The Scottish Government Response to the Review of Proposals to Improve Arrangements for Independent Monitoring of Prisons
THE SCOTTISH GOVERNMENT RESPONSE TO THE REVIEW OF PROPOSALS TO IMPROVE ARRANGEMENTS FOR INDEPENDENT MONITORING OF PRISONS

FOREWORD

I am determined to ensure that the reform of independent monitoring of prisons delivers the best outcomes and, in particular, meets our obligations under the Optional Protocol to the UN Convention Against Torture (OPCAT) and the National Preventive Mechanism (NPM). I am very grateful to Andrew Coyle for carrying out his review and providing a comprehensive and detailed report on improving the arrangements for independent monitoring of prisons.

Professor Coyle has given us a valuable overview of the current landscape and provides a helpful baseline from which to work. This document sets out the Government’s response to Professor Coyle’s report which we now intend to put into place. We will move to implement 17 of the 21 recommendations in Professor Coyle’s report immediately, and will refer the remaining 4 to the Implementation Group which will be set up shortly.

Of the 7 options for bodies to oversee arrangements for independent monitoring of prisons presented by Professor Coyle, I considered 3 to be suitable for further consideration: HM Chief Inspector of Prisons for Scotland (HMCIP), the Scottish Human Rights Commission (SHRC) and the Scottish Government Justice Directorate. The Government has now considered these options in relation to potential impact, scope for integration with related functions, independence (mindful of the Scottish Government’s obligations under OPCAT and the NPM), cost and alignment with core responsibilities. In my deliberations, I have been reassured by comments from Nick Hardwick, Chair of the NPM, who has confirmed that, in his view, “any of the three alternatives would be OPCAT compliant”. The NPM’s role is to visit places of detention, including prisons, and monitor the treatment of, and conditions for, detainees. The NPM is coordinated by HM Inspectorate of Prisons for England and Wales.

After careful consideration, I remain of the view that HMCIP is best placed to oversee future independent monitoring of prisons. Bringing prison monitoring under the auspices of HMCIP provides an opportunity to integrate scrutiny and monitoring effectively, in a way that preserves the distinct (though complementary) functions of both. It will enhance the impact and profile of monitoring, given his access to
Ministers, Parliament and the media. And it will give strong national leadership, from an office whose independence is clear and long established, to the independent monitors.

HMCIP will employ four part-time Prison Monitors who will, in turn, be supported by Lay Monitors, attached to each prison and representing the community. In overseeing the monitoring function, HMCIP will be supported by an Advisory Group which will be made up of key stakeholders from the Justice sector. This Group will provide guidance on monitoring, appointments and training.

In relation to the recommendations addressed to the Scottish Prison Service, the Chief Executive, Colin McConnell, welcomes and supports these recommendations and is committed to ensuring that Scottish Prison Service staff are informed of their obligations to cooperate fully with the independent monitors.

I believe that this new approach will provide an integrated and robust system which will provide Scotland with a gold standard in prison monitoring.

Kenny MacAskill, MSP
Cabinet Secretary for Justice

April 2013
THE AMBITION

1. Our commitment to rationalise the public sector landscape was a key driver for looking afresh at independent monitoring of prisons. The challenges facing Scotland’s public services are considerable, therefore, all parts of the Scottish public sector need to intensify the pace of public service reform and transform outcomes for people in communities across Scotland.

2. As part of our approach to public service reform we remain committed to a streamlined and rationalised public body landscape. In 2008, we initiated a successful simplification programme which has led to a reduction in the number of public bodies from 199 to 145. On present plans this will reduce further to around 112 bodies and we will continue to look for opportunities to rationalise and streamline the landscape going forward to improve outcomes. As part of our work on public service reform, and in response to the Crerar Review of 2007, we are also working to make external scrutiny proportionate, risk-based and co-ordinated so that potentially vulnerable service users are protected and to drive down cost and red tape.

INDEPENDENT MONITORING

Prison Visiting Committees

3. Prison Visiting Committees currently monitor Scotland’s prisons. They are statutory bodies regulated by Section 8 of the Prisons (Scotland) Act 1989 and Part 17 of the Prisons and Young Offenders Institutions (Scotland) Rules 2006. They are required to visit prisons fortnightly (as a minimum) and to hear, in confidence, complaints and concerns from prisoners. Prison Visiting Committee members may visit at any time of the day or night, during which they have unfettered access to all areas of the prison and to prisoners.

OPCAT and the National Preventive Mechanism

4. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by the United Nations General Assembly on 10 December 1984 and came into force on 26 June 1987. The Optional Protocol to the Convention, usually referred to by its acronym OPCAT, was adopted by the General Assembly in 2002 and came into force in 2006.1 Article 1 of the Protocol describes its objective:

The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

5. All countries which ratify OPCAT legally bind themselves to allowing visits by the UN Subcommittee for the Prevention of Torture to all places where people are deprived of their liberty and also to establishing “one or several independent national

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1 Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199.
preventive mechanisms for the prevention of torture at the domestic level” (Article 17). The Subcommittee for the Prevention of Torture has published a set of guidelines on national preventive mechanisms, setting out a series of basic principles and issues for the establishment of a national preventive mechanism and its’ operation.\(^2\)\(\text{OPCAT does not prescribe any specific structure or model for a national preventive mechanism, leaving each state to decide which model best suits national requirements.}\)

6. The United Kingdom was among the first states to ratify OPCAT and it established its national preventive mechanism in 2009. Rather than create any new bodies, the UK decided to identify a number of existing bodies which were already involved in inspecting or monitoring places of detention as its collective national preventive mechanism. This was in accordance with the basic principles published by the Subcommittee for the Prevention of Torture. In determining which bodies were to be included in its national preventive mechanism the UK Government’s over-riding criterion was that the bodies should meet the requirements of OPCAT particularly in respect of independence.

7. The UK Government identified 18 bodies which were collectively to constitute the National Preventive Mechanism, including five in Scotland. HM Inspectorate of Prisons for England and Wales was nominated as the lead body in coordinating the work of the National Preventive Mechanism and liaising with the Subcommittee for the Prevention of Torture. Independent Monitoring Boards for prisons in England and Wales were included as bodies in the National Preventive Mechanism as were Independent Monitoring Boards in Northern Ireland. Prison Visiting Committees in Scotland were not included although their functions are broadly comparable to the two sets of Independent Monitoring Boards. The reason for this was that at the time the National Preventive Mechanism was established the arrangements for Prison Visiting Committees were under review and it was anticipated that once the review was finalised Prison Visiting Committees would be considered for designation as an additional member\(^3\). One of the main issues of concern was that the independence of Visiting Committees did not reach the standard required by OPCAT since budgetary and administrative arrangements were managed by the Scottish Prison Service – the organisation they are required to monitor.

**SCOTTISH GOVERNMENT PROPOSALS**

8. The Cabinet Secretary for Justice announced in December 2011 that Prison Visiting Committees should be abolished and replaced with a prisoner advocacy service. This announcement was followed by a debate in the Scottish Parliament on 2 February 2012. It was recognised in the debate that an independent prisoner advocacy service would contribute to better offender outcomes, however, concerns were raised about the future independent monitoring of prisons. Following the debate the Cabinet Secretary for Justice committed to look again at independent monitoring and ensure that the Scottish Government met its obligations under OPCAT.

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9. The Scottish Government then put forward proposals to abolish the Committees and move independent monitoring under the auspices of HMCIP.

10. In shaping these proposals, we recognised the importance of contributions from a wide range of people and organisations. We consulted with key stakeholders during 2012 which provided an opportunity for them to provide their views and comments on our proposals. Following this consultation, and to ensure that the proposals recommended to Parliament met all the Scottish Government’s obligations, the Cabinet Secretary for Justice asked Professor Andrew Coyle (Emeritus Professor of Prison Studies in London University and Visiting Professor in the University of Essex) to review the Scottish Government proposals.

PROFESSOR COYLE’S REVIEW

11. The remit of the review was to consider specifically:

- the extent to which the proposals meet the Government’s obligations under OPCAT;
- responses of prisoners, prison staff and stakeholders to the new proposals; and
- independent monitoring of legalised police cells.

12. We published Professor Coyle’s report on independent monitoring on 7 February 2013. The Report recommended that Prison Visiting Committees should be abolished and replaced with independent prison monitors, made up of lay people. The report gave a useful overview of the current landscape and provided a helpful baseline from which to work.

13. One of the most important questions is deciding which body should oversee and support those carrying out the monitoring. Of the seven options Professor Coyle presents in Recommendation 16, three were felt to be suitable for further consideration. These options were: HMCIP, the Scottish Human Rights Commission (SHRC) and the Scottish Government Justice Directorate. Analysis of each follows below, which takes into account the following criteria: impact; potential for integration/duplication with existing organisations; independence (bearing in mind the Government’s legal obligations); cost; and effect on core functions.

PREFERRED OPTION: HMCIP

14. The Cabinet Secretary for Justice has taken the decision that HM Chief Inspector of Prisons is best placed to provide oversight and support of independent monitors of prisons.

15. The primary reason for this decision is that having HMCIP oversee monitoring provides the best potential for impact and ensuring high standards in our prisons. HMCIP is already well established in the field as having an important leadership role, and a strong public voice for humane and appropriate treatment of prisoners. With access to Ministers, officials and Parliament, as well as the media and the public,
HMCIP has every opportunity to bring to light any instance where standards fall short of what would be expected in Scottish prisons.

16. Furthermore, integrating inspection and monitoring is attractive, and allows there to be follow up of recommendations and findings of inspection through monitoring. In depth inspection and frequent lay monitoring provides the layered approach called for by OPCAT. Provision of monitoring findings in a consistent and familiar way, will allow a rich picture to be provided to HMCIP ahead of each formal inspection, and better integrate the snapshot that an inspection provides, with a more consistent picture. This option also avoids any risk of duplication, which might otherwise arise from the establishment of an effective “alternative” structure for monitoring that could confuse prisoners and the public. It also fits well with the broader approach to public service reform, which aims to create a clearer, simpler and more effective public sector by removing organisational barriers between linked areas of activity (in this case, monitoring and inspection), simplifying structures and streamlining decision-making. HM Chief Inspector of Prisons for Scotland is also a member of the NPM.

17. In terms of the necessary independence of those overseeing monitoring, HMCIP scores highly. The appointment of HMCIP is a lay appointment by Royal Warrant, and although part of the Scottish Government for administrative purposes, HMCIP retains his clear independence from direction by Ministers or civil servants.

18. A further advantage of this proposal is that it introduces oversight and leadership from an individual already working in this field. Adding monitoring to HMCIP responsibilities is a natural move, which goes with the grain of his core business, and plays to existing strengths. In many respects, it can be seen as natural move and is similar to the system under construction in Ireland and the Netherlands, where the NPM comprises Inspectors under the chairmanship of the Inspector of Sanctions.

REJECTED OPTIONS

Unit within the Justice Directorate

19. As Professor Coyle noted, Independent Monitoring Boards in England and Wales are supported by a Secretariat located within the Ministry of Justice. He highlighted the opportunity that Scotland had to emulate such a system, and set out possible advantages. On reflection, the Cabinet Secretary is not persuaded that these possible advantages outweigh the disadvantages.

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4 In order to strengthen the independent oversight of Irish prisons, the Irish Government has approved the drafting of a General Scheme of an Inspection of Places of Detention Bill which will include provisions to make visiting committees more effective. A link will be established between the visiting committees and the Inspector of Prisons. As part of these plans, it is intended to expand the role of the Inspector of Prisons through ensuring that Prison Visiting Committees report regularly to him. In addition, Prison Visiting Committees will be able to report any urgent or major matter directly to the Inspector at any time.
20. In terms of impact, we believe that the issues uncovered by monitors in prisons should be addressed, and where necessary brought to public attention. Although an Agency, the Scottish Prison Service remains part of Government and accountable to Ministers. In the Scottish context, we do not feel that this option provides sufficient distance between those overseeing monitoring (the Government), and those being monitored (the Prison Service).

21. In terms of integration, moving the monitoring function to Government would provide a more ready flow of information from prisons to policy that could be helpful. However, this could still be achieved via the HMCIP option.

22. The operational responsibility for recruitment, training and reporting would not sit well with other central Government functions. The Scottish Government focuses on providing strategic direction and support to facilitate the delivery of outcomes.

**Scottish Human Rights Commission**

23. As Professor Coyle notes, locating support for the independent prison monitors within the Scottish Human Rights Commission would underline the fact that monitoring is primarily a human rights obligation and is not a matter merely of approving processes and management initiatives. However, on reflection, the Cabinet Secretary is not persuaded that the potential advantages of this option outweigh the disadvantages.

24. In terms of impact, this option holds some attractions, and would certainly provide for appropriate distance between the monitors and those being monitored. However, situating independent monitoring under the SHRC would potentially weaken the links between regular monitoring and routine inspections and add to the already cluttered landscape of scrutiny.

25. The best argument for this option lies in the independence of the SHRC from Government.

26. In terms of integration, the SHRC already has a power to enter any place of detention to inspect or conduct interviews in private with any person detained there, including Scottish Prison Service establishments and establishes an important link to ensure prisoners are treated humanely and with respect. We believe that respecting this link whilst keeping the functions of the SHRC and prison monitoring separate is more effective than situating monitoring within the SHRC.

27. The core function of the SHRC is to promote and protect the human rights of everyone in Scotland and such a high profile, well established voice would no doubt represent the interests of prisoners to an exceptional standard. However, independent monitoring goes further than prisoner human rights, for example, prisoner complaints cover a multitude of issues which independent monitors will be required to follow up with prison staff. In terms of delivering core functions, the addition of prison monitoring to the responsibilities of the SHRC potentially diverts their efforts from their core functions as set out in the Scottish Commission for Human Rights Act 2006.
28. The SHRC is ideally placed to work with HMCIP to share skills and experience ensuring a high standard of prison monitoring rather than assuming responsibility for monitoring overall. The SHRC will continue to provide advice to ensure the compliance of prison monitoring with OPCAT and will be invited to sit on the Advisory Group.

**HOW THE NEW SYSTEM WILL WORK**

29. We intend that HMCIP will oversee four part-time Prison Monitors who will be supported by Lay Monitors. The Prison Monitors will be further supported by an Advisory Group who will be made up of key stakeholders from the Justice sector and will provide guidance on monitoring, appointments and training.

**Independence and representativeness**

30. A key issue is the appointment of Monitors and how appointments might be discontinued. The Chief Inspector will appoint the Prison Monitors. Appointment as a Prison Monitor or Lay Monitor would be for a fixed period of time, with a defined limitation on any possibility of re-appointment. The grounds for discontinuation should be limited and specified. The person specifications against which appointments would be made should be rigorous and require that, for both Prison Monitors and Lay Monitors, there be a variety of complementary skills available within each team. There will, of course, be opportunities for current Prison Visiting Committee members to apply for Lay Monitor posts.

**Effectiveness**

31. An advisory group will be set up to support the monitors and will comprise key stakeholders from the Justice sector.

32. The Inspectors and Prison Monitors will be required to work to common standards. If these standards are to support independence and representativeness, it is not sufficient that they satisfy only HMCIP. They clearly need to be derived from current law and to reflect policy, international and professional guidance and research but they should also be subjected to critical examination by the Advisory Group.

33. It is agreed that local monitoring should take place within a structure headed by the team of four Prison Monitors. A persistent criticism of the various forms of Prison Visiting Committees that have existed across Scotland has been the variability of quality and lack of influence that exists due to the absence of any co-ordinating structure. The opportunity will now be taken to organise the Lay Monitors within such a structure.

34. Detailed arrangements will be for HMCIP and the prison monitors to decide with advice from the advisory group, however, we envisage a two way flow of information and assessment between the Chief Inspector and the Prison Monitors in order to complement the work of one another. We see that working in a collaborative manner. There should be a quarterly management meeting between
HMCIP, the Advisory Group and the four Prison Monitors. This meeting would have, amongst any other functions it might develop, the core functions of:

- reviewing any findings from the previous quarter and agreeing the priorities for the coming quarter;
- considering team and individual performance, considering and scheduling training and team development activities; and
- review of the effectiveness of current communications activities.

35. It might then be for the Prison Monitors as a group to design programmes of visits to be undertaken by themselves and the Lay Monitors.

36. We see this structure as a means for achieving a balance between ensuring coherence across inspection and monitoring functions, the level of independence provided by the role of the Chief Inspector and engaging the contribution of civil society in the supervision and practice of the monitoring process.

37. This structure for independent monitoring under the auspices of HMCIP will ensure that independent monitoring is aligned with the standards of HM Inspectorate of Prisons; that clear lines of reporting exist between the monitors to HMCIP and the Cabinet Secretary for Justice; and would also see the creation of an Advisory Group made up of key stakeholders to provide guidance on monitoring, appointments and training.

**Costs**

38. Each of the three options considered would involve extra financial resources than the current system. It is anticipated that this new service will cost an additional £180,000 which we consider provides the best value for money. This is already budgeted for, and is a reasonable expenditure for the benefits that will accrue.

**Structure of Independent Monitoring Service**

39. There will be 4 salaried ‘Prison Monitors’, who collectively will form a national monitoring team and will each head a team of Lay Monitors in a geographical area. Appointments to this team of Prison Monitors should be made so as to ensure that the team includes a relevant spectrum of professional skills and experience.

40. Lay Monitors will be appointed to a specified prison with some flexibility to allow visits in other prisons in the area. As far as can be achieved, each local team should also comprise persons who collectively offer a range of relevant skills and experience.

41. An Advisory Group comprising representatives from the Justice sector will be constituted with responsibility for monitoring, appointments and training.

42. Inspection and Monitoring Standards, which are currently being developed, will be structured so as to underpin both Inspection and Monitoring.
43. Prison Monitors will meet with their team of Lay Monitors monthly, will review areas of concern or special interest from the month’s visits and agree areas of monitoring to focus on for the next period.

44. HMCIP and the Advisory Group will meet quarterly with the Prison Monitors to hear their assessment of the previous quarters work and to agree priorities for the coming quarter. The group of Prison Monitors would then jointly develop their forward programme.

45. Monitoring and Inspection will become complementary activities each targeted on areas identified through two way communication. The Monitors, and the information from their reports will serve as an alert to Inspectors highlighting those establishments that require more intensive or thematic inspection.

PROFESSOR COYLE’S RECOMMENDATIONS

46. We will move to implement 17 of the 21 recommendations made by Professor Coyle and will remit the remaining 4 to the Implementation Group.

Recommendation 1 - Arrangements should be put in place for each prison to be monitored on a regular basis by independent volunteers appointed on a statutory basis, to be known as independent prison monitors.

We accept this recommendation. Each prison will be regularly visited by a prison monitor and lay prison monitor. The monitors statutory responsibilities will be set out in the Prisons (Scotland) Act 1989 using a section 14 Order under the Public Services Reform (Scotland) Act 2010.

Recommendation 2 - The role of these monitors should be defined to ensure that they are OPCAT compliant.

Recommendation 3 - There needs to be a clear definition of the role of independent monitors to ensure that they are OPCAT compliant and of the competences which monitors need to possess to enable them fulfil their role.

We accept these recommendations. The new system for independent monitoring of prisons will be OPCAT and NPM compliant.

Recommendation 5 - The independent monitors for each prison should submit an annual report to Scottish Ministers and should publish these reports.

Recommendation 6 - Monitors should bring to the attention of the Governor any matter which is of concern to them. If the matter is not resolved monitors should bring it to the attention of Scottish Ministers.

We accept these recommendations. Formal monitoring arrangements will be set out in statue through amendments to the Prisons (Scotland) Act 1989 under the Public Services Reform (Scotland) Act 2010.
Recommendation 8 - There should be a system of annual appraisal and re-appointment should be subject to satisfactory appraisal.

Recommendation 9 - Independent monitors should be required to undertake appropriate training on appointment and throughout their period of office. Sufficient resources should be provided to enable this training to be provided.

Recommendation 10 - The number of independent monitors appointed to each prison should be sufficient to enable them to carry out their statutory duties.

We accept these recommendations. The HMCIP implementation group will set the number of Lay Monitors for each prison establishment in Scotland and set out standards for performance monitoring and training.

Recommendation 11 - Scottish Ministers should provide funding at a level which will enable independent monitors to carry out their role in a manner which conforms to OPCAT. This funding should not be administered by the Scottish Prison Service.

Recommendation 12 - Monitors should be reimbursed for expenses incurred in the performance of their duties.

We accept these recommendations. Scottish Ministers will provide financial resources to enable an independent monitoring system which conforms to OPCAT. HMCIP will oversee the monies for independent monitoring and will reimburse Lay Monitors travel expenses.

Recommendation 16 - There should be a structure for the appropriate oversight and support of independent prison monitors.

We accept this recommendation. HM Chief Inspector of Prisons will have oversight and support of independent monitoring of prisons. HM Chief Inspector of Prisons will oversee and support four Prison Monitors who will be supported by independent Lay Monitors. The Prison Monitors will be further supported by an Advisory Group who will be made up of key stakeholders from the criminal justice sector and will provide guidance on monitoring, appointments and training.

Recommendation 4 - The Scottish Prison Service should ensure that all staff understand their obligation to enable prisoners to have confidential personal access to independent prison monitors on request without fear of recrimination or disadvantage. The fact that prisoners have such a right of access should be publicised widely throughout each prison.

Recommendation 17 - In all prisons there should be clear arrangements to ensure that prisoners are aware of the existence and the role of independent monitors and how to make contact with them.

Recommendation 18 - No member of staff shall “order, apply, permit or tolerate any sanction” against a prisoner who contacts an independent monitor.
Recommendation 19 - The Scottish Prison Service should ensure that all prison staff understand the role to be carried out by independent monitors and are supportive of their activities.

We accept these recommendations. Colin McConnell, Chief Executive of the Scottish Prison Service, welcomes and fully supports the recommendations accepted by the Scottish Government. He is committed to ensuring that Scottish Prison Service staff are informed of their obligations to cooperate fully with the independent monitors.

Recommendation 20 - A protocol should be agreed between HM Inspectorate of Prisons for Scotland and the independent monitors to ensure that they benefit from each other’s activities.

We accept this recommendation. A working protocol will be drawn up between the Independent Monitoring Team and HM Inspectorate for prisons.

Recommendation 21 - The Visiting Committees for legalised police cells should be abolished and their functions transferred to independent custody visitors.

We accept this recommendation. We are working with the Scottish Police Authority in transferring the functions from prison visiting committees to police custody visitors. Police custody visitors will have the relevant training, skills and vetting for this role and will already be in place. There will be opportunities for current prison visiting committee members to apply for these posts.

47. The following recommendations will be considered by the implementation group:

Recommendation 7 - Monitors should be appointed under an open public appointments system for specified periods.

Recommendation 13 - The monitors for each prison should elect a chairperson and to meet as a group in the prison at least every two months.

Recommendation 14 - Arrangements should be made for appointing a paid clerk to take the minutes of each meeting of the independent prison monitors and to assist in administrative matters including preparing the annual report and any other reports as necessary. Monitors should have appropriate accommodation and other facilities.

Recommendation 15 - Provision should be made for a Council of Independent Prison Monitors to include one monitor from each prison. The Council should agree protocols for, among other matters, recruitment, appointment and training of independent monitors as well as a format for annual reports.
TRANSITION AND IMPLEMENTATION

48. It is our priority to ensure that the transition from prison visiting committees to the new monitoring service is achieved speedily and seamlessly, however, our decision still requires Parliamentary scrutiny and agreement. The legislative process to transfer and modify the existing prison visiting committee statutory powers, as well as amendments to the Prison Rules, will be made through a Section 14 Order under the Public Services Reform (Scotland) Act 2010.

49. We recognised the importance of contributions from stakeholders across the Justice sector, and to that end, we will share the draft Section 14 Order with stakeholders at the end of June 2013 to gather views and comments before the draft Section 14 Order is laid before Parliament in September 2013.

50. The Parliamentary process and transition from prison visiting committees to independent monitors will take a number of months to complete. We anticipate the transition and introduction of the new independent monitoring service to be completed by Autumn 2014.

51. The Cabinet Secretary for Justice will be writing to the Association of Visiting Committees, CoSLA and the Chief Executive of the Scottish Prison Service setting out the timetable for transition and ensuring their continued support of the current arrangements until the new service is in place.