should be given due weight in decisions about the development of community prisons (as required by article 3 of the UNCRC). It is also clear that, if we are to respect the rights of children to meaningful contact with both parents, where this is in the child’s interests, then we should be looking at improving policies and practices across the prison service generally to ensure that children’s relationships with their fathers is recognised as much as their relationships with their mothers.

²⁸ HM Chief Inspector of Prisons for Scotland (2005) *Annual Report 2004-05* (Edinburgh: The Stationery Office) p. 6.

Recommendation 5: Addressed to SPS

Any development in the prison estate, and specifically any move towards establishment of more local, “community prisons”, should take explicit account of the rights of children affected by the imprisonment of their parents.

Recommendation 6: Addressed to SPS

Policy and practice should acknowledge the child’s right to meaningful contact with both parents where that is consistent with the child’s interests, taking account of the child’s views. This will have implications for the design of prisons for males as well as those for females.

6.3 Young prisoners

In 2004–2005, 18 children under 16 were held in prison in Scotland. Most were held for a short time, but one was imprisoned for 155 days (two separate periods of custody) and another for 66 days. Nearly half were held in Polmont, but Kilmarnock, Cornton Vale, Barlinnie, Dumfries, Edinburgh and Greenock also held under-16s. HMCIP pointed out that this centralisation had implications for visits:

“...visits (surely even more important for children in prison) are likely to be far from easy for many families to arrange.”²⁹

In 2005–2006, the number of under-16s had increased to 23, all of them being held in Polmont.

7. WHEN A PARENT IS ARRESTED

The 2001 report on “Teenagers with a Family Member in Prison” recounted some experiences of young people during the arrest of a parent.

“I was 11 when they came to arrest my Dad. I’ll never forget it, we were watching a Rangers v Celtic match on the TV and the police came in and said to my Dad “Come down the station.” I was hitting them ... one male police officer took me in to my bedroom and tried to chat to me. 2 police cars came to take me away – they put me in a blacked out police car so I couldn’t see out and said my Mum was coming but in a different car. I thought they were taking me to a home. I didn’t know why they took us away separately – I still don’t.





At the police station they put me in a room on my own and said they'd be back in a couple of minutes. I was worried they were going to put me in a straightjacket. I tried to open the door and saw a uniformed police officer. I said I needed the toilet and when I came out of the toilet there were 2 police officers waiting for me. On the way back to the room I heard my Mum shouting in a different room. I was scared.

2 plain clothes police officers (a man and a woman) came and asked me loads of daft questions; it was just me and the police, I didn't like that. I want someone I knew to be there.

Then they took me back to my house and asked a neighbour if she would watch me but she said she was going out so they took me back to the station. At midnight they let us out and me and my Mum walked home. We didn't even have any coats. Dad came home at 2am."

Male 15 (Page 13)

This scenario raises a number of issues about the circumstances in which the child was interviewed and the child protection implications of leaving him with a neighbour.

The report recommended that agencies:

"Initiate a dialogue with the Scottish Association of Chief Police Officers on how:

Police who are aware that children or young people under the age of 16 are likely to be present at the time of arrest ensure:-

A police officer has dedicated responsibility for any children/ young people involved.

The young people are accompanied at all times.

The young people have all the information they need to help them understand what is happening.

To develop police awareness of the difficulties some young people under 16 face at the time of a relative's arrest."

This scenario is, of course, seven years old and some practice will have developed since that time. Families Outside have indicated that some progress is being made towards integration of this issue into the Police Training College curriculum. The Association of Chief Police Officers in Scotland have expressed their commitment that "the care of any children present at the time will always be considered by the police officers present in an appropriate manner." They agree that further dialogue is needed about the provision of information, taking account of the rights of the arrested person, practical considerations about language used relative to the age of the child, and any impact on the investigation or integrity of that particular enquiry.³⁰

Recommendation 7 Addressed to Chief Constables of Scottish Police Services

Police should receive guidance and training on dealing with children sensitively when a family member is being arrested or detained.

³⁰ Letter from ACPOS to the Commissioner, 15 January 2008.

8. THE DECISION TO IMPRISON

8.1 Making the children of offenders visible in the process

Despite their own innocence and the impact upon them of the imprisonment of a parent, the children of offenders do not consistently figure in the processes leading to a decision to imprison.

Article 3.1 of the UNCRC requires that:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

This section of the paper examines how article 3 is, or might be, reflected in Scottish law, policy and practice on sentencing.

8.2 Current law and practice on sentencing

Courts in Scotland have very wide discretion in sentencing. Acts of Parliament set out limits to the sentencing powers of lower courts, prescribe what kinds of sentence can be imposed, and sometimes impose maximum sentences for particular offences. But within these limits, Scottish courts have some of the widest discretion in the world:

*“... Scotland appears to occupy an almost unique position in having neither a penal/criminal code nor a formal, operational system for the provision of comprehensive sentencing guidance. Scotland proved to be one of the most difficult jurisdictions on which to obtain detailed sentencing information.”*³¹

There are only three circumstances in which courts have no choice but to impose a mandatory minimum sentence of imprisonment:

- Life imprisonment for murder³²;
- Three or five years imprisonment (depending upon age) for illegal possession or distribution of firearms³³; and
- Seven years imprisonment for offenders over 18 in respect of some drug trafficking offences.³⁴

The only other mandatory sentence is disqualification from driving for some road traffic offences.

The High Court has a power, when considering an appeal against sentence, to issue a “guideline judgement” giving the Court’s opinion as to the sentence that might be appropriate in any similar case.³⁵ This appears to have been rarely exercised.³⁶

³¹ Machin, D. (2005) *Sentencing Guidelines Around the World* (Edinburgh: Sentencing Commission for Scotland) p. 2.

³² Murder (Abolition of Death Penalty) Act 1965 (c.71).

³³ Criminal Justice Act 2003 (asp.7) s. 287.

³⁴ Criminal Procedure (Scotland) Act 1995 (c.46) s. 205B.

³⁵ Sentencing Commission, para. 1.10, citing sections 118(7) and 189(7) of the Criminal Procedure (Scotland) Act 1995.

³⁶ Sentencing Commission, para. 140 refers to “a handful” of notable guideline judgements that have been issued since 1995.



8.3 The recommendations of the Sentencing Commission for Scotland

In 2006, the Sentencing Commission for Scotland recommended the creation of a new statutory body – the Advisory Panel on Sentencing in Scotland (APSS) – which would be responsible for preparing draft sentencing guidelines for consideration by the Appeal Court of the High Court of Justiciary. This is only one of a set of recommendations designed to ensure greater consistency in sentencing. In the Foreword to the report, the Chairman, the Rt. Hon. Lord Macfadyen, said:

*“It is generally accepted that there should be consistency in sentencing at every level of our courts. That is an aspect of fairness and justice. These principles demand that similar crimes committed in similar circumstances **by offenders whose circumstances are similar** should attract similar sentences.”* (Emphasis added)

The body of the report expands on this:

*“Treating like cases alike does not mean treating them in exactly the same way ... A large number of different circumstances can legitimately be taken into account by sentencers. Crimes and offences falling within the same category may vary in their seriousness; the personal circumstances of offenders vary widely; the impact of crimes and offences on victims can vary ...”*³⁷

The report recommends (Rec. 3) that the purpose of sentencing should be enshrined in statute. Statutory duties should be placed on sentencers to have regard to the sentencing guidelines and to state any reason for departing from them (Rec. 16). The proposed APSS should give priority to guidelines for those offences that frequently result in a sentence of detention or imprisonment (Rec. 22).

Recommendation 8: Addressed to Scottish Ministers

Any new sentencing body or guidelines should acknowledge that the rights and interests of the children of offenders are a legitimate, necessary and important consideration.

8.4 Social Enquiry Reports (SERs)

In some circumstances, a court will order a Social Enquiry Report (SER) to assist with sentencing. The SER may also be retained in prison records and be considered during the parole process.³⁸ The legal basis is the Criminal Procedure (Scotland) Act 1995. Courts have a **general power** to order a report when a person has been found guilty of an offence. A court may adjourn a case to allow inquiries to be made in order to help it determine “the most suitable method of dealing with his case” (Section 201). Courts **must** consider a report before:

- Imposing a sentence of detention on a **person aged 16–20** (Section 207(4)).
- Sentencing a person over 21 to imprisonment **if they have not been imprisoned before**. Imprisonment should be ordered only if the court considers that “no other method of dealing with him is appropriate.” The court must give its reasons for concluding that no other method is appropriate (Section 204).
- Making a **Probation Order**. The report must consider the “circumstances and character of the offender” (Section 228).
- Making a **community service order** as an alternative to imprisonment. The report must address “the offender and his circumstances” to help the court decide whether the offender is a suitable person to perform community service (Section 238).
- Making a **supervised release order**. This order has the aim of protecting the public from serious harm when the offender is released. The report must address “the offender and his circumstances.” It applies to convictions for non-sexual offences and sentences of less than four years (Section 209).

- Ordering an **Extended Sentence** for sexual and violent offences. The extension is a period of release “on licence” and subject to recall to prison after the normal term of imprisonment is over. It is a public safety measure. The court has to consider a report on “the offender and his circumstances” before making this order (Section 210A).
- Passing sentence on a convicted person who is **already under statutory supervision** related to criminal behaviour (Section 203).³⁹
- Disposing of a case where the offender is **under 16 years of age** or under 18 and subject to a supervision requirement imposed by a children’s hearing (Section 42(8)).

Thus, the duty to consider an SER applies to some specific circumstances, but there is also a more general power. Between 2002 and 2007, requests for SERs increased from 44,958 to 50,557.⁴⁰

Scottish Government statistics give some indication of how relatively few cases benefit from an SER. In 2005/06, an estimated total of 142,200 persons were proceeded against in court.⁴¹ In 2005/06 a total of 42,043 SERs (including supplementary reports) were submitted by Local Authorities to the courts.⁴² The number falls to 35,342 when supplementary reports are excluded. The majority related to summary proceedings in Sheriff Courts (88%). Males were the subject of 30,032, while females were the subject of 5,310.

³⁸ Scottish Executive (2004) *National Objectives for Social Work Services in the Criminal Justice System: Standards Social Enquiry Reports and associated Court Services* (Edinburgh: Scottish Executive) Standard 3.2.

³⁹ The statutory supervision referred to is founded in section 27(1)(b) (i) to (vi) of the Social Work (Scotland) Act 1968 (c.49).

⁴⁰ Scottish Executive (2007) *Social Enquiry Reports – CJA Tables 2005-06* (Edinburgh: Scottish Executive).

⁴¹ Scottish Executive (2007) *Criminal Proceedings in Scottish Courts 2005/06*. Statistical Bulletin CrJ/2007/3 (Edinburgh: Scottish Executive National Statistics).

⁴² Scottish Executive (2007) *Criminal Justice Social Work Statistics 2005/06*. Statistical Bulletin CrJ/2007/02 (Edinburgh: Scottish Executive National Statistics) during the same period a total of 50,150 SERs were requested by the Courts.

In 2004, the Scottish Executive published National Standards for Social Enquiry Reports.⁴³ The Standards refer to the purpose and content of the report. The risk of harm to others is a key concern and there is frequent reference to the need to take account of the offender’s “circumstances”. The report should address the offender’s “family relationships”. The justification for this is explained:

“Beyond establishing essential contextual information about the offender’s family history and current relationships and responsibilities to include in the report, the emphasis should be on investigating:

1. *the significance of previous and current relationships and whether there is anything to suggest that family disruptions, attitudes or tensions may be contributing to the subject’s offending;*
2. *the degree of active support within the family for pro-social behaviour and for helping the offender to change his or her behaviour.”*⁴⁴

The Standards suggest that, in some cases, one interview with the offender may be sufficient, but that there may be cases where it is appropriate to interview members of the offender’s family as well as third parties and agencies who may be able to contribute resources to the action plan.⁴⁵ It is recommended that report writers visit the family home where it is safe to do so. This is an interesting observation and raises the possibility that legitimate concern for the safety of the worker might result in exclusion of the most vulnerable family members from the process.

Recommendation 9: Addressed to Scottish Ministers

Consideration should be given to revising the National Standards for Social Enquiry Reports to encourage workers to look for other ways of ascertaining the view of family members if a home visit is regarded as an unsafe option.

A paragraph of the Standards suggests to report writers other information that may be of “general relevance”:

*“Information about financial means is almost always relevant. **Other factors** [emphasis added] which the court may wish to take into account include family commitments, ill-health, work record/ prospects and accommodation ...”*⁴⁶

The Standard on Women Offenders refers to a number of considerations, but children do not feature in them. Report writers are advised to look wider than the psychological, psychiatric or medical issues that often dominate these reports:

⁴³ Scottish Executive (2004) *National Objectives for Social Work Services in the Criminal Justice System: Standards Social Enquiry Reports and associated Court Services* (Edinburgh: Scottish Executive).

⁴⁴ Social Enquiry Report, Standard 2.12.2.

⁴⁵ Social Enquiry Report, Standard 3.12.

⁴⁶ Social Enquiry Report, Standard 4.9A.

“When preparing reports on women offenders, report writers must take care to give proper consideration to the provision of information about, and analysis of, employment issues, education and training, and, in particular, alcohol and drug use and financial circumstances. They must also ensure that they review the full range of community disposals which may be available and appropriate in the light of the circumstances of the case and current responsibilities and other commitments should not rule out Community Service. Where such concerns apply, social workers will need to explore ways of addressing them with the offender and offer this information to the court.”⁴⁷

There may be an implication here that child care responsibilities might be a barrier to suitability for Community Service thus rendering mothers more liable to imprisonment than other offenders. This is part of a broader issue. It has been suggested that community service provision is not designed with women offenders in mind as there are relatively few of them.⁴⁸

Recommendation 10: Addressed to Scottish Ministers

It should be clearly stated that child care responsibilities should not be a barrier to a person undertaking community service as an alternative to prison. Where appropriate, child care should be provided to allow a community service order to be carried out. Community service opportunities should be audited to assess their suitability for women offenders.

The Standards document sets out the range of disposals available to the court⁴⁹ and advises report writers how to frame their conclusions.

The options available to the court (depending on the offence and status/state of the offender) are:

- Admonition
- Fine
- Supervised Attendance Order
- Compensation Order
- Deferred Sentence
- Probation
- Fines Supervision
- Remittal to a Children’s Hearing
- Supervision and Treatment Orders
- Hospital Orders
- Hospital Direction
- Guardianship
- Restriction of Liberty Orders (tagging)
- Drug Treatment and Testing Orders
- Supervised Release Orders
- Custody
- Extended Sentences

⁴⁷ Social Enquiry Report, Standard 4.11.

⁴⁸ A view expressed in a meeting with Scottish Prison Service.

⁴⁹ Social Enquiry Report Standards, Appendix III.

Report writers are advised:

“The court is looking for comments on the feasibility and possible impact of specific disposals, particularly those involving social work services ... Whilst reports must not include a recommendation as such, report writers may indicate, on the basis of their review and assessment, which non-custodial option is in their opinion most likely to prevent or reduce future offending in the event of the court deciding it is not necessary to impose a custodial sentence ... The court will also want to know if the report writer considers there may be a risk of self harm if the offender is sentenced to custody. If the offender has been assessed as someone who could pose a risk of serious harm to others, the court will appreciate advice on the desirability of a Supervised Release Order or Extended Sentence in the event of custody.”⁵⁰

The Standard document refers also to the role of the social worker after sentence has been passed. It suggests that, where a court has remanded someone in custody or passed a custodial sentence, there should be an immediate interview that aims to deal with pressing problems, “e.g. arrangements for child care.”⁵¹ Single parents are listed amongst the cases that should be prioritised for this interview if resources are too stretched to allow an interview in every case.⁵²

Where the social worker considers the offender to be at risk of self harm, a form must be passed to the prison.⁵³ Social work staff are advised to follow up interviews by informing family members of the court’s decision, “particularly where custody was not anticipated and where prompt action may be required.”⁵⁴ They are also to try to provide information and advice to the families and friends of the accused persons where they attend court⁵⁵, and to help with any crises that occur and direct to sources of assistance.⁵⁶

8.5 Survey of SER practice

It is clear from the above that there is scope for SERs to address the interests of children, even though these are identified as ‘other factors’ rather than significant and central concerns. The Commissioner undertook a small survey of report authors in order to assess what happened in practice and to find out what these workers thought about proposals to give children’s rights and interests a more central place in the process.

SERs are drawn up by criminal justice social workers. With the help of BASW (British Association of Social Workers), a survey was undertaken with criminal justice social workers attending a BASW event in order to find out:

- The extent to which SERs currently play a role in assessing the impact on children of parental imprisonment;
- Whether there is scope for extending the use of SERs to achieve this aim;
- The practicality and value of doing this; and
- The practicality and value of introducing separate child impact statements⁵⁷ to be considered by the court at the point of sentencing.

Twenty five survey forms were completed. The responses are analysed in Appendix 4. They show that the respondents were very experienced workers, with more than half preparing in excess of 100 SERs each year.

There was significant variation in the extent to which SERs took account of the interests, views and rights of children who would be affected by imprisonment. One third (eight respondents) said these were reflected routinely in their reports. Five said these were reflected to a reasonable extent. Nine thought they were reflected in few reports, and two reported that they were not taken into account at all.

⁵⁰ Social Enquiry Report, Standard 5.6.

⁵¹ Social Enquiry Report, Standard 8.5.2.

⁵² Social Enquiry Report, Standard 8.11.5.

⁵³ Social Enquiry Report, Standard 8.7 – 8.10.

⁵⁴ Social Enquiry Report, Standard 8.12.

⁵⁵ Social Enquiry Report, Standard 8.16.1.

⁵⁶ Social Enquiry Report, Standard 8.16.3.

⁵⁷ The survey spoke of child impact “statements.” However this can be misleading as some might think the aim is to have statement from the children of the accused reported to the court, on analogy with a Victim Statement. This would be a difficult procedure that might leave the children of offenders vulnerable to pressure and stress. To counter this misunderstanding, this report now speaks of a “child impact assessment” rather than a “statement.”

When asked whether it would be *practical* to extend the use of SERs for this purpose, seven gave an unqualified Yes; a further seven gave a qualified Yes; six were unsure; and five thought this would not be practical. Fourteen of the responses referred to resources, especially staff workloads, as an inhibiting factor.⁵⁸

As for the *value* of extending the use of SERs specifically to cover affected children, half of the respondents (12) gave an unqualified Yes; five gave a qualified Yes; five were unsure; and two said No.

Thirteen thought there would be value in introducing a separate child impact statement rather than incorporating this dimension into the SER. Ten gave a qualified Yes or were unsure. Only one thought there would be no value in this.

One person could foresee no drawbacks to the introduction of a separate child impact statement. Eight cited time or resource constraints as a problem. Nine worried about the possibility of a negative impact on the child if this were introduced in such a way as to put pressure on the child. Six cited other possible issues, such as who would do this, how lawyers and sheriffs might respond, the need for guidance and for appropriate information sharing, the willingness of families to co-operate, and one concern about whether it would be proper to introduce this consideration in terms of fair and equal treatment of convicted persons.

Thirteen respondents thought the reports should be prepared by social workers. These were almost equally divided amongst those who favoured criminal justice social workers and child and family social workers, and those who were not sure or did not express a preference. Two thought the work should be done by an independent person or agency. Eight respondents were less specific. Suggestions included a Safeguarder⁵⁹ and unspecified adults with appropriate training.

What this shows is that there is very considerable support for taking specific account of the rights of affected children provided it is done sensitively, in a way that does not put children under pressure. Resources would have to be made available to allow this to be done effectively.

8.6 Giving children a place

Scottish courts have very wide discretion in sentencing. There are only a limited number of circumstances in which imprisonment is the only option. This, of course, means the only *legal* option. Sentencers will be constrained by the availability of accessible options as a matter of practice. The National Strategy for the Management of Offenders argues that “the system now has a good range of community sentences in place for the courts to use in place of short prison sentences” (para. 1.5). It also refers to an “information for sentencers” website that helps exploration of available options (para. 4.7).

⁵⁸ Scottish Executive (2006) *Reducing Offending: National Strategy for the Management of Offenders* (Edinburgh: Scottish Executive) note at para. 3.1 that local authorities employ about 600 criminal justice social workers.

⁵⁹ A Safeguarder is an independent person appointed to represent the interests of a child within certain proceedings under the Children (Scotland) Act 1995.

To help with sentencing, courts may also order an SER which *may* consider the impact on children. Children have, however, no secure place in the decision to imprison. There are a number of ways in which their interests may be filtered out:

- There may be no SER.
- The SER may not address the impact on children or give it weight.
- The court receiving the SER may not give the children’s interests weight.

If we are to respect article 3 of the UNCRC, there must be a place in the process for consideration of the rights of children who will be affected by different possible disposals. SERs could be extended to cover this, but would have to be made in every case where children were affected. The introduction of a separate child impact assessment might bring a clearer focus in those cases where an SER would not otherwise be ordered.⁶⁰

Respondents to the survey expressed legitimate and thoughtful concerns about the possibility that such a process might put pressure on the child. This is an issue that always appears when moves are made to take account of the views of children. There is literature available in relation to parental separation and medical decision-making that can help the architects of a system to think this through and introduce appropriate safeguards. The UNCRC obliges influential adults to grasp the nettle of devising a system that allows children’s views and interests to be reconciled.⁶¹

Recommendation 11: Addressed to Scottish Ministers

The rights and interests of the children of offenders should be taken into account when sentencing options are being considered and their impact on the sentence should be recorded.

Consideration should be given to requiring a child impact assessment at the point of sentencing. This could be through a separate assessment or, where a Social Enquiry Report is ordered, as an explicit component of that report. Good practice guidance should be issued on conducting a child impact assessment, backed up by training. This should acknowledge the need to avoid exposing children to pressure from the offender or family in the process of assessing the likely impact on the child.

⁶⁰ If child impact assessments were prepared in every case, this would also allow greater certainty about the numbers of children affected by the imprisonment of a parent or carer. See the discussion at para. 3 above.

⁶¹ Marshall K. (1997) *Children’s Rights in the Balance: The Participation – Protection Debate*. Edinburgh: Stationery Office.

9. THE PERIOD OF IMPRISONMENT

9.1 The Scottish Prison Service (SPS)

The Scottish Prison Service (SPS) is an agency of the Scottish Government. Its key aims are:

- to keep in **Custody** those committed by the courts;
- to maintain good **Order** in each prison;
- to **Care** for prisoners with humanity;
- to provide prisoners with a range of **Opportunity** to exercise personal responsibility and to prepare for release; and
- to play a full role in the integration of offender management services.⁶²

SPS operates within the framework of The Prisons and Young Offenders Institutions (Scotland) Rules 2006, and its performance is measured with reference to a range of 'Key Ministerial Targets.'

9.2 Prison Rules and the invisibility of children

Prisons operate under the Prisons and Young Offenders Institutions (Scotland) Rules 2006.

The word "child" does not appear in the Rules. There is a reference to "babies" in Rule 135, which allows a female prisoner to have her baby with her in prison.

The word "family" appears twice. Rule 41 says:

"The Governor shall ensure that every prisoner is given reasonable assistance and facilities to maintain and develop relationships with family and friends and with such other persons and agencies outwith the prison as may best offer the prisoner assistance during the sentence or period of committal, and in preparation for and after release."

This Rule appears under the heading 'Prisoners' welfare', and its wording confirms that it is designed for the benefit of the prisoner, rather than the family or the children.

Rule 142 allows the Governor to authorise unescorted day release of a low risk prisoner for one day (including travelling time) in order to develop or re-establish links with family or community.

The word "relative" appears in eight of the Rules:

- Rule 11 sets out the information that a prisoner should be given on arrival, including how he or she may maintain contact with relatives and friends;
- Rule 38 is about informing relatives or friends if a prisoner is seriously ill or injured;
- Rules 63 and 101 set out arrangements for visits by persons of a prisoner's choice, including relatives;
- Rule 112 regulates escorted day absence in connection with the death or serious illness of "a near relative";
- Rule 134 is about notification of relatives when a young offender is pregnant; and
- Rule 143 allows unescorted day release for compassionate reasons, linked with the death or illness of a relative, or to visit a parent who is too old or ill to travel to the prison;

⁶² Scottish Prison Service Website, <http://www.sps.gov.uk> (downloaded 13/07/07).

- Rule 147 allows Ministers to specify in a direction ways in which the temporary release provisions are to be applied. This includes “the relevant criteria about which the Governor must be satisfied before granting any such form of temporary release.”

The language of the Rules does not exclude children, but the fact that they are not explicitly referred to means that there is a risk of their particular needs and rights being inadvertently overlooked. This concern is taken into account in Recommendation 20.

9.3 Reception into prison

Rule 10 says that prisoners must be interviewed on reception to “identify any problems which may require immediate attention.”

Rule 12 says that, as soon as possible after reception, a record should be made of a number of matters including religious affiliation, physical characteristics and other “personal particulars”.

In correspondence, SPS commented:

“As an organisation, SPS recognise that a large number of prisoners are parents and as such we are aware of how important the relationship between the parent and the child can be. We are also aware, unfortunately, that in some cases the parent may be a parent in name only and may not be aware of the whereabouts of their children. SPS recognise the importance of maintaining links between prisoners and their families and as such are constantly seeking ways in which contact between prisoners and family members can be maintained during a prisoner’s period in custody. However, certain prisoners pose a risk to children.”⁶³

The letter then refers to the dangers some paedophiles pose to vulnerable women and children. Given the profile of calls to ChildLine (see para, 6.1 above), it is understandable why SPS has adopted this approach.

SPS said it had:

“recently finished a review of how we can best meet the needs of prisoners and have developed a new prisoner management system known as Integrated Case Management (ICM). This is a replacement for the current Sentence Management System. As part of that process a computerised system is to be introduced, known as the “Core Assessment Screen.” This Core Assessment Screen ... identifies risks and needs where action may be required by the SPS or its partner agencies during a prisoner’s sentence and on release... If there is an indication of need in any of these areas, appropriate referrals are made and/or appropriate arrangements are made by the establishment to ensure as far as possible, that positive family relationships are maintained during a custodial sentence and also to ensure that any welfare issues associated with prisoners children are dealt with appropriately.”⁶⁴



⁶³ Reply to letter from Ewart Communications, dated 14 July 2006.

⁶⁴ Reply to letter from Ewart Communications.

This has been followed through in practice by the introduction of an eight-page “core assessment form” which is completed within 72 hours of admission. While it covers a number of relevant issues, at no point is the prisoner asked for details of his/her family, e.g., whether they have a partner or children. Section 3, dealing with ‘Family Contact During Prison and on Release’, is placed in the context of ‘resettlement needs’ rather than the needs of children. While this section is helpful in understanding the context of family life in relation to prison, it seems designed to identify problems which existed *prior* to detention rather than those that might be created as a *result* of detention. What is promising is that there is now an established mechanism to offer family support through ‘Family Contact Development Officers’ (FCDOs) in each establishment. However apart from Cornton Vale, it would appear that none of the jobs are full-time; they must be delivered by individual officers as an adjunct to their other operational duties. In 1996, Her Majesty’s Inspector of Prisons produced a report which recommended that “as a matter of priority, full-time FCDOs should be appointed at Barlinnie, Cornton Vale, Edinburgh, Glenochil, Perth, Peterhead, Polmont and Shotts.”⁶⁵ (This is discussed further at para. 11 below).

The ‘core assessment form’ shows a clear understanding of the need to be respectful of disability, religion, belief and cultural issues. It would be useful if similar attention could be given to addressing the rights and needs of children.

Recommendation 12: Addressed to SPS

The “core assessment” of prisoners on reception into prison should refer specifically to responsibilities for children and should be informed by any child impact assessment conducted before sentencing.

9.4 Regulating visits

a. Prison Rules

The word “children” does not appear in the Rules relating to visits; although there is a reference to visitors “under 16 years of age”.

Prison Rules set out the basic entitlement to visits, but these are generally extended by the “privilege” system established in each prison.

Rule 11(6) says prisoners should be given information on how to maintain contact with relatives and friends. Families Outside said they had never heard of this Rule and were not aware of the existence of this information.⁶⁶

Recommendation 13: Addressed to SPS

The Scottish Prison Service should check awareness of and compliance with Rule 11(6) of the Prisons and Young Offenders Institutions (Scotland) Rules 2006, concerning providing prisoners with information about how to maintain contact with relatives and friends.

⁶⁵ Scottish Office Home Department: HM Inspectorate of Prisons (1996) *Thematic Study – The Importance of Visits in Scottish Prisons* (Edinburgh: Scottish Office Home Department) para 9.1.2.

⁶⁶ Letter to the Commissioner from Families Outside, 27 August 2007.

b. Privileges

Rule 49 requires the Governor to establish a system of privileges. This must make provision about: what property prisoners might have in their cells; purchase of items within or outwith the prison; the use of the library and recreational facilities and activities; and possession of tobacco. Other matters may be specified by Scottish Ministers in a Direction, but SPS advise that no such Directions have been issued.⁶⁷ Prisoners must be given information about the circumstances in which privileges may be withdrawn. Basic entitlements are not privileges and cannot be withdrawn as a punishment.

c. Frequency of visits

The Governor has discretion about the number of people who may visit at any one time.

Rule 63 sets out the basic rights of a convicted prisoner to visits from a person of the visitor's choice. This extends to 30 minutes in any period of seven consecutive days, or two hours in any period of 28 consecutive days. There are more generous provisions for the untried, for civil prisoners and for young prisoners. Young prisoners are allowed two 30-minute visits in any seven day period. These minimum periods can be reduced by Scottish Ministers if local conditions make it impracticable to respect them. However, SPS has indicated that no such reduction has been authorised.⁶⁸ On the other hand, visit entitlement can be increased at the discretion of the Governor. This "privilege" is common practice.

For example, Kilmarnock Prison operates an incentives and earned privileges scheme. There are three levels of visit entitlement: basic, standard and enhanced. The basic standard is four hours per month, but prisoners start on a standard level of four visits per month, one of which is doubled up to two hours. Enhanced level includes an additional double visit. If there are disciplinary problems, visits can be reduced to basic level. In addition to these categories, Kilmarnock offers "bonding" visits, during which prisoners are allowed to play with their children. These take place on Wednesdays. They rarely get full take-up, possibly because of transport issues and the need for older children to attend school.⁶⁹ Transport is a very significant issue for prisoners' families. A 2007 report by Families Outside showed that, in one week in Scotland, 22% of pre-booked prison visits did not go ahead, with many citing travel issues and the distance to prison as a barrier. The report cites examples of families with children having to walk significant distances along unsafe paths in order to reach prisons. It recommends, amongst other things, that local and national transport strategies should include transport to prisons.⁷⁰

Recommendation 14: Addressed to SPS

As recommended by Families Outside, local and national transport strategies should include arrangements for transport to prisons. Prisons should be required to produce travel plans in conjunction with local providers.

Recommendation 15: Addressed to SPS

Visit times arranged by the Scottish Prison Service should take account of school hours and public transport issues in order to avoid disruption to schooling, ease the stress of visits and increase uptake.

⁶⁷ Information contained in letter from Scottish Prison Service to the Commissioner, 6 September 2007.

⁶⁸ Ministerial authority is given by Direction in terms of the Prison Rules. An email from Scottish Prison Service to Ewart Communications, dated 27 September 2006, stated "No Directions have been made under Rule 64(5) or (6)."

⁶⁹ Project Happy operates a free minibus from Glasgow to Kilmarnock on Saturdays, but not on Wednesdays. SACRO also provides a regular transport service to some Scottish prisons. In addition to a weekend schedule, there is a Special Run Service for those unable to travel within the normal hours of service, which is provided at weekends and midweek. (Information from www.sacro.org.uk 27/10/07.)

⁷⁰ Higgenbotham, M. (2007) *Do Not Pass Go Travel Links to Scottish Prisons* (Edinburgh: Families Outside).

Discussions with SPS have indicated that the legal visit entitlement is invariably exceeded as a result of exercise of the Governors' discretion. There is a lot of variation between prisons. Increasing the visit entitlement too much could be disadvantageous for families where it increased prisoner expectations that might be difficult and onerous for families to meet. Nevertheless, given the very low level of basic legal entitlement and the fact that it means little or nothing in practice, there is a case for this basic entitlement to be reviewed to reflect actual practice. This would respect the rights of children by ensuring greater consistency and safeguarding the actual minimum from the withdrawal to which privileges are vulnerable.

It has been difficult to pin down the issue of withdrawal of visiting privileges as a means of discipline. On the one hand, it has been made clear that the basic entitlement cannot be withdrawn. On the other hand, some of the messages from organisations dealing with families seemed to indicate that this was the experience and perception of families. A meeting with SPS also touched on the fact that prisoners are sensitive to changes in visiting arrangements and this makes the flexibility that prisons have a useful tool in maintaining necessary discipline. A disciplinary action would not generally focus on withdrawal of a visiting privilege in isolation. These privileges are often part of a package associated with progression through the prison, including the location of an offender's accommodation. It was stated that there had always been a fundamental debate about whether privileged, extra visits could be withdrawn. There was also a possible debate about who the visits "belonged" to. SPS would see them as "belonging" to the prisoner and therefore something that could be legitimately withdrawn in some circumstances.

An alternative view would be that, where children are involved, they "belong" also to the child who has a basic human right to contact with their parent, where that is in the child's interests, taking account of the child's views.

Rule 77 allows the Governor to prohibit visits from particular persons in the interests of security, discipline, or the prevention of disorder or crime. Rule 78 allows the Governor to order closed visits to prevent the transfer of prohibited articles or material or to address security or behaviour issues. This would involve special security features such as physical barriers between the prisoner and the visitor. It is understood, from discussions with SPS, that closed visits are often imposed on the whole spectrum of visitors a prisoner might have and that there is scope for taking a more selective approach. For example, prison staff could discuss with a prisoner the possibility of making arrangements so that a child, who would be adversely affected by the closed visit arrangement, might be brought for a visit by someone not implicated in the passing of prohibited articles or materials. This seems a sensible way forward. It is, of course, possible that a child might be pressurised to take and pass prohibited articles or materials; this is evidenced in the note of calls received by ChildLine (see para. 6.1). However, the associated security assessment could take account of this possibility in each case.

Recommendation 16: Addressed to Scottish Ministers

Scottish Ministers should consider reviewing the Prison Rules with the Scottish Prison Service with a view to raising the basic legal entitlement to visits to reflect actual practice. Further, quality "bonding" visits should be available in all prisons in Scotland and should be regarded as a right of the child rather than a privilege of the offender.

Recommendation 17: Addressed to SPS

The Scottish Prison Service should review its disciplinary arrangements to ensure that decisions to reduce visiting or impose closed visits take specific account of the rights of any children affected.

d. How visitors are received

Rules 101 to 103 set how visitors are received in the prison; what questions they may be asked, and justifications for refusing entry. Visitors may be required to hand over articles before admission and may be asked to consent to a search. Refusal of consent may justify refusal of admission to the prison. Any searches of visitors aged under 16 must take place in the presence of an accompanying adult.

During a visit to Kilmarnock, the Commissioner was told that children under 16 are not searched unless there is reason to believe that they are being used to carry prohibited items into the prison.

Appendix 2 describes the process of visiting Kilmarnock Prison.

e. Facilities for children

The attractiveness of visiting facilities for children varies amongst, and even within, establishments. HMCIP advises that facilities in a number of SPS establishments, e.g., Inverness and Aberdeen, are no longer fit for purpose. They are very small and cramped and definitely not child-friendly. Other prisons have tried more successfully to soften the surroundings, thus enhancing the experiences for children who visit. This has been done by providing toys or, in some instances, designated play areas, some of which are staffed either by nursery staff or volunteers.⁷¹ SPS noted that new prison building and design was resulting in improved visiting facilities, for example in Edinburgh, Glenochil and Perth.

There are differences even within establishments. The Commissioner’s visit to Cornton Vale showed that the visitor room in the new Wallace House was brighter and looked more child-friendly than the main visitor room. However it was located in a central part of the prison so that families had to walk right through the prison to get to it, whereas the main visit room was close to the main entrance. While this seemed to be a disadvantage, a former Governor of Cornton Vale explained that this was a deliberate attempt to get families involved in sentence management. There were some security disadvantages, but the fact that families could see more of the environment in which the prisoner lived helped dispel fears and misconceptions. For children, it would hopefully reassure them by giving them a mental picture of the place where their parent was living.⁷²

The Commissioner also visited Kilmarnock Prison where the visiting area was bright and airy, with cartoon murals on the walls, a play area for younger children, a tea bar, a playstation, and an area where children could watch films. There was a fenced, grassy area outside with five picnic tables which, we were told, were well used on sunny days. However, play equipment had been removed as a result of concerns about safety. It was felt that a strong “compensation culture” meant that any possible risk left the prison vulnerable to a lawsuit.

⁷¹ Communication from HMCIP to the Commissioner, 29 November 2007.

⁷² Information from Sue Brookes, former Governor of Cornton Vale, in a meeting with the Commissioner, 10 December 2007.

9.5 Criteria for temporary release

Children are not specifically mentioned in any of the temporary release provisions. They would, no doubt, be included within the definition of “relative”; but it is the lack of explicit reference to children that is the point of this analysis. Rules 140 and 141 set out further temporary release possibilities for longer periods – up to seven nights (excluding travelling time). Children will no doubt be affected by these provisions – for good or ill – but their interests are not explicitly referred to and there is no reason to believe that they are consistently taken into consideration.

9.6 Key Ministerial Targets and SPS Offender Outcomes

SPS aims to meet Key Ministerial Targets which set out Performance Indicators on matters such as the prevalence of: escapes; serious assaults by prisoners on staff or other prisoners; case conferences involving social work; offender development through accredited programmes; levels of proven drug misuse; access to night sanitation; annual cost per prison place; and recalls to custody. The targets also list five Offender Outcomes:

- a) Suitable accommodation;
- b) Increase in employability;
- c) Reducing or stabilising drug use;
- d) Increase in literacy; and
- e) Individual programmes to reduce offending.⁷³

The National Strategy for the Management of Offenders has identified nine Offender Outcomes, designed to reduce the chance of an individual re-offending, two of which refer to families:

- Sustained and improved physical and mental well being.
- Reduced or stabilised substance misuse.
- Improved literacy skills.
- Employability prospects increased.
- Maintained or improved relationships with families, peers and community.
- The ability to access and sustain community support, including financial advice and education.
- The ability to access and sustain suitable accommodation.
- The ability to live independently if they choose.
- Improvements in the attitudes or behaviour which lead to offending and greater acceptance of responsibility in managing their own behaviour and understanding of the impact of their offending on victims and on their own families.⁷⁴

⁷³ SPS Website,
<http://www.sps.gov.uk/>

⁷⁴ Scottish Executive (2006)
Reducing Offending, p. 5.
If child impact assessments were introduced, these might help prisoners acknowledge their responsibility for the impact of their offending behaviour on their children.

There is therefore scope within current policy for a focus on children as members of prisoners' families; however this is all within a framework aimed at reducing re-offending, with children appearing as potential contributors to satisfaction of this agenda. When the UK Government ratified the UNCRC, it solemnly promised to work towards achievement of a wider societal aim of respecting the rights set out in that Convention. These rights have to be made manifest in *all* matters that affect children, in *all* areas of the life of our country that the government can influence. The question should therefore be, not *whether* to review key outcomes in the light of this commitment, but merely *how* and *when* to do so. This will only be done effectively if satisfaction of this wider public agenda relating to children is reflected in the targets against which SPS and Scotland's prison establishments will be measured.

It is natural to want to direct scarce resources towards those activities and outcomes on which one's performance will be measured and assessed. In the course of the visits made by the Commissioner to prison establishments, it became clear that some very valued parenting programmes were being terminated or inhibited in favour of other programmes that could fit better with the targets. We learned that, in Polmont Young Offenders Institution, a parenting programme attended by young fathers was to be cut, along with an anger management course for 64 young men, in favour of an intensive violence reduction course for only eight young people. Parenting programmes in other establishments also appeared to be vulnerable. The Governor of Greenock Prison told the Commissioner that they had run two successful parenting courses in the previous year.

The benefits extended wider than the family because the courses allowed staff and prisoners to engage in a meaningful way. However, they were difficult to sustain because they were not provided under the contract with SPS and were therefore not a priority. Kilmarnock is a privately run prison. The Commissioner was told that they can only provide services that are specified in their contract with SPS. Parenting did not feature, therefore there was no parenting programme. The programme at Cornton Vale women's prison was safe, due to the fact that it focused on the impact of substance misuse, which is one of the offender outcomes and therefore did fit into a target area. It was safe in Cornton Vale because of the unfortunate fact that almost all of the inmates had been proven to have a problem with substance misuse.

Correspondence and meetings between the Commissioner and SPS clarified their perspective on the situation. Programmes run at prisons are designated as either accredited or approved. Parenting programmes fall into the latter category. Last year, SPS instructed prison establishments to ensure that 80% of the programme provision related to accredited programmes, including anger and offending, leaving 20% flexibility. Prison establishments could choose how to use that 20% and some had chosen not to use it on parenting programmes. However, SPS indicated an intention, this year, to specify both accredited and approved programmes and said they would specify parenting for Polmont and Cornton Vale. In the coming year there would be a full review of interventions available to young adults. This might provide more focus on parenting, but it would be at the cost of something else, as resources were an issue.⁷⁵

⁷⁵ Meeting with Scottish Prison Service, 10 December 2007.

This is a welcome prospect. It is hard to reconcile the low priority given to parenting programmes in the light of the great public concern about the need for more parenting support and education, particularly for the most vulnerable groups. A high proportion of the young men in Polmont have a history of being in care and may therefore not have benefited from an experience of good and consistent parenting. During a debate in the Scottish Parliament in 2001, Dr Richard Simpson stated, “If anyone is in any doubt about the failures of the system, they need only consider statistics such as the fact that 40 per cent of the men in the young offenders institution at Polmont come from looked-after care backgrounds.”⁷⁶ It is the Commissioner’s view that cutting parenting programmes is short-sighted and inconsistent with other policy initiatives that emphasise the critical role of parents in supporting, guiding and educating their children. It fails to respect the rights and needs of a large number of vulnerable children whose parents are in prison. In particular, the emerging evidence about the importance of a child’s early years makes parenting support for the most vulnerable parents a matter of critical importance.

Parenting programmes in prisons were highlighted by SPS as a measure that promoted compliance with the ECHR (see para. 9.8 below). Their fragile place in the economy of the prison service undermines this claim. Whilst all of the compliance measures cited have the potential to have a positive impact on children, the parenting programme is the only one that is child specific and yet appears, like children themselves, to be the most vulnerable.

However, SPS have shown some willingness to take forward the child-related agenda. In meetings with the Commissioner, they have indicated that they are creating a set of standards as part of Directors’ Rules – a new, administrative tool to replace the former operating standards. There were already performance standards underpinning contracts with prison establishments. Both these and the standards under the Directors’ Rules could provide a focus for embedding the children’s rights dimension of prison activity.

Recommendation 18: Addressed to Scottish Ministers and SPS

Key Ministerial Targets, Offender Outcomes, Scottish Prison Service performance standards for contracts and standards set under the forthcoming Directors’ Rules should take explicit account of the rights and needs of the children of offenders.

9.7 Prisoner surveys

Visiting arrangements and facilities for children are key to establishing or strengthening a bond that helps the community by aiding rehabilitation of the offender, and also promotes respect for the rights of children.

SPS conducts regular Prisoner Surveys.⁷⁷ Previously carried out every three years, they have, since 2005, been undertaken annually. They involve all prisoners in every prison establishment, and cover a range of issues, including arrangements for visits.

The 2007 survey had a response rate of 74%. The following are some of the results relevant to children.

⁷⁶ Scottish Parliament Official Report Vol 11 No 11, 2001 Col 1209.

⁷⁷ Available on the Scottish Prison Service Website, <http://www.sps.gov.uk>

On the positive side:

- 79% were positive about access to family and friends.
- 74% were positive about the ability to arrange visits.
- 71% were positive about the timing of visits.
- 67% were positive about facilities for children.

This shows some considerable improvement since the 1992 survey, which showed 76% dissatisfaction with facilities for children.⁷⁸

On the negative side:

- 56% commented on a lack of privacy.
- 58% said their visitors had experienced problems associated with the visit. Distance and cost were the main complaints.
- 23% mentioned the difficulties of travelling with children.
- 17% mentioned a lack of facilities for children.

The statistics for children's issues may be particularly significant given that many prisoners will not have visits by children. This may be because they have no children closely associated with them, or due to choice, shame, not wanting a child to come to the prison, the age of the child or the fact that a visit would be upsetting for the child or the prisoner.⁷⁹

A Families Outside survey showed that, in a seven day period, 4,313 visits went ahead in Scottish prisons, involving 7,906 adults and 1,460 children (15.6% of visitors).⁸⁰

Whilst prisoner surveys are useful, Families Outside has urged caution in assuming that prisoners' views reflect families' views. Prisoners are often wilfully or otherwise unaware of the pressures on their families, and families are often reluctant to "burden" the prisoner with their problems. This suggests that visitor surveys might provide a different perspective. In a meeting with the Commissioner, SPS indicated that there was a plan to introduce visitor surveys.⁸¹

Recommendation 19: Addressed to SPS

The Scottish Prison Service should be encouraged to pursue its plan of undertaking visitors' surveys to assess satisfaction with arrangements that affect families.

SPS also publish annual thematic reports. The 2005 report⁸² included sections on drug use and family contact, as well as family contact more generally. Illegal drug use was associated with more problems in relation to visits, including staff attitudes, visitor stress and a less positive atmosphere. With regard to more general family contact issues, females were more critical of facilities for children than were males (43% female as compared with 30% male). There were some variations in levels of satisfaction across establishments. SPS conclude that this showed a high correlation with concerns about distance. However, their report also acknowledges the possibility of drawing some good practice lessons from those establishments that fare best.

⁷⁸ 1992 figures taken from HMCIP (1996) *Thematic Study - The Importance of Visits in Scottish Prisons*.

⁷⁹ Reasons suggested by HMCIP in correspondence with the Commissioner, 29 November 2007.

⁸⁰ Higgenbotham, p. 8.

⁸¹ Meeting with Scottish Prison Service, 10 December 2007.

⁸² Scottish Prison Service (2005) *Thematic Report: 8th Prisoner Survey 2005* (Edinburgh: Scottish Prison Service).

9.8 Compliance with human rights standards

The UNCRC came into effect in the UK in 1992, but has not been explicitly taken into account in framing law and policy in relation to prisons. When asked about this in correspondence, SPS responded:

“The substantial revision to the Prison Rules in 1994 and subsequent updates took into account the relevant European guidance (the European Convention on Human Rights and the European Prison Rules, as well as reports such as the European Committee for Prevention of Torture and Inhumane or Degrading Treatment or Punishment). The spirit of the Rules reflects a wide range of reports and standards.”

No mention is made of the UNCRC.

Article 8 of the European Convention on Human Rights has already been referred to (at para. 2 above) as a powerful source of rights for children as well as for their imprisoned parents. The SPS cites the following as measures of compliance with the ECHR:

- Having Family Contact Development Officers in each of its establishments.
- Providing £275,000 of financial help through the Assisted Prison Visits Scheme for the year 2006-2007. This provides a prisoner’s family with financial assistance when visiting prison.
- Conducting a yearly census survey of the prisoners in our establishments. This survey has a section dedicated to visits whilst in prison.
- Impartial inspection by Her Majesty’s Inspector of Prisons.
- Prisoner programmes that seek to build better parenting skills.

- Information Line through external partnership with the charity Families Outside.
- A new computerised visits booking system.

SPS believes that the Prison and Young Offenders Institution (Scotland) Rules 2006, which governs its actions, comply with the requirements of the European Convention.⁸³

Whilst these are welcome initiatives, some of them are not integral to the service and are vulnerable to funding cuts. For example:

- There has been reduction in some of the services of Family Contact Development Officers (see paras. 10.2 and 11 below).
- A survey conducted by Families Outside showed that 50% of visitors to a Scottish prison had never heard of the Assisted Prison Visits Scheme.⁸⁴
- Parenting programmes are a low priority and liable to be cut (see para. 9.6 above).

Recommendation 20: Addressed to Scottish Ministers and SPS

When the Prison and Young Offenders Institution (Scotland) Rules 2006 are next revised, they should be subject to a Children’s Rights Impact Assessment and should make explicit reference to the rights and needs of the children of prisoners. Until the next revision, practice should seek to respect the rights of children affected by imprisonment.

⁸³ Scottish Prison Service letter to Ewart Communications, 14 July 2006.

⁸⁴ Higgenbotham, p. 17.

10.HM CHIEF INSPECTOR OF PRISONS (HMCIP)

Her Majesty's Chief Inspector of Prisons (HMCIP) is an independent person appointed by the Crown to undertake regular inspections of the 16 prison establishments in Scotland. Each establishment is subject to a full inspection every three years, with follow-up inspections in between. Full inspections involve some contact with prisoners' visitors. The Inspector also undertakes inspections of legalised police cells as well as periodic thematic studies.

10.1 1996 Thematic Report on Visits

Four thematic reports have been published since 1994. One of these, submitted in 1996 by Clive Fairweather, the Chief Inspector of Prisons at that time, addressed "The Importance of Visits in Scottish Prisons." This was a response to prisoner surveys undertaken in 1992 and 1994 that showed a high level of dissatisfaction with arrangements for visits.

The report's introduction discusses the importance of visits, not only in terms of the impact on the prisoner's morale and behaviour, but also in relation to families and children:

"The role of prison visits in enabling prisoners to retain this vital family contact is crucial, yet a meaningful relationship is exceedingly hard to achieve, given the standard conditions in which visits take place. The quality of prison visits is therefore of paramount importance and in the view of families, takes precedence over their frequency or length of duration. It must be remembered that prisoners' families are innocent victims and that their needs and rights (particularly those of children) must not be overlooked. To this end, visits should be conducted in such a manner as to preserve the dignity of visitors and should take place in as convivial an atmosphere as possible. A poor visit is damaging both to the family and the prisoner. It leads to later problems and the build up of tensions which become increasingly hard to resolve, and could lead to a prisoner becoming disruptive."
(Para. 1.6)

The report makes specific reference to the rights of children:

"At various parts of this report we refer to the importance of prisoners maintaining contact with their families and in particular their children. It is important, therefore, that special care should be taken to ensure that children's needs are properly catered for."

Article 9(3) of the UN Convention on the Rights of the Child, which the United Kingdom ratified in 1991, states that:-

"Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests". (Paras. 6.45-6.46)

Particular emphasis is placed upon the development of play facilities, not least to counteract what are often the trying conditions of travel to the prison:

“Children may also have endured a long journey - perhaps with a carer who is already stressed and anxious - and therefore their first impression of the prison and their subsequent reception are crucial in ameliorating the negative effects of such an experience.

It is very important for the SPS to understand the nature of the visits experience for families and as a result, what can be done to ensure that no harm comes to the child in particular as a consequence of their necessary contact with the prison in order to maintain positive links with their parent or relative. The fundamental question is whether in reality, for most closed establishments, the visits experience can only ever be a damage limitation exercise or whether it is possible within resource limitations to ensure that the visit experience for the child at least, is a positive one.” (paras. 8.4 and 8.5)

The report acknowledges a number of improvements as a result of SPS initiatives, including the introduction of Family Contact Development Officers (FCDOs), and changes to visit entitlements and home leave, but it suggests a number of further improvements in three main areas:

- 1 Visiting entitlements should be doubled from the then (and still) current 30 minutes per seven day period to one hour. This was acknowledged to be still low in comparison with most other countries but was proposed as an achievable and potentially acceptable improvement.
- 2 The larger prison establishments should have full time FCDOs.
- 3 Visitor waiting areas should be improved with the establishment of Visitors' Centres where possible.

The report also suggested that:

- Bonding visits should be extended to fathers as well as mothers (paras. 4.8.4 and 9.2.1);
- Every establishment should review their facilities for children with the aim of enhancing them or, where they do not exist, introducing them (paras. 6.50 and 9.2.21); and
- Every prison should provide proper baby changing facilities which are easily accessible by male and female visitors (paras. 6.52 and 9.2.22).

Annex 2 to that report is a Summary of Discussions at a Forum Held in HMP Edinburgh in October 1995. This included consideration of the possible linkage of visits and drug smuggling in the context of an incentive scheme. The report concludes:

“The consensus view was that visits should be an equal entitlement for all prisoners in view of the fact that contact with the outside world was both a right and potentially a rehabilitative tool. It might therefore be postulated that contact was arguably most needed when a prisoner's behaviour in prison was at its poorest. It was also felt that using visits as a punishment could not be justified (although it was acknowledged that restrictions could be applied in respect of home or family visits). Other views expressed in favour of entitlement were that family contact was too important to be linked to behaviour and that it was wrong to impinge on the rights of families (especially children).”

Annex 6 sets out the then existent visit arrangements in the different SPS establishments, showing significant variations.

The foreword to the report contains a response by the Minister of State to the report's recommendations. It acknowledges the importance of visits and the improvements in the years preceding the report. With regard to the report's recommendations, it notes:

- 1 "Whether or not a general doubling of minimum entitlement in the foreseeable future is a realistic prospect, I can readily confirm that some establishments are at present able to offer more than the minimum entitlement to what is laid down. Moreover, Governors are free to increase visit opportunities as resources and security considerations permit."
- 2 "I should prefer if it were left to individual Governors to determine whether full-time FCDOs should take priority over other claims on resources in the establishments identified."
- 3 "So far as Visitors' Centres are concerned, consideration will be given to their feasibility in the context of the Service's Estates Strategy."

It would appear, then, that the approach taken was to continue to rely on local discretion.

10.2 Reports on establishments

The current Chief Inspector of Prisons, Dr Andrew McLellan, regularly notes issues connected with family visits in his published reports, both full inspection and follow up reports. For example, his 2004 report on Aberdeen highlighted a range of issues including a lack of investment in the fabric of the prison, which meant that the visit room, health centre and reception area "continue to be unfit for purpose." Overcrowding was putting further pressure on these facilities.

Specifically, he pointed out that "The visit room is as unfit as ever for its extremely important function - promoting stable and supportive relationships." His follow-up report in October 2005 noted that these concerns had not yet been resolved.⁸⁵

Recent reports on Shotts Prison show how quickly arrangements can change, for good or ill. The 2003 full inspection report noted both positive and negative developments:

"The arrangements and facilities for visits are very good. The visits room is as previously described in inspection reports: clean, bright and comfortable, with tables well spaced. There is a large crèche and tea bar which serves hot food." (para. 7.26)

More negatively, the previously commended role of the Family Contact Development Officer had now "all but collapsed" and there was a recommendation for its reintroduction and recognition as an integral part of the work of the prison. (para. 7.31)

The 2004 follow-up report made more negative comments about family visits. It expressed disappointment in the reduction of services for visitors:

"It used to be that Shotts had an outstanding system of Family Contact Development Officers: the last two years have seen a steady reduction of this service. A crèche for the children of prisoners during visit time is being withdrawn. For all prisoners the experience of visits is important: for long term prisoners and for their families it may be vital. Reductions in training opportunities and in the quality of the experience of visits are not likely to improve the opportunities offered to prisoners for rehabilitation. In the course of the inspection the Governor, representatives of the POA(S) and the Visiting Committee all attributed these reductions to "the pressure for savings." (Page 3)

⁸⁵ Scottish Prison Service indicated, in a meeting with the Commissioner, that the new prison build proposals would address this.

Things seem to have got better again by 2007. The full inspection report said “arrangements for maintaining family contact are very good.” A number of new initiatives were noted, including a Family Consultation Forum, which offered families the opportunity to make suggestions and consult with visits staff. It was noted that the Family Contact Development Officers were again making a valuable contribution, although “this is now being done as a secondary duty, which means that they are not able to produce the same impact as previously.”⁸⁶ It was noted that the children’s play area was unsupervised and it was recommended that this be addressed.

The 2006 full inspection report on Cornton Vale women’s prison contained positive, negative and ambivalent comments. In a positive tone it observed:

“Arrangements for maintaining family contact are good. There are three dedicated Family Contact Development Officers (FCDO) in place. They carry out a range of duties within the establishment and also liaise with community based, family orientated, organisations such as Families Outside, Children First, Aberlour and Barnardo’s.”⁸⁷

It was noted that the opening of the new St Margaret’s Family Centre had led to better opportunities for the involvement of prisoners’ families in the work of the prison and in the lives of the prisoners.

More negatively, the report recommended some improvement to the facilities in the main visits room.⁸⁸ The 2007 follow-up report noted that this recommendation had not yet been implemented.⁸⁹

Comment was more ambivalent on the fact that very young children are sometimes held in prison with their mothers. There was one baby in the prison when the inspection was carried out and another in one of the Independent Living Units. The report pointed out that “It is good that mother and baby are together, but it is not good that a baby is in prison.”⁹⁰ This underlines the importance of finding alternatives to the imprisonment of mothers as already addressed in Recommendations 1, 2, 10 and 11 of this report.

The reductions of service referred to above reinforce the need for implementation of Recommendation 18 above to give children’s rights and needs a place within prison targets so that related facilities do not become early casualties of pressure for savings.

It is clear from these reports the value placed by HMCIP on Family Contact Development Officers. Their future appears to be a contentious issue and is discussed further below at para. 11.

10.3 Standards for inspection

In August 2006, HMCIP published a set of Standards which will now govern the inspection of prisons in Scotland. The purpose is to bring greater consistency and transparency to the inspection process. In developing the model, account was taken of international and national case law e.g. article 8 of the ECHR (page 20). The standards revolve around three main principles:

- Safety - including security, good order and protection from harm;
- Decency, humanity and respect for legal rights; and
- Opportunities for self-improvement and access to services and activities. These include measures to resolve the problems that led the prisoner into crime.

⁸⁶ HM Inspectorate of Prisons (2007) *Report on HMP Shotts, 2007* (Edinburgh: Scottish Executive) para 5.2.

⁸⁷ HM Inspectorate of Prisons (2006) *Report on HMP and YOI Cornton Vale, 2006* (Edinburgh: Scottish Executive) para. 8.1.

⁸⁸ *Report on HMP and YOI Cornton Vale, 2006*, para. 8.5.

⁸⁹ HM Inspectorate of Prisons (2007) *HMP & YOI Cornton Vale Inspection: 19-20 March 2007* (Edinburgh: Scottish Executive) para. 11.5.

⁹⁰ HM Inspectorate of Prisons (2005) *HMP & YOI Cornton Vale Inspection: 2-3 February 2005* (Edinburgh: Scottish Executive) para. 2.6.

A total of nine outcomes are identified including that “Good contact with family and friends is maintained.” Importantly HMCIP proposes that “Visitors should be asked by inspectors about their experience of visiting and their treatment by staff” (page 22).

Specific standards include that:

“Family visits are given a high priority in terms of frequency, length and quality and are not restricted as part of any disciplinary or control process” (Page 29).

The indicators fleshing out this standard include the following:

- Family members receive clear and helpful information about the visits system and there are special arrangements for transport to the prison if public transport is inadequate;
- Most prisoners can have a weekly visit of at least one hour;
- Basic visit entitlements are not related to assessments of prison behaviour;
- Efforts are made to hold prisoners as near their home areas as possible; and
- If a prisoner is transferred the family is given adequate notice.

A further standard that, “Visits take place in the most relaxed environment compatible with security”, is supported by indicators that include:

- Special arrangements are made for parents to be with their children; and
- There are arrangements for children to play.

A standard addressing arrangements for prisoners to buy personal items is supported by an indicator that:

- The establishment has items available that help prisoners with their family links, such as cards marking family, religious and cultural events.

A standard on links with families and the local community supports an indicator that:

- Resources are devoted to programmes that extend family contact and family involvement with the prison in its work to prepare prisoners for release.

The Standards are a welcome development but still relatively new. It will be interesting to observe their potential for effecting change. How, for example does one reconcile the indicator that, “Basic visit entitlement are not related to an assessment of prison behaviour” with the Prison Rule 77(1)? This says:

“The Governor may prohibit a prisoner from receiving a visit from any person in particular in terms of this Part of these Rules where the Governor considers that it is necessary to do so in the interests of security, discipline or the prevention of disorder or crime.”

The SPS has indicated in correspondence that:

“The Rule is generally used to bar a visitor where that visitor poses a threat to the security and control of the prison.”⁹¹

I would reiterate here recommendation 16 above that: Scottish Ministers should consider reviewing the Prison Rules with SPS with a view to raising the basic legal entitlement to visits to reflect actual practice. Further, quality bonding visits should be available in all prisons in Scotland and should be regarded as a right of the child rather than a privilege of the offender.

⁹¹ Responses set out in information sent by Scottish Prison Service to Ewart Communications in an email dated 27 September 2006.

10.4 Visiting legalised police cells

Police cells are generally used for short periods of the detention of those taken into custody by the police. However, nine Police Stations have cells which have been “legalised” to allow prisoners to be detained for up to 30 days. They are located in places remote from the prisons where such people would normally be held: Lerwick, Kirkwall, Thurso, Stornoway, Lochmaddy, Oban, Campbeltown, Dunoon and Hawick. Prisoners, both convicted and remanded, form only a small proportion of those detained in police custody.

In September 2004, HMCIP published a Report on Legalised Police Cells, which noted, amongst other things, the visiting arrangements for families. There was some variety in the arrangements:

- Lerwick – family visits take place in the presence of a police officer in a small room; or, in certain cases, by means of conversation through a cell door hatch;
- Kirkwall – family visits take place by means of conversation through a cell door hatch; or, at the discretion of the police officer in charge, within the cell, supervised by the officer standing at the door of the cell;
- Thurso – family visits take place at the discretion of the police officer in charge, within the cell, supervised by the officer standing outside the door of the cell;
- Stornoway – arrangements for visits are flexible, with most taking place in the interview rooms. However, the overwhelming majority of prisoners being held in the cells were well known to the police, and visits could be facilitated in cells or in the exercise yard if it was considered appropriate;
- Lochmaddy – visits took place in the cell area and were always supervised;

- Campbeltown – visits take place in the cell area. Families stand outside the cells; and
- Hawick – a small visit area is located in the cells area. It is discrete and comfortable and provides a decent area for family and friends to spend some time with a prisoner.

No reference is made to visiting arrangements at Oban or Dunoon.

The report notes that the number of prisoners held in cells is not overwhelmingly large. There are significant variations. Hawick has both the most developed facilities and the largest number of prisoners.

There is no specific reference to visits by children. It may be that the small number involved combined with the short period of time mean that there is no significant problem although, in the absence of any more specific information one can reach no definite conclusion.

HMCIP’s Annual Report for 2004-05 noted (page 38) the absence of information for prisoners held in legalised cells and recommended:

- Induction information should be produced detailing what prisoners can expect to receive and what they are entitled to; and
- Each location should be issued with a standard set of Rules, Notices and Operating Standards and these should be readily available in the cell areas.

It is understood that visits to legalised police cells are recorded, either on computer custody records, or on paper systems if no database has been installed.⁹²

⁹² Letter from ACPOS to the Commissioner, 15 January 2008.

Recommendation 21 Addressed to Scottish Ministers and the Chief Constables of Scottish Police Services

Information about visits by children to family members in legalised police cells should be analysed to allow an assessment to be made of the need for guidance.

II. FAMILY CONTACT [DEVELOPMENT] OFFICERS

Frequent reference has been made in this paper to the role of Family Contact Development Officers (FCDOs) within prison establishments:

- They were cited by SPS as a measure of compliance with European human rights standards (see para 9.8 above);
- A 1996 HMCIP report recommended the appointment of full time FCDOs in some prison establishments (see paras. 9.3 and 10.1 above); and
- They have frequently been referred to with approval in HMCIP inspection reports (see para 10.2 above).

It is understood that the job title has been changed to “Family Contact Officers”. But, whatever the name, the Commissioner’s communication with HMCIP and Families Outside has shown how much the role is valued by them. The name itself is not critical; it is the fact that there is an identifiable individual or individuals with the remit for maintaining family contact that seems to be the significant factor.

An analysis of calls by family members to the Families Outside helpline expressing concerns about the mental health of prisoners showed that they frequently appear to have been ill-advised by gate staff and to have received an unsympathetic reception. The problems were resolved largely through contact with the Family Contact [Development] Officers.

There appears to be some debate at the moment about whether the role should be continued in its current form or whether it should be mainstreamed. SPS have expressed a view that the existence of these officers risks allowing others to abdicate their responsibilities for facilitating family contact.⁹³ They have pointed to the possibility of family contact being addressed through standards and outcomes rather than specific reference to FCDOs; through reference to a service, rather than to a role. Families Outside would be happy if standards and outcomes ensured the appointment of full time Family Contact Officers, adequately resourced and properly integrated as part of the prison regime. They feel that the appointment of Family Contact Officers should be one of the key SPS standards relating to family contact.⁹⁴ HMCIP would support a strong recommendation that “every prison in Scotland is tasked with developing a family strategy. As part of this strategy each prison should identify an individual or individuals to carry out the role of maintaining family contact.”⁹⁵

The role and value of Family Contact Development Officers in Scottish prisons was the subject of a 2005 report commissioned by the London-based Prison Reform Trust. It concludes that these posts work well when adequately resourced and properly integrated as an important part of the prison regime, and it recommends their introduction into prisons in England and Wales.⁹⁶

⁹³ View expressed by the Scottish Prison Service representatives at a Stakeholder meeting convened by the Commissioner on 6 November 2007.

⁹⁴ View expressed by the Families Outside representative at a Stakeholder meeting convened by the Commissioner on 6 November 2007 and in an email of 16 January 2008.

⁹⁵ Suggestion proposed by HMCIP in a letter to the Commissioner dated 15 January 2008.

⁹⁶ Loucks, N. (2005) *Keeping in Touch: The Case for Family Support Work in Prison* (London:Prison Reform Trust).

While it is true that the Commissioner's role is to seek to ensure compliance with the rights of the child rather than set out the details of how that compliance should be achieved, it seems appropriate to comment on the strongly expressed views of both HMCIP and Families Outside, whose perspective is informed by their frequent and ongoing contact with families. Families need a named person with a human face to help address their issues. There may be a variety of ways of achieving this, but there seems to be a very strong feeling that allocation of the role to named individuals is the best way to do it.

Recommendation 22: Addressed to SPS

Every prison in Scotland should develop a family strategy. As part of this strategy, each prison should identify an individual or individuals to carry out the role of maintaining family contact. Consideration should be given to standardising this role.

12. RELEASE AND HOME DETENTION CURFEW

The Victim Notification Scheme gives victims of crime the right to be given certain information about the release of an offender, to be informed about decisions made by the Parole Board and to make representations to the Parole Board about release of the offender.⁹⁷ The intention is to acknowledge and take account of the potential impact on the victim of the release of the offender.

Given that the children of offenders are often the innocent victims of their parent's offending and its consequences; and also the fear some children have expressed of the offending parent (see para. 6.1 above), it would seem appropriate to take some steps to ensure that the interests of the children of offenders are taken into account when decisions about release (temporary or permanent) are being made. This may affect the decision to release or may at least draw attention to the need to consider whether any steps need to be taken to mitigate the potential adverse impact on the child. If SERs or child impact assessments were required at the point of sentencing, these could provide a useful starting point for such reflections at the point of possible release, while taking account of the fact that the views of the child may change over time.

Similarly, decisions to release an offender to Home Detention Curfew⁹⁸ (HDC) will have implications for the offender's children, which may be positive or negative. Where the child lives at the same address as the offender, the offender's release and confinement to the home may well have a significant impact on the child. Where the child is afraid of the offender, the presence of the offender may encourage the child to spend more time out of the home. Families Outside understand that there are more returns to custody from HDC due to breakdown in home circumstances than criminal breach.⁹⁹

⁹⁷ The Scheme gives effect to sections 16 and 17 of the Criminal Justice (Scotland) Act 2003 and is available on the Scottish Executive website: www.scotland.gov.uk.

⁹⁸ Home Detention Curfew, supported by electronic monitoring, was introduced by Section 15 of the Management of Offenders etc. (Scotland) Act 2005 (asp.14).

⁹⁹ Letter from Families Outside to the Commissioner, 27 August 2007.



The decision to release to a HDC is made by SPS management. The Home Detention Curfew Procedural Manual¹⁰⁰ says that the decision to release on the HDC scheme must take account of the need to protect the public at large. This must surely – and perhaps even specially – include the children of the offender. The risk factors to be taken into account include whether the prisoner has a conviction for a Schedule 1 offence (a class of offences against children under 17 to which special provisions apply)¹⁰¹ and whether the conviction includes an element of domestic violence.¹⁰² Other factors particular to the offender may also be taken into account. In addition to this risk-based assessment undertaken by SPS, criminal justice social workers will carry out a community assessment.¹⁰³ This will include “a summary of domestic/family responsibilities” and “the views of those likely to be affected by the enforced presence of the prisoner.” This gives scope for including the potential impact – positive or negative – on the offender’s children. If the children’s interests had already been considered in the SER or a child impact assessment at the point of sentence, this would also aid consideration about decisions to release.

Recommendation 23: Addressed to Scottish Ministers and SPS

Procedures for release of prisoners, and decisions about temporary release or Home Detention Curfew, should be explicitly informed by the rights and needs of children who may be affected. Report templates and requirements should be amended to reflect this.

13. REDUCING REOFFENDING

In 2006, the Scottish Executive published the National Strategy for the Management of Offenders, with the aim of reducing reoffending.¹⁰⁴ Two thirds of the offenders convicted in 2002 had a previous conviction. The Strategy acknowledges the impact of crime, not just on victims and their communities but also on their families (page 4). It sets out a list of factors known to reduce the chances of reoffending, including, “Maintained or improved relationships with families ...” and “understanding of the impact of their offending on victims and on their own families” (page 5).

The main components of the Strategy are the establishment of local Community Justice Authorities (CJAs). They will produce plans which will include allocation of resources to local authority criminal justice social work services (para. 1.10). This is important, in the light of the discussion above about SERs. The CJAs’ plans will be scrutinized by a National Advisory Body (NAB) which will advise on how the plans match investment to priorities (paras. 1.11). The resources will be provided ultimately by the Executive (now the Scottish Government) (para. 1.11).

The Strategy refers to the need for skills development to deliver this agenda and refers to the scope for joint training across criminal justice organisations (para. 3.6). It would seem appropriate for this to include training on the needs and rights of the children of offenders.

The Strategy makes frequent reference to public safety in the context of offender management. Given some of the serious fears identified by the analysis of calls to ChildLine (see para. 6.1 above) the safety and well-being of children of offenders should be given a very explicit place in decisions about offender management.

100 The Home Detention Curfew Manual comprises the largest part of Scottish Executive Justice Department (2006) Home Detention Curfew, Circular No. JD/9/2006, issued in June 2006 (Edinburgh: Scottish Executive).

101 Listed in Schedule 1 to the Criminal Procedure (Scotland) Act 1995. The Children’s Reporter should be informed if this is the case Children (Scotland) Act 1995, Section 52(2).

102 Home Detention Curfew Manual, para. 2.7.

103 Home Detention Curfew Manual, p. 12.

104 Scottish Executive (2006) *National Strategy for the Management of Offenders*.

Recommendation 24: Addressed to Community Justice Authorities

Those involved in delivering the National Strategy for the Management of Offenders should receive training on the needs and rights of the children of offenders.

Recommendation 25: Addressed to Community Justice Authorities

References in the Strategy to protection of the public (paras. 1.2 and 1.11) should be understood as including reference to the children of offenders.

Recommendation 26: Addressed to Scottish Ministers, Community Justice Authorities and the National Advisory Body

Community Justice Authorities, the National Advisory Body and the Scottish Government should take steps to ensure that the needs and rights of the children of offenders are taken fully into account in their policies and procedures and the allocation of resources.

Recommendation 27: Addressed to Community Justice Authorities

Community Justice Authorities, who are required to explore communications with offenders and their families in connection with the development of services (para. 4.7), should include exploration of how to take sensitive account of the views of affected children.

14. MAKING CHILDREN VISIBLE: CHILDREN'S RIGHTS IMPACT ASSESSMENT

This report is not suggesting that there has been any deliberate omission of specific reference to children, nor that the authors of the applicable laws, Rules or Key Ministerial Targets are disinterested in children's welfare. It is suggesting that their inadvertent omission has implications for children, and that law, policy and practice might have been somewhat different had the rights and interests of children been taken specifically into account.

Appendix 3 is a template for an abbreviated Children's Rights Impact Assessment (CRIA). The CRIA is a model developed by SCCYP as a tool for looking at a policy, law or decision and assessing its impact on children and young people and their rights. It allows the impact to be predicted, monitored and, if necessary, avoided or mitigated. It can provide a useful starting point for agencies working towards respect for the human rights of children.

Recommendation 28: Addressed to Scottish Ministers, SPS and Community Justice Authorities

Law, policy and practice affecting the children of offenders should be reviewed in light of their impact on the children of prisoners. Consideration should be given to using the SCCYP Children's Rights Impact Assessment as a tool to achieve that end.

15. CONCLUSION

Making the children of prisoners visible is only a prelude to promoting respect for their rights. This report has attempted to point out some of the ways in which this could and should be done. The children of prisoners are innocent and vulnerable and they must be helped to feel nurtured and valued by our society. They must be raised from the status of ‘other factors.’¹⁰⁵ Their existence and their particular needs must be acknowledged and addressed. This is their right, recognised by international law and promised by our government.

This report has commented on the fact that our system tends to view children as aids to the rehabilitation of their parents rather than as persons in their own right.¹⁰⁶ It is wrong to see children *only* in that light, but it is nevertheless true that contact with their children and hopes for their future can be a powerful incentive to changing an offenders behaviour. It is, potentially, a ‘win-win’ situation. If we respect the rights of these children we will also advance the rights of everyone to peaceful and respectful communities.

We need to make children’s rights a visible factor in our decision-making processes. We need to listen sensitively to children’s views and experiences. We need to recognize and act on the undoubted truth that these children are not guilty of any wrong doing and should not be required to pay the price of justice. This report shows how the children of prisoners are currently not seen and not heard, and urges action to recognize the fact that they are not guilty, but need, and are entitled to, our care and concern.

SUMMARY OF RECOMMENDATIONS

Recommendation 1: Addressed to all involved

The debate on providing alternatives to prison should take specific account of the impact of imprisonment on the children of offenders.

(Para. 2)

Recommendation 2: Addressed to all involved

Law, policy and practice in relation to criminal justice and imprisonment should be amended to take account of the rights of children affected by the imprisonment of a parent or carer.

(Para. 2)

Recommendation 3: Addressed to the Scottish Parliament

That Parliament take note of and seek to address the impact of the increasing prison population on the rights of children in Scotland and, specifically, the impact of prisoner overcrowding on the rights of the children of offenders.

(Para. 3)

Recommendation 4: Addressed to Scottish Ministers and Local Authorities

In order to raise awareness of this often neglected group of children, local and national guidance on children who may be “in need” in terms of section 22 of the Children (Scotland) Act 1995, should refer explicitly to the children of prisoners as potentially falling into this category.

(Para. 6.1)

¹⁰⁵ See paras. 8.4 and 8.5 above.

¹⁰⁶ See summary and paras. 9.2 and 9.6 above.

Recommendation 5: Addressed to SPS

Any development in the prison estate, and specifically any move towards establishment of more local, “community prisons”, should take explicit account of the rights of children affected by the imprisonment of their parents.

(Para. 6.2)

Recommendation 6: Addressed to SPS

Policy and practice should acknowledge the child’s right to meaningful contact with both parents where that is consistent with the child’s interests, taking account of the child’s views. This will have implications for the design of prison for males as well as those for females.

(Para. 6.2)

Recommendation 7: Addressed to Chief Constables of Scottish Police Services

Police should receive guidance and training on dealing with children sensitively when a family member is being arrested or detained.

(Para. 7)

Recommendation 8: Addressed to Scottish Ministers

Any new sentencing body or guidelines should acknowledge that the rights and interests of the children of offenders are a legitimate, necessary and important consideration.

(Para. 8.3)

Recommendation 9: Addressed to Scottish Ministers

Consideration should be given to revising the National Standards for Social Enquiry Reports to encourage workers to look for other ways of ascertaining the view of family members if a home visit is regarded as an unsafe option.

(Para. 8.4)

Recommendation 10: Addressed to Scottish Ministers

It should be clearly stated that child care responsibilities should not be a barrier to a person undertaking community service as an alternative to prison. Where appropriate, child care should be provided to allow a community service order to be carried out. Community service opportunities should be audited to assess their suitability for women offenders.

(Para. 8.4)

Recommendation 11: Addressed to Scottish Ministers

The rights and interests of the children of offenders should be taken into account when sentencing options are being considered and their impact on the sentence should be recorded. Consideration should be given to requiring a child impact assessment at the point of sentencing. This could be through a separate assessment or, where a Social Enquiry Report is ordered, as an explicit component of that report. Good practice guidance should be issued on conducting a child impact assessment, backed up by training. This should acknowledge the need to avoid exposing children to pressure from the offender or family in the process of assessing the likely impact on the child.

(Para. 8.6)

Recommendation 12: Addressed to SPS

The “core assessment” of prisoners on reception into prison should refer specifically to responsibilities for children and should be informed by any child impact assessment conducted before sentencing.

(Para. 9.3)

Recommendation 13: Addressed to SPS

The Scottish Prison Service should check awareness of and compliance with Rule 11(6) of the Prisons and Young Offenders Institutions (Scotland) Rules 2006, concerning providing prisoners with information about how to maintain contact with relatives and friends.

(Para. 9.4)

Recommendation 14: Addressed to SPS

As recommended by Families Outside, local and national transport strategies should include arrangements for transport to prisons. Prisons should be required to produce travel plans in conjunction with local providers.

(Para. 9.4)

Recommendation 15: Addressed to SPS

Visit times arranged by the Scottish Prison Service should take account of school hours and public transport issues in order to avoid disruption to schooling, ease the stress of visits and increase uptake.

(Para. 9.4)

Recommendation 16: Addressed to Scottish Ministers

Scottish Ministers should consider reviewing the Prison Rules with the Scottish Prison Service with a view to raising the basic legal entitlement to visits to reflect actual practice. Further, quality bonding visits should be available in all prisons in Scotland and should be regarded as a right of the child rather than a privilege of the offender.

(Para. 9.4)

Recommendation 17: Addressed to SPS

The Scottish Prison Service should review its disciplinary arrangements to ensure that decisions to reduce visiting or impose closed visits take specific account of the rights of any children affected.

(Para. 9.4)

Recommendation 18: Addressed to Scottish Ministers and SPS

Key Ministerial Targets, Offender Outcomes, Scottish Prison Service performance standards for contracts and standards set under the forthcoming Directors' Rules should take explicit account of the rights and needs of the children of offenders.

(Para. 9.6)

Recommendation 19: Addressed to SPS

The Scottish Prison Service should be encouraged to pursue its plan of undertaking visitors' surveys to assess satisfaction with arrangements that affect families.

(Para. 9.7)

Recommendation 20: Addressed to Scottish Ministers and SPS

When the Prison and Young Offenders Institution (Scotland) Rules 2006 are next revised, they should be subject to a Children's Rights Impact Assessment and should make explicit reference to the rights and needs of the children of prisoners. Until the next revision, practice should seek to respect the rights of children affected by imprisonment.

(Para. 9.8)

Recommendation 21: Addressed to Scottish Ministers and the Chief Constables of Scottish Police Services

Information about visits by children to family members in legalised police cells should be analysed to allow an assessment to be made of the need for guidance.

(Para. 10.4)

Recommendation 22: Addressed to SPS

Every prison in Scotland should develop a family strategy. As part of this strategy, each prison should identify an individual or individuals to carry out the role of maintaining family contact. Consideration should be given to standardising this role.

(Para. 11)

Recommendation 23: Addressed to Scottish Ministers and SPS

Procedures for release of prisoners, and decisions about temporary release or Home Detention Curfew, should be explicitly informed by the rights and needs of children who may be affected. Report templates and requirements should be amended to reflect this.

(Para. 12)

Recommendation 24: Addressed to Community Justice Authorities

Those involved in delivering the National Strategy for the Management of Offenders should receive training on the needs and rights of the children of offenders.

(Para. 13)

Recommendation 25: Addressed to Community Justice Authorities

References in the National Strategy for the Management of Offenders to protection of the public (paras. 1.2 and 1.11) should be understood as including reference to the children of offenders.

(Para. 13)

Recommendation 26: Addressed to Scottish Ministers, Community Justice Authorities and the National Advisory Body

Community Justice Authorities, the National Advisory Body and the Scottish Government should take steps to ensure that the needs and rights of the children of offenders are taken fully into account in their policies and procedures and the allocation of resources.

(Para. 13)

Recommendation 27: Addressed to Community Justice Authorities

Community Justice Authorities, who are required to explore communications with offenders and their families in connection with the development of services (para. 4.7), should include exploration of how to take sensitive account of the views of affected children.

(Para. 13)

Recommendation 28: Addressed to Scottish Ministers, SPS and Community Justice Authorities

Law, policy and practice affecting the children of offenders should be reviewed in light of their impact on the children of prisoners. Consideration should be given to using the SCCYP Children's Rights Impact Assessment as a tool to achieve that end.

(Para. 14)

APPENDIX I: ISSUES ABOUT LISTENING TO THE CHILDREN OF PRISONERS

While working on this project, it was natural for SCCYP to consider direct consultation with children and young people in order to fulfil its commitment to article 12 of the UNCRC. However, it became clear that this work had already been done to good effect by other agencies and repetition by SCCYP would have been unnecessary and possibly intrusive if it was not going to add to the sum of knowledge. However, it seems appropriate to set out and share some of the fruits of our thinking through the dilemmas associated with this work.

It is important that any interviews undertaken with children who have a parent in prison are designed appropriately, undertaken sensitively and carried out by experienced people:

- The format of the questions needs to be inclusive so that children with reading difficulties or learning disabilities can give their views too.
- The subject matter should not be restrictive, e.g., confined to the physical environment or contact, as very often children can make simple, sensible suggestions for reform on broader issues.
- The timing is important. If children who are going to visit a parent are encouraged to draw a picture to share their view, and then they go to prison and draw a picture for their parent which they cannot hand over, then the process will have caused unnecessary angst.

- It will be impossible to reach and to consult with some children. Some young children have no idea that their parent is in prison and think they are visiting parent at work. Other children do not visit because of the environment, because of their disruptive behaviour before, during and after visits or because the parents want to be able to speak privately.
- The study on Teenagers with a Family Member in Prison, commissioned by the Scottish Forum on Prisons and Families¹⁰⁷ reveals that very often teenagers had never spoken about parental imprisonment before. Anyone who encourages children to open up for the purpose of a survey has an obligation to consider the impact of the interview on the child and how to manage the follow up emotions.
- The calls to ChildLine reflect the extent of secrecy within as well as outside the family circle.
- Families may distrust anyone who seems 'official'.
- The dislike of forms, by many families, also needs to be acknowledged.
- Hosting a consultation event before or after visiting could provide the opportunity to speak to children who could be interviewed/complete a form/draw a picture. However, this may not work as people are already making a big journey to get to the prison, so that would mean an even earlier start or later finish to the day, which can be problematic as people just want to get home.

¹⁰⁷ Discussed at para. 6.1 above.

APPENDIX 2: VISITING A PRISON

Reproduced from work undertaken for SCCYP by Ewart Communications in consultation with families affected by imprisonment.

For many people, visiting a relative in prison will be an experience which they will never face. For the purposes of this project, it is important to understand the process to make an informed view as to the experience for adults and for children.

The following description of a visit details what is understood to be the standard procedure faced by a family visiting a parent in prison at the weekend. The information has been gathered via interview and, although it focuses on Kilmarnock Prison, there would appear to be a similar format in other jails.

The setting

At Kilmarnock, there is a special project run by the Lighthouse Foundation which focuses on helping the families of drug users. It is running a pilot project which includes support on looking after the children and how to deal with specific situations. It also offers supports like massage. It operates within the Visitors' Centre in Kilmarnock.

- The Visitors' Centre is as new as the prison but, like all waiting rooms and visiting halls, it is cramped, and having personal and private conversations is impossible.
- There is also a small play area with a climbing frame and soft flooring outside which would only be suitable for children under 10, and there could be no more than five on it at any one time. There are no other play facilities and nothing for teenagers. During a visit, children tend to wander off to the open area and this allows the adults to chat.

Visit process

- The prisoner has to book the visit and provide the names and times of those attending but not the exact ages of the children.
- Visitors like to gather outside the jail at about 12.30-12.45 as there is paperwork to complete before you get to see the prisoner and many adults have gained good time management skills so that the process is smooth and as quick as possible.
- Once inside, the adult requires to fill out a form with the prisoner's number, who they are and their address. On the back of the form you put the name and address and ages of the children visiting. Then you hand the form over to the officer who checks the names against his/her list.
- Then your fingerprints are taken using the box at the side of the desk. If you have visited before then your photograph will automatically come up on the screen but if not then you have to move to the side to get your photograph taken. Children under 16 years are never subjected to this type of identification procedure but of course they are watching.
- All of this is done without the use of pushchairs as you are not allowed to take them into this area in case there is anything hidden in them. When filling out the forms, carrying children is not easy so the parents help each other.

- To get through to the next area, you have to go through a scanner similar to airport security. You walk down the corridor and go into a waiting room where there are about 9-10 chairs. You wait there until the prisoner arrives in another room, and he is then allocated a table and then you go in and have the visit. The chairs are colour coded so that the prisoner is sitting in a seat which is separated from the other two chairs in the seating unit by a table. There are always enough tables and chairs. Prison Officers move around between the families although some are static at certain tables.
- Very often, to keep children happy, the parents will try to do quizzes with them.

Other types of visits

- A closed visit would be when there is a glass partition between you, and a prison officer stands behind the prisoner.
- A family visit is on a Wednesday afternoon and finishes about 8pm. By its very definition it is more user friendly, allowing parents to walk around with their children. It is more staff intensive and therefore presumably works because fewer people go. It can be more difficult for the child to adjust to this kind of visit if they have not known the parent.
- For many families this is more the style of visit they want but the time taken to travel and accommodating the school day, means that few can take it up. The cost of another visit can also be prohibitive.

Gifts

- During the visit, it is not permitted to hand the prisoner anything. A child may have drawn a picture but they must post it in the box in the Visitors' Centre.

Conclusion

Visiting prisons on a regular basis is a challenging and costly exercise for many families. As children get more used to the process it does become less scary and clearly there always needs to be a balance between maintaining security and respecting the rights of children to visit a parent or significant other in prison. Sometimes unpleasant incidents, which are part of the business of the establishment, can spoil a visit e.g. stopping a couple passing drugs; everyone has to watch the repercussions. Consideration should be given to make such situations better as there is no way to avoid them but the experience can be better managed and the witnesses better supported.



APPENDIX 3: CHILDREN'S RIGHTS IMPACT ASSESSMENT INITIAL SCREENING FORM

The Children's Rights Impact Assessment (CRIA) is a model developed by SCCYP as a tool for looking at a policy, law or decision and assessing its impact on children and young people and their rights. It allows the impact to be predicted, monitored and, if necessary, avoided or mitigated.

The full model with explanatory text is available from SCCYP and can be downloaded from www.sccyp.org.uk. It includes template forms for both an Initial Screening and a Full Assessment. The document on the next two pages is the Initial Screening Form and is included here as an indication of what questions policy makers need to ask and answer if they are to ensure that their work takes full and proper account of the human rights of children.



Children's Rights Impact Assessment Generic Initial Screening Form

1. What is being assessed? (Name/description of the policy, legislation, practice)	Policy <input type="checkbox"/> Legislation <input type="checkbox"/> Other <input type="checkbox"/> Existing <input type="checkbox"/> New <input type="checkbox"/>
2. What is the aim, objective or purpose of the proposal? (How does it relate to other initiatives: does it seek to fulfil national targets...)	
3. Who initiated the proposal? (e.g. Scottish Government, Scottish Parliament)	
4. Who is to implement the proposal? (e.g. Local Authorities, Police, Health Boards)	
5. Does the proposal fall within a priority area for your organisation? (Please provide further detail)	UN Con.Obs ¹ <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
6. Which articles of the UNCRC are relevant?²	
7. Does the proposal contravene the UNCRC or any other laws? (e.g. European Convention on Human Rights, Children (Scotland) Act 1995)	
8. Which groups of children will be affected by the proposal?	

¹ Concluding Observations of the UN Committee on the Rights of the Child.

² Regard should always be had to the four general principles of the UN Convention on the Rights of the Child (UNCRC); articles 2, 3, 6 and 12.



9. Positive Impact

(Note the groups affected)

10. Negative Impact

(Note the groups affected, gaps or inconsistencies in the proposal)

11. Has there been any consultation in the development of the proposal?

(Note the groups consulted)

Children and	<input type="checkbox"/>
Young People (CYP)	
Stakeholders	<input type="checkbox"/>

12. Have CYP and other stakeholders highlighted this as an area for you to work on?

13. What conclusions have been reached by you?

(Is the proposal the best way of achieving its aims, taking into account children's rights?
Please note any gaps in information)

14. What recommendations should be made and who should be informed of them?

(e.g. Should relevant groups be consulted)

15. Is a full impact assessment required?

(Please elaborate)

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

Preliminary screening by:

Date:

APPENDIX 4: SURVEY OF CRIMINAL JUSTICE SOCIAL WORKERS ABOUT SOCIAL ENQUIRY REPORTS

Q1: How many SERs do you prepare each year (approx.)? (23 responses)

No. of SERs	No. of responses
150 – 200	5
100 – 150	9
50 – 100	2
1 – 50	5
0	1

One further respondent said their team prepared about 800 SERs per year.

Q2: If you can, please estimate the percentage of cases in which the subjects of SERs have caring responsibilities for children (under 18) or substantial contact that would be affected by imprisonment. (22 responses)

% of cases	No. of responses
85%	1
60%	1
50%	1
40%	3
25% - 35%	3
20%	2
15%	2
10%	2
1%	1
Not quantified	
A high percentage	1
Significant	1
Small/very few (one said because work was with young, male offenders)	3
Don't know	1



Q3: To what extent are the interests, views and rights of these children taken into account in SERs? (24 responses)

The author of this paper has allocated responses to the categories in the first column.

A lot (8)

There will be a discussion with client at SER interviews about impact of custody on their family. If contact with Children & Family SW, I will speak to allocated worker.

Views are not, interests/rights are e.g. mention it when discussing undesirability of custody. Children always mentioned in SER info taken re DOBs & names of children in houses.

Comment about family responsibility/relationships included in report.

Needs of children taken into account if custody is likely or liberty is restricted.

Impact of such always mentioned in SERs. Always where required for child protection.

Impact on family, which is usually really the children, is noted as an inevitable break in contact (ex-partners are unlikely to do prison visits).

I always try to take this into account. Particularly in domestic violence cases and when considering the impact that disposal have on the whole family, not just the offender.

If primary carer is at risk of custody then this is discussed in the report.

A reasonable extent (5)

Average

Their interests may be but views almost never as it is very unusual for children to be present during interviews for SERs or home visits.

I have only been qualified for two and a half years but I have noticed that children are becoming more noticeably important i.e. children are written about more explicitly on SERs. Training on child protection guidelines and making it explicit that children's welfare is paramount.

General account is taken of the anticipated impact on the family and attention drawn in the report.

Very little, no communication with child unless they were victims of domestic violence. [This may refer only to the child's views.] Impact on child of imprisonment taken into account

A little (9)

Honestly, not very much unfortunately. There is little time to fully assess the impact on children.

Minimal input. Focus on recording contacts as opposed to ascertaining views.

Not very often although I would guess more so for women offenders.

Very little.

Limited reference in the disposal section

SERs that I read rarely take any significant or meaningful account of kids or their circumstances.

Little

Minimal – from child protection viewpoint.

Very little

Not at all (2) None – only in terms of risk to children – child protection issues.

None. I tend to present it from the offenders point of view. I do say that their imprisonment would impact on the family.

Q4: Would it be practical to extend the use of SERs to take the interests, views and rights of children into account? (25 responses)

Yes (7) Yes

Yes

Yes, in my opinion.

Yes, would like with clearer responsibilities for child protection and vulnerable adults

Yes, if they live with the offender and particularly if they are the primary carer. This information could also be used to inform offender of the impact of their offending and the consequences on their families.

Yes, there should be a specific element. Child protection matters always feature – however perhaps a child protection component could be explored.

Yes just requires right questions to be asked and assessment to be made.

Qualified Yes (7) Only if time to complete reports was lengthened to be able to facilitate family interviews where appropriate.

In principle, yes – practically would be impossible given level of demand. SER interviews now only one per SER.

There is merit in the idea but this would take more time to prepare.

It could be done but sentencers would see their role as dealing with offender not their children.

Yes but this would have significant implications on resources that are not readily adoptable or changeable.

If done by independent person and feedback given to SER author.



Yes it would. The only negative stand I would have is the restricted timescales to conduct interviews – i.e. with family members due to ever increasing workloads.

**Unsure/
non-committal
(6)**

This would be time intensive and arrangements would have to be made for children to be seen as well.

This has huge implications in terms of amount of time available to meet with clients, their families and other agencies and complete SERs in time for court.

Depends on age of children.

Would need more staff – amount depends on extent of extra work. We have no spare capacity to do more at present.

Not sure. I imagine this would require interviewing children – resource implications. Could be placing children at risk? Could come under pressure from offender?

Not always – some clients may not have parental responsibilities. Child protection/significant carers in domestic abuse cases – courts interest.

No (5)

Views – I really don't think so as SERs are usually based on one interview with the offender. Workload would not allow extension of SER remit.

Not based on current workload demands of approx 2 SERs per week plus those generated by own case load. However I would like to have that opportunity.

Not unless their families accept their responsibilities towards their children and that they are responsible for their actions.

No, there is hardly time to interview and complete SERs within limited timescales. I think it sounds good in practice but realistically unless there is a change in practice – I can't see there being time to interview children individually to ascertain their interests and views.

Not without significant resource increase.

Q5: Would there be value in extending SERs in this way? (24 responses)

Yes (12)

Yes (6)

Yes, as it would give the sheriff a clearer picture of impact of custody on family and children.

Certainly in terms of alerting relevant authorities of possible impact upon offender – and/or risk to child.

Yes, in some cases where the relationship with the offender is very important to the child.

Would need to be explored, but yes.

 Offender with sole care responsibilities for children.

 Yes, it would give the children a voice, raise awareness of the impact of sentencing on child/family. Also highlight the effectiveness of community based disposals.

Qualified Yes (5) Only if sheriffs would listen to the reports.

 Yes but only if organised in a consistent and meaningful way.

 Yes, but difficult to implement given we only get 3 weeks and one interview and phone calls etc to prepare SERs.

 Yes, I think there would be but it would require a huge shift that has to be backed up by resources/training etc. It might mean that we require more time to complete SERs – would the courts accept this?

 Yes – if risk to the community is not inevitable if a community disposal was imposed and if harm to a child/children was anticipated.

Unsure (5) Maybe, but at the end of the day the sheriff will make the decision knowing there are children involved but I don't think this will override other considerations – maybe it should though?

 Whilst I would understand the value of this for children's relationships with parents I'm not confident about my ability to make a professional assessment within time constraints for completing SERs.

 A very complex question! To what purpose? Would the offender not (potentially) be punished for impacting on children?

 Not sure

 I'm not sure whether or not sentencers would see this as relevant.

No (2) No, as you would raise families' expectations that effects on them would significantly influence the court. This would not as judges/sheriffs often do what they want regardless of reports.

 Feel that this should be the lawyers job who is able to make a plea of mitigation.

Q6: Would there be value in introducing a separate Child Impact Statement to be taken into account at the point of sentencing? (24 responses)

Yes (13) Yes (6)

 Yes, would be interested to see how they would be used.

 Very probably but again sheriffs would need educating.



This may be more appropriate.

Yes, would help with intervention strategies based on individual and encouraging personal responsibility.

Yes, especially in cases of single parents and/or where child is the victim

Yes, many adults often write to the court/sentences so why not the children?

Yes, I feel a child growing up in an environment where there is domestic violence/substance misuse, are not given the opportunity to express their views.

**Qualified Yes/
Unsure (10)**

Potentially

Not unless courts would seriously be taking these comments into account.

Yes, but how would we get the information other than that given by the offender? Potential to link up with the school the child attends to get information? Training for both sides would need to be made available for this.

Only if you can clearly articulate the purpose.

Perhaps in some cases, but resources would have to be increased, but children should not be used as a bargaining chip. Offenders should be educated about their impact on their children.

Do you mean from a parent/child perspective? If so, yes. If you mean from a victim perspective – definitely. The problem is a recurrent one – we simply do not get enough information from the Procurator Fiscal about the crime on victims.

If prison was not inevitable.

Possibly. The sentencer would probably assume that he has an understanding of how the child would feel.

It may be hard for the child not to collude with parents but the child's views are important.

Where age appropriate and ensuring child does not feel compromised in terms of localities or conflict with offender.

No (1)

I think that this might discriminate against clients who do not have children. I wouldn't support a separate statement in SERs for this reason.

Q7: Can you foresee any drawbacks to this proposal? (24 responses)

No (1)	No
Time/	Time
Resources (8)	
	Resource
	Possible volume but could base the inclusion of such a strategy on risk assessments i.e. likely CS ... prison rather than as all – often mention impact on family.
	SW would need more time to interview children and families which would cause further delay in the courts.
	Only in resourcing.
	Resources; impact on family relationships, including negatively.
	Time scales for reports and resources.
	Time consuming, lack of resources, resistance from management to resource this type of commitment.
Impact on Child (9)	Increased pressure/expectation of child.
	Enhanced risks to child.
	Yes, child loves parent no matter what they may have done. Distress to child.
	Children as a bargaining chip. More work for children and families or CJSWs – not enough.
	Children may be, or feel, pressurised to support an offending parent.
	You could cause anxiety to children unnecessarily.
	I would not want children to be put under pressure to write to the court or to be used as “pawns” in a game to avoid custodial sentences being imposed.
	Children may feel responsible if parent goes to prison.
	Child feeling coerced/obligated.
Other concerns (6)	Have some difficulty with the idea that having children could be the sole thing which keeps one person and not another out of custody. Otherwise seems like a very good idea.
	Which agency could do this?
	Yes, even though every single review states the need for professionals to share information I still



think that there can be reluctance to do so. To successfully complete a Child Impact Statement there would have to be explicit guidelines.

Yes – information sharing etc.

Yes, sheriffs may view such as trying to minimise and influence sentencing outcome. Lawyers could also misuse especially in cases of serious high risk/custodial merited sentences.

Client co-operation - reliance in discussing child care issues with social workers.

Q8: If there were to be Child Impact Statements, who should prepare them? (23 responses)

Children & Families Social Work (4) Children and Families SW

Children and Families SW – we have different priorities and points of view

Child care team

The Children & Families SWs – realistically these teams are understaffed and totally stretched. This would not be a priority (in fact the offending parent in custody may provide some respite to the Children and Families SWs)

Criminal Justice Social Work (5) Probably CJSW – additional training required.

CJSW – the practicality of this is a large issue. It might also “blur” the lines between CJSW and C&F SW.

CJSW in collaboration with C&F or HV etc.

Social worker preparing the SER with the parent.

Criminal justice social workers

Social Workers (4) Social Workers

The Social Work department

Child care/criminal justice social workers jointly.

Separate social worker to that compiling SER.

Independent Agency (2) Independent agency. I’d love to prepare these but wouldn’t have time, also don’t think I’d have the skills to get over information from children.

Someone independent from criminal justice/child care social work – a children’s advocate?

Other (8)

Staff with applicable specialised training. Consequently not CJSW.

The person who thought up the idea

Safeguarder

Not SER written.

A responsible worker/ adult. Not SER author.

Someone independent of SER writer. Not SER author.

Nor criminal justice – wrong system to draw a potentially vulnerable child into.

I believe a child should be interviewed in the presence of an individual they can trust and openly voice their feelings, thoughts and beliefs.

Q9: Any other comments?

Text	Resources	Impact on child	Other
Resources seem like a key issue	✓		
I am not unsympathetic to the idea but this would require additional resources which we do not have at present and would it change offenders?	✓		✓
If Child Impact Assessments become a reality then the policy/guidelines need to be clear or the whole process could be undermined.			✓
Time frame for completing may have to be extended. Impact upon child would have to be explored re ensuring child would not assume guilt of parent imprisoned. Also, child's age would have to be taken into consideration. Could be a minefield in cases of parental sexual abuse, especially where one child has been specifically targeted in family group.	✓	✓	✓
Children involvement would be an excellent way of putting their needs at forefront. However I feel courts are often dismissive of putting children's needs first if parent has offended as "justice" needs to come first. But where is the justice for children if parents are in custody for minor offences?			✓



Text	Resources	Impact on child	Other
<p>Caution regards potential impact of drawing children directly into focus of criminal justice/court system when may be unaware unrelated to offenders behaviour. Not all offenders end up under a custodial outcome – or wish their children to be actively aware of their offending behaviour!</p>		✓	
<p>Should be a separate document attached to a SER, not made public, only for the attention of the sentencing sheriff – need for protection of the child, element of anonymity to reduce the risk of negative reprisals.</p>		✓	

APPENDIX 5: BIBLIOGRAPHY

Books & Research Reports

BUIST, M. (1997) *More Than a Box of Toys*. Edinburgh: Scottish Forum on Prisons and Families, and Save the Children.

HIGGENBOTHAM, M. (2007) *Do Not Pass Go ... Travel Links to Scottish Prisons*. Edinburgh: Families Outside.

LOUCKS, N. (2005) *Keeping in Touch: The Case for Family Support Work in Prison*. London: Prison Reform Trust.

LOUCKS, N. (2004) *Prison Without Bars: Needs, support and good practice for work with Prisoners' Families*. Edinburgh: Families Outside.

MCCULLOCH, C. & MORRISON, C. (2001) *Teenagers with a Family Member in Prison: A Study by the TASC Agency on behalf of the Scottish Forum on Prisons and Families*. Edinburgh: Scottish Forum on Prisons and Families.

MACHIN, D. (2005) *Sentencing Guidelines Around the World*. Edinburgh: Sentencing Commission for Scotland.

MARSHALL, K. (1997) *Children's Rights in the Balance: The Participation – Protection Debate*. Edinburgh: Stationery Office.

MORRISON, C. & MCCULLOCH, C. (1998) *Children Visiting Prisons: A Good Practice Guide*, Scottish Forum on Prisons and Families. Edinburgh: TASC Agency.

PATON, L. & MUNRO, G. (2006) *Children's Rights Impact Assessment: The SCCYP Model*. Edinburgh: Scotland's Commissioner for Children and Young People.

SCOTTISH OFFICE HOME DEPARTMENT: HM INSPECTORATE OF PRISONS (1996) *Thematic Study – The Importance of Visits in Scottish Prisons*. Edinburgh: Scottish Office Home Department.

SCOTTISH PRISON SERVICE (2005) *Thematic Report: 8th Prisoner Survey*. Edinburgh: Scottish Prison Service.

Conference Proceedings

Alternatives to Prison: Report of a Conference Organised by Encounter and The Royal Society of Edinburgh, 7 – 9 December 2006. Edinburgh, (2007). Edinburgh: The Royal Society of Edinburgh.

European Court of Human Rights Cases

Boyle v. The United Kingdom (friendly settlement), no. 16580/90, 28 February 1994. Series A no. 282-B.

Keegan v. Ireland, no. 16969/90, 26 May 1994. Series A no. 290.

Söderbäck v. Sweden, no. 24484/94, ECHR 1998-VII.

Inspection Reports

HM CHIEF INSPECTOR OF PRISONS FOR SCOTLAND (2005) *Annual Report 2004-05*. Edinburgh: The Stationery Office.

HM CHIEF INSPECTOR OF PRISONS FOR SCOTLAND (2006) *Annual Report 2005-06*. Edinburgh: Scottish Executive.

HM CHIEF INSPECTOR OF PRISONS FOR SCOTLAND (2007) *Annual Report 2006-07*. Edinburgh: Scottish Government.

HM INSPECTORATE OF PRISONS (2007) *Report on HMP Shotts, 2007*. Edinburgh: Scottish Executive.

HM INSPECTORATE OF PRISONS (2006) *Report on HMP and YOI Cornton Vale, 2006*. Edinburgh: Scottish Executive.

Official Guidance/standards

SCOTTISH EXECUTIVE (2004) National Objectives for Social Work Services in the Criminal Justice System: Standards Social Enquiry Reports and associated Court Services. Edinburgh: Scottish Executive.

SCOTTISH EXECUTIVE (2006) Reducing Offending: National Strategy for the Management of Offenders. Edinburgh, Scottish Executive.

SCOTTISH EXECUTIVE JUSTICE DEPARTMENT (2006) Home Detention Curfew. Circular No. JD/9/2006, issued in June 2006. Edinburgh: Scottish Executive.

Scottish Parliament

SCOTTISH PARLIAMENT. Official Report: Vol 11 No 11, 4 April 2001, Col 1209.

Statistics

SCOTTISH EXECUTIVE (2007) Criminal Justice Social Work Statistics 2005/06. Statistical Bulletin CrJ/2007/02. Edinburgh: Scottish Executive National Statistics.

SCOTTISH EXECUTIVE (2007) Criminal Proceedings in Scottish Courts, 2005/06. Statistical Bulletin CrJ/2007/3. Edinburgh: Scottish Executive National Statistics.

SCOTTISH EXECUTIVE (2007) Prison Statistics Scotland, 2006/07. Statistical Bulletin CrJ/2007/7. Edinburgh: Scottish Executive National Statistics.

Statutes

Children (Scotland) Act 1995 (c.36)

Criminal Justice Act 2003 (c.44)

Criminal Justice (Scotland) Act 2003 (asp.7)

Criminal Procedure (Scotland) Act 1995 (c.46)

Management of Offenders etc.(Scotland) Act 2005 (asp.14)

Murder (Abolition of Death Penalty) Act 1965 (c.71)

Social Work (Scotland) Act 1968 (c.49)

UN Documents

GENERAL ASSEMBLY OF THE UNITED NATIONS (1989) UN Convention on the Rights of the Child.

UN COMMITTEE ON THE RIGHTS OF THE CHILD (2002) Concluding Observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland, CRC/C/15/Add.188. Geneva: UN Committee on the Rights of the Child.

UN COMMITTEE ON THE RIGHTS OF THE CHILD (2000) Concluding Observations of the Committee on the Rights of the Child: Norway, CRC/C/15/Add.126. Geneva: UN Committee on the Rights of the Child.



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