Consultation Report on Draft Public Services Reform (Prison Visiting Committees) (Scotland) Order 2014
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1. Introduction

1.1 Acknowledgements

The Scottish Government would like to thank all individuals and organisations who took the time to consider and respond to the proposals contained in the consultation paper on the draft Public Services Reform (Prison Visiting Committees) (Scotland) Order 2014.

1.2 Background

The Scottish Government issued a consultation paper on 4 October 2013 inviting comments on the draft Public Services Reform (Prison Visiting Committees) (Scotland) Order 2014 (the draft Order) by 13 January 2014. Following a request for further information by the Justice Committee, a revised Explanatory Document was laid in November 2013 and the consultation period was extended until 31 January 2014.

The draft Order proposed to abolish Prison Visiting Committees and create the new roles of Prison Monitors and Lay Monitors. It also proposed to change the statutory role of HM Chief Inspector of Prisons for Scotland (“the Chief Inspector”) to bring monitoring of prisons under his oversight, while retaining separate inspection functions.

No specific questions were posed in the consultation paper, with respondents invited to comment on any aspect of the draft Order or proposed Explanatory Document. A total of 36 written submissions were received, 34 from organisations and 2 from individuals, all of which took the form of general narrative. Responses were received from a range of stakeholders with varying backgrounds with the most common respondent category being Visiting Committees (VCs), including individual VCs and the Association of Visiting Committees (AVC). Other respondents included local authorities, criminal justice organisations and national organisations whose primary function relates to inspection, monitoring or complaints handling in relation to prisons or prisoners. There were also responses from organisations with an interest in human rights and a professional/representative organisation within the legal profession.

Consultation exercises such as this are not numerically representative but aim to elicit the views and experiences of a wide range of stakeholders. Any interpretation of the proportion of responses in agreement or disagreement with any element of the proposed new system must be undertaken with caution. It is thought that the relatively small number of responses is indicative of the specific nature of the consultation.

Throughout this report we have attempted to provide further explanation about the new proposals where we felt respondents needed more information.

1.3 Responses

All respondents gave permission for their responses to be published, and as such they can be found on the Scottish Government website at: http://www.scotland.gov.uk/Publications/2014/02/4705/0
A full list of the respondents to the consultation is listed at Annex B. A breakdown of these respondents is contained below:

- Prison Visiting Committees (14)
- Local Authorities (8)
- Criminal Justice Organisations (6)
- Inspection, Monitoring or Complaints Organisations (3)
- Human Rights Organisations (2)
- Individuals (2)
- Professional or Representative Organisations (1)

1.4 Liaison with Stakeholders

In addition to the consultation, the Scottish Government have engaged with stakeholders by setting up an Implementation Group to help develop, guide and implement the proposed new system. The Implementation Group is comprised of representatives from the Scottish Government, HM Inspectorate of Prisons for Scotland (HMIPS), the Association of Visiting Committees, Scottish Prison Service (SPS), Howard League Scotland, Scottish Human Rights Commission and Positive Prison? Positive Futures.

The Implementation Group has established a number of workstreams to take forward particular pieces of work in relation to the proposed new system including work on the development of guidance, recruitment and appointment of Prison Monitors and Lay Monitors and training.

1.5 Findings

Following the closing of the consultation, an analysis of the written responses was conducted. This analysis was published on 25 April 2014 and can be found on the Scottish Government website at: http://www.scotland.gov.uk/Publications/2014/04/8634

From the analysis, it was apparent that the main focus of comments on the draft Order was the identification of issues or concerns with the proposals, and suggestions for further consideration. Although respondents were not asked to indicate their support or otherwise for the proposals, there was some clear variation by type. VCs and both of the individual respondents (who identified themselves as VC members) generally expressed disagreement or highlighted substantial concerns. There were more mixed views among other types of respondents, both supportive and raising concerns.

Most respondents made comments on the current situation (e.g. the need for reform; positive aspects of the current system and the importance of independent monitoring) and most, whatever their view of the proposals, expressed support for, or positive views of, some aspect of developments to the system. Several expressed positive views of the effects of the changes such as the promotion of consistency, compliance with the UN Optional Protocol to the Convention Against Torture (OPCAT) and the nature and effectiveness of the approach.

This report provides a summary of the Scottish Government’s response to the issues raised by respondents to the consultation.
The Scottish Government has considered carefully the suggestions that have been made in respect of recommendations for changes to the Order. We remain satisfied that the proposed arrangements provide the best solution for delivering high quality monitoring of our prisons. However, we acknowledge that there is room for more clarity around aspects of the new system and so, where it is accepted that the draft Order could be amended, this has been highlighted in the relevant section within the report. A list of those areas of the Order which will be amended can also be found in more detail under Section 2: Decisions Taken.

1.6 Further Information

For further information on any aspect of this Consultation Report, please contact:

Andrew Corrigan  
Penal Policy Unit  
Community Justice Division  
Scottish Government  
Room GWR  
St Andrews House  
Regent Road  
EDINBURGH  
EH1 3DG  

email: andrew.corrigan@scotland.gsi.gov.uk  
telephone: 0131 224 3549
2. Decisions Taken

This section provides details of the changes that will be made to the draft Order which will be put out for further consultation in early course.

The key change in the draft Order is to the titles and duties of the roles of prison monitors and lay monitors. Prison Monitors are now called Prison Monitoring Co-ordinators (PMCs) in the draft Order and they will take on a more administrative role with overall responsibility for ensuring the effective monitoring of prisons. Lay Monitors are now called Independent Prison Monitors (IPMs) and will now take on a more operational role with sole responsibility for monitoring prison conditions and the treatment of prisoners.

For the purposes of this document:
- “The current draft Order” means the draft Order which was issued for consultation on 4th October 2013;
- “The updated draft Order” means the version of the Order incorporating the changes made in response to the consultation;
- “The Implementation Group” means the group established to help develop, guide and implement the proposed new system and which is described in section 1.4;
- The new role titles (PMCs and IPMs) will be used when referring to the new functions which will be set out in the updated draft Order in due course.
- The previous role titles (Prison Monitors and Lay Monitors) will be used when referring to the functions set out in the current draft Order. See section 3.2.11 for further information.

The other main changes which will feature in the updated draft Order are as follows:
- **Inspection and Monitoring** – the current draft Order will be amended to provide more distinction between the roles of inspection and monitoring. See sections 3.1.9 and 3.2.10 for further information;
- **Role of the Chief Inspector** – the functions of the Chief Inspector will be updated to include a provision for the evaluation of Prison Monitors. See section 3.1.9;
- **Progression of matters** – Where IPMs feel that a matter they have raised with the Governor has not been remedied to their satisfaction they will be given the power to progress the matter to the PMC assigned to the prison; See section 3.2.2;
- **Reporting by the Chief Inspector** – the Chief Inspector will be obliged to prepare an annual report on monitoring and lay it before Parliament. The Chief Inspector will also have the power to provide a report on any matter considered appropriate. See section 3.2.2;
- **Complaints/Requests** – the function in the current draft Order whereby Lay Monitors must “investigate prisoners’ complaints” will be amended so that IPMs seek to support prisoners to resolve complaints through the available complaints process. However, IPMs will have a general power to monitor prison conditions and the treatment of prisoners which will enable them to consider matters raised with them by individual prisoners where appropriate. See section 3.2.8;
- **Assignment of Lay Monitors** – in the current draft Order, Lay Monitors were to be appointed and assigned to prisons by the Chief Inspector. In the updated draft Order, IPMs will be appointed by PMCs and will be assigned by the PMC to a
prison within the group of prisons to which the PMC is assigned. See section 3.2.9;

- **Prison Monitoring Advisory Group** – the Chief Inspector will be placed under an obligation to establish an advisory group and provisions on the composition and functions of the Advisory Group will be added. See section 3.3.3;

- **Assistance to the Chief Inspector, PMCs and IPMs** – the updated draft Order will place an obligation on the Governor of a prison to ensure that the Chief Inspector, PMCs and IPMs are provided with assistance to allow them to exercise their functions within the prison. See section 3.3.4;

- **Provision of Reports** – the updated draft Order will clarify the duty of the Chief Inspector to report to the Scottish Ministers. It will also create a duty on PMCs to report to the Chief Inspector and a duty on IPMs to report to PMCs. See section 3.3.5; and

- **Funding** – further detail on the funding and payments made in relation to the new monitoring system will be added. See section 3.3.9.

- **Transitional arrangements** – the updated draft Order makes a number of savings and transitional arrangements to enable visiting committees to conclude ongoing inquiries, investigations and complaints for a limited period of time after the new prison monitoring regime comes into force. Provision will also be made for the annual report which is due to be made by Visiting Committees at 31 March 2015. See section 3.3.11
3. Comments on Consultation Responses

3.1 The Structure Overall

3.1.1. Need for reform

Comments made at consultation:
The analysis of written responses identified that the most common theme relating to the current arrangements was the perceived need for reform or a review of the current system.

Comments included views on a need to update the current arrangements and improve some specific aspects or perceived weaknesses in the system such as consistency and standardisation, independence, funding, accountability, recruitment and aspects of practice. Comments were also made in relation to ensuring compliance with OPCAT, improving training and supporting those undertaking monitoring, modernising and streamlining processes, providing a service ‘fit for purpose’ and reviewing and evaluating the work of VCs.

The Scottish Government’s response:
The Scottish Government welcomes the views of stakeholders that the current system needs to be reformed. The provisions in the current draft Order are aimed at introducing a new system which provides a consistent approach to independent monitoring across Scotland. We have reflected on the views expressed by stakeholders and now propose to amend the draft Order to strengthen the proposed arrangements in a number of areas. There are aspects of the new arrangements that do not require to be included on the face of the legislation, but will be contained in guidance which will be issued by the Chief Inspector under the new arrangements. This guidance is being drawn up by the Implementation Group and will be issued informally prior to the coming into force of the Order. The guidance will be considered by the Chief Inspector’s Advisory Group prior to being formally issued by the Chief Inspector following the coming into force of the Order.

3.1.2. Positive aspects of the current system

Comments made at consultation:
A further theme was the identification of perceived positive aspects of the current system. Many respondents made references to these aspects and specific points including general positive working, clarity of existing legislation and Prison Rules, independence, transparency, local links, prisoner confidence, support and training.

The Scottish Government’s response:
The Scottish Government recognises that there are positive aspects of the current Visiting Committee arrangements. We believe, however, that the time is right for reform and that the new arrangements, which involve bringing the centralised support, guidance and management under the auspices of the Chief Inspector, will create a more integrated and robust system for prison monitoring in Scotland.


3.1.3. The importance of independent monitoring

Comments made at consultation:
Many respondents also made comments about the importance of independent monitoring. Reasons for this which were identified included: the general need for independent monitoring and scrutiny of prisons; safeguarding prisoner’s rights and preventing human rights violations; public accountability and reassurance, and transparency in the justice system; compliance with Article 3 of the European Convention on Human Rights (ECHR) and OPCAT obligations, involvement of community interests.

The Scottish Government’s response:
The Scottish Government fully recognises the importance of independent monitoring of our prisons as a means of safeguarding the treatment of those in detention and generally improving prison conditions. We are committed to ensuring that reform delivers the best outcomes for prisoners and the wider community and meets our obligations under OPCAT and the National Preventative Mechanism.

3.1.4. Support for particular developments

Comments made at consultation:
The analysis concluded that most respondents, whatever their view of the proposals and structure overall, expressed their support for, or agreement with some aspect of developments to the system of independent monitoring of prisons.

Several respondents, for example, welcomed confirmation of the continuation of independent monitoring. One respondent also welcomed the decision to retain the rights of access currently available to VC members.

Other issues for which support or agreement was identified by some respondents included: the general requirement for reform or the need for improvement; the general purpose of the Order; the aims to increase transparency, consistency or quality in monitoring; the development of compliance with the requirements of OPCAT and the proposal to remove funding responsibility from the Scottish Prison Service; the proposals for consistent national recruitment, improved training and stronger support (including administrative and secretarial support) for independent monitoring; the independent review by Professor Coyle; and the clarity in the draft Order.

The Scottish Government’s response:
The Scottish Government welcomes the fact that aspects of proposed arrangements were regarded positively and considers that further amendments to the current draft Order, outlined in Section 2 will enhance the proposed system of independent monitoring.

3.1.5. Perceived benefits of the changes overall

Comments made at consultation:
A further broad theme was the identification of perceived benefits of the proposed changes overall although fewer respondents commented on the benefits than raised concerns.
Several of the respondents who expressed overall support for the new arrangements expressed the specific view that they agreed with the oversight of monitoring becoming part of the role of the Chief Inspector. Comments included general agreement or welcoming of this model, as well as more specific comments such as, that the overall link to the inspection process would be valuable; or that the Chief Inspector had the necessary skills and awareness; or that HMIPS would be the appropriate organisation to oversee independent monitoring.

In terms of perceived benefits of the changes, those which were identified related to the promotion of consistency; compliance with OPCAT; and the nature and effectiveness of the approach.

The Scottish Government’s response:
The Scottish Government welcomes the fact that many respondents identified benefits arising from the new arrangements. We are also encouraged that the Justice Committee in its first Report on the draft Order agreed that there would be benefits in the functions of monitoring and inspection sitting in the same organisation. Monitoring standards are currently being developed in conjunction with the Implementation Group. A Prison Monitoring Advisory Group with responsibility for reviewing certain aspects of the new service will also be convened. This is further discussed at Section 3.3.3.

3.1.6. Consistency

Comments made at consultation:
Several respondents identified benefits of the proposals in terms of the promotion of consistency. It was argued, for example, that there would be greater coherence to reporting systems, and thereafter better monitoring across Scotland. Related to this, it was suggested that the changes would enable a joined up approach to the oversight of prisons to be taken.

One respondent suggested that the proposals would provide a common point of reference, and enable training and guidance to encourage consistency. One respondent stated that the structure would enable the more consistent implementation of inspection recommendations.

The Scottish Government’s response:
The current system is not consistent across the country. The Scottish Government believes that the proposed structure will provide essential oversight, co-ordination and support to those tasked with monitoring prison conditions and the treatment of prisoners. Importantly, all aspects of prisons will be monitored effectively and there will be a consistent approach to monitoring throughout Scotland.

3.1.7. OPCAT compliance

Comments made at consultation:
As noted previously the lack of compliance with OPCAT was highlighted as being one reason for the need for reform. The achievement of OPCAT compliance was also identified as being among the benefits of the new proposals.
The Scottish Government’s response:
The current system is not OPCAT compliant. Scottish Ministers are committed to meeting the Government’s obligations under OPCAT. As such, we are assured that the new system, with in-depth inspection complemented by frequent independent monitoring, will be OPCAT compliant. This was recognised by the Justice Committee in its first Report on the draft Order.

3.1.8.  Perceived benefits arising from the new structure

Comments made at consultation:
Several respondents identified perceived benefits arising from the new arrangements. For example, one respondent stated that Monitors reporting to the Chief Inspector should ensure that performance management and accountability are embedded in the new structure. It was also suggested that the changes would help clarify processes. One respondent stated that the new structure would enable the functions of inspection and monitoring to complement the work of each other, with a two way information flow. It was also argued that it should ensure the findings from the activities of Monitors would inform inspection programmes, leading to more effective scrutiny of prisons overall.

The Scottish Government’s response:
The Scottish Government considers that bringing prison monitoring under the auspices of the Chief Inspector provides an opportunity to integrate inspection and monitoring effectively, in a way that preserves the distinct functions of both. Having the Chief Inspector responsible for overseeing and supporting the monitoring regime provides the best potential for impact and ensuring high standards in prisons in Scotland. It introduces oversight and leadership from an individual already working in this field and will improve the overall scrutiny of Scottish prisons.

The new system will also allow follow up of the recommendations and findings from inspections through monitoring activity, as it will allow the Chief Inspector to direct PMCs towards a particular area of concern found in an inspection and for those concerns to be flagged up with IPMs. Similarly, the reporting of monitoring findings, in a consistent way, will allow a rich picture to be provided to the Chief Inspector ahead of each formal inspection, and better inform the snapshot that an inspection provides. Bringing monitoring under the auspices of the Chief Inspector also avoids any risk of duplication, which might otherwise arise from the establishment of an alternative structure for monitoring which 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.

3.1.9.  The distinction between inspection and monitoring

Concerns raised at consultation:
Many respondents raised issues or concerns about the perceived lack of a clear distinction between inspection and monitoring in the proposals, or made suggestions about this issue.
In terms of the nature of issues or concerns, some respondents focussed on the distinct and complementary nature of the two functions or expressed concern about the extent to which the distinction would remain under the proposals.

Many respondents expressed concern that the distinctions may be blurred or unclear. Some questioned the assurance provided by the Scottish Government in the consultation paper that it is clear about the distinction between the functions of inspection and monitoring. Some made reference to issues raised in the Coyle report relating to the value of differentiating between the two, or the potential risks of a model that would sit under the Chief Inspector. There was also concern expressed about the perceived risks of an unclear distinction, and some respondents raised a specific concern that monitoring would become “on-going inspection”.

A few respondents provided particular examples of such concerns by making reference to:

- The proposed Explanatory Document suggesting that Monitors would “take instructions” from the Chief Inspector (paragraph 1-2). It was argued that it was difficult to see how the functions would be managed separately;
- The proposed Explanatory Document suggesting the opportunity to integrate scrutiny and monitoring (paragraph 3-18). It was argued that the Chief Inspector did not have a responsibility for scrutiny; and that the opportunity to integrate contrasted with the philosophy that inspection and monitoring should be separate, but related;
- The current draft Order containing reference to the need for Prison Monitors to maintain records about matters “inspected” by them;
- The proposed representation of Scottish interests on the National Preventative Mechanism being only by the Chief Inspector; and
- The envisaged development of “inspection and monitoring standards”.

Many respondents expressed a concern that the proposals did not reflect the “layered” approach recommended by OPCAT. A few respondents argued that others had raised these concerns previously.

The Scottish Government’s response:
The Scottish Government notes the views that have been expressed by some respondents who are concerned that the proposed arrangements do not make an appropriate distinction between the functions of inspection and monitoring. We have always been clear about the distinctions involved in these separate functions but accept that some of the wording used in the current draft Order may have led to certain ambiguity in this regard. As a result we propose to amend the current draft Order to better reflect the work that will be undertaken by the Chief Inspector, PMCs and IPMs. The current draft Order will also be amended to provide details of the role and functions of the proposed Prison Monitoring Advisory Group which will ensure the independence and representativeness of monitoring. We also believe that, together, in-depth inspection and frequent lay monitoring will provide the layered approach called for by OPCAT.

Further concerns raised at consultation:
A large number of respondents made specific suggestions about how to address the issues or concerns about the distinction between inspection and monitoring. These included separation of the structures for inspection and monitoring and promotion of the
independence of the two functions. Further suggestions involved greater clarity about the relationship between the two functions and how they are considered to be preserved under the new system, and replacing the requirement for Prison Monitors to comply with instructions from the Chief Inspector with a requirement for them to co-operate instead.

Several respondents argued specifically that the role of the Chief Inspector should be rigorously detailed in the legislation, so that it fulfilled a support and administrative role in relation to monitoring, but was not permitted to influence the work and priorities of independent monitors or to “instruct” them. A few stated that their concerns would then be reduced, or that there would be potential for an “amicable” or “workable” solution. A few stated that this should be underpinned by the protocol recommended in the Coyle report. One respondent suggested that, should responsibility for independent monitoring become part of the duties of the Chief Inspector, there should be a single paid member of staff responsible for managing prison monitoring, preferably collaborating with, rather than reporting to the Chief Inspector.

The Scottish Government’s response:
The Scottish Government believes that the current system of independent monitoring via Prison Visiting Committees is not as efficient or co-ordinated as it could be. There is no national approach to monitoring and the service is inconsistent throughout the country. The current structure does not allow for assessing the performance of Prison Visiting Committees or individual Visiting Committee members. Due to the lack of formal structure and accountability, it is not possible to ensure that all aspects of prisons are monitored on a regular basis. We believe that this must change and that the introduction of an administrative role dealing with the appointment, training and oversight of prison monitors is essential to addressing this.

As mentioned previously, the Scottish Government accepts that more clarity is needed in relation to certain aspects of the legislation, including the role of the Chief Inspector. As such, the current draft Order will be updated to leave the core function of prison monitoring with IPMs, the function of overseeing IPMs with PMCs and the function of evaluating PMCs with the Chief Inspector. This will highlight independent monitoring as a function which is quite distinct from inspection and will place independent monitoring on an equal footing with inspection in terms of importance.

3.1.10. The impact of the proposals on the independence of Monitors and monitoring

Concerns raised at consultation:
A further issue which was raised as a concern by a large number of respondents was the perceived negative impact of the proposed changes on the independence of prison monitoring.

Many respondents expressed concerns that the proposals would lead to a general loss of independence. While some expressed general concerns, some provided further details.

For example, arguments included:

- Overall, the proposed hierarchical structure and the erosion of the distinction between the functions of inspection and monitoring could compromise independence;
The independence of the Prison Monitors and Lay Monitors may be compromised by the requirement that Prison Monitors take instruction (and be paid by) the Chief Inspector and Lay Monitors must comply with instructions from Prison Monitors;

- The capacity of one service to criticise another which was managed by the same individual would be questionable, raising the issue of what would happen if a prison which had had a very recent positive inspection was monitored and found to have issues;
- Prisoners did not see the Chief Inspector as totally independent, and the proposals would erode their confidence in raising complaints;
- Prison staff may have less trust in the Prison Monitors and Lay Monitors, given the role of the Chief Inspector in inspecting their establishments, and this may threaten close working relationships;
- Prison Monitors may be seen as the “eyes and ears” of the Inspectorate; and
- Public confidence in the system may be damaged, undermining the process of independent monitoring on behalf of the public and the Government.

Some respondents raised specific concerns that the proposed title of the Lay Monitors did not make reference to their being independent, or stated that the word “independent” was not included in the current draft Order. A few respondents also made reference to others’ concerns about the potential for Prison Monitors and Lay Monitors to be influenced by the Chief Inspector.

The Scottish Government’s response:
The Scottish Government notes the concerns expressed by some respondents that the new arrangements might adversely affect the trust that prisoners have for monitors or that public confidence might be damaged but can find no evidence to support this nor is it a view that we share. We aim to alleviate any concerns by providing a clear separation of duties between the Chief Inspector on one hand and PMCs and IPMs on the other. These concerns are also being addressed by creating a clearer distinction between the administrative role of PMCs and the operational role of IPMs. This is further described at Section 3.2.1

Further concerns raised at consultation:
As noted, many respondents stressed the general importance of independent monitoring. The suggestions made at Section 3.1.9 also link to this issue, although several respondents made additional suggestions about the way forward in relation to concerns about independence. These included concerns regarding the overall maintenance of independence and objectivity, the protection of independence in legislation, along with “future proofing” and the protection of prisoner confidence.

Further suggestions were made in relation to the issue of independence, however these related to particular aspects of the nature and roles of Monitors, and are presented in detail in Section 3.2.4 to avoid repetition.

The Scottish Government’s response:
The Scottish Government intends that the independence and objectivity of the new system will be maintained by the Chief Inspector, PMCs and IPMs and assisted by the Prison Monitoring Advisory Group.

With regards to protecting independence in legislation and ‘future-proofing’ the system, the current draft Order will be amended to include more information on the Prison Monitoring Advisory Group. This is further described at Section 3.3.3. Prisoner
confidence in the new system will be achieved, and thereafter protected, through comprehensive communication with prisoners, both prior to the implementation of the new service and on an ongoing basis. This process of communication will be planned throughout the workstreams of the Implementation Group. SPS, in its response to the Consultation, noted the importance of effective communications to prisoners and staff as the new system is implemented.

3.1.11. Costs and use of resources

Concerns raised at consultation:
Many respondents raised issues or concerns or made specific suggestions about costs or the use of resources.

The most common issue raised, or concern expressed, in terms of costs or use of resources related to the proposals being more expensive than the current system. Some respondents, for example, provided details of the estimated cost or the current annual cost of VCs, while some made specific reference to the new system appearing to cost around four times that of the present system (while relying on unpaid volunteers to carry out most of the work). Links were also made between the increased costs and the proposal to have paid Monitors, as well as the expansion of the role of the Chief Inspector.

A few respondents stated that it was unclear whether the estimated costs would include other expenses such as travel and overnight accommodation, office accommodation, support staff, training and administration costs. One respondent stated that there was no evidence of any funding being laid aside for recruitment, training, support or evaluation. Another respondent argued that the financial assumptions underpinning the proposals were unclear, including the level of payment being proposed for Prison Monitors.

A few respondents made specific reference to a perceived lack of value for money. One, for example, stated that the majority of expenditure would be directed to salaries and expenses of a small number of possibly part-time staff. One of the individual respondents specifically questioned the concept of improved economy in paragraph 3-30 of the proposed Explanatory document.

The Scottish Government’s response:
Although the new system will be more expensive, it will better safeguard the rights of prisoners thus providing better value for money than the existing regime of independent monitoring. The new regime will cost more but it will produce better results and, accordingly, will prove more economical overall. The system of prison monitoring will ensure that areas of concern within prisons are identified, and can be addressed, at an earlier stage, thereby protecting the rights of prisoners and reducing the likelihood of litigation. The Scottish Ministers therefore consider that the provisions in the Order will make the exercise of the function of prison monitoring more economical.

The updated draft Order will ensure that PMCs will provide essential oversight, coordination and support to IPMs. We appreciate that some stakeholders have expressed opposition to the creation of the role of Prison Monitors, however we believe that the change in the title of the role to PMC and providing further clarity on the extent of the role of the PMC will address these concerns and that they will prove to be an invaluable part
of the monitoring service. Further information on the roles of the PMCs and IPMs are included at **Section 3.2.1**

### 3.1.12. Perceived drawbacks arising from new structure

**Concerns raised at consultation:**
Many respondents raised issues or concerns about the impact of the proposals on the overall nature and effectiveness of the approach.

Several respondents argued that the proposed structure would be complex and hierarchical (e.g. with three layers) or stated that it would be “top-down” or involve a “command and control” system. A few respondents stated that the structure would involve “micro-management” by the Chief Inspector. One of the individual respondents argued that effective monitoring would depend on the efforts of a large number of Lay Monitors, making the proposed structure inappropriate. A few respondents stated that the language used was also negative and hierarchical. It was further suggested that the complexity of the structure could, in turn, lead to confusion.

Additional issues or concerns raised about the nature and effectiveness of the approach included views that there would be:

- Less robust arrangements, with less rigorous scrutiny and a less exacting approach (e.g. in the absence of some existing safeguarding requirements in the current draft Order);
- Less statutory protection for the system or the role of Lay Monitors;
- A potential negative impact on the simplicity and speed of complaints handling;
- A lack of clarity of monitoring and reporting arrangements; and
- A lack of links between Lay Monitors and local communities, and the end of direct engagement by local government with prisons.

A few respondents argued that the structure would not lead to improved efficiency, or that it would reduce effectiveness (e.g. due to the complexity of the system; the lack of specification or clarity of roles; and the increased area of responsibility of the Chief Inspector). A small number of respondents made specific reference to paragraph 1-6 of the proposed Explanatory Document (which stated that the overarching purpose of the current draft Order was to improve efficiency of public functions in inspection and monitoring prisons in Scotland) and disagreed that this would be the outcome. One respondent stated that there was no proof for the assertion at paragraph 3-19 of the proposed Explanatory Document about the Chief Inspector’s responsibility providing the best potential for “impact”.

**The Scottish Government’s response:**
As indicated previously, the Scottish Government believes that the proposed system will improve the consistency and quality of monitoring prisons and is encouraged that the Justice Committee agreed that there would be benefits in the two functions working together within the same organisation.

The Scottish Government is confident that having the Chief Inspector oversee prison monitoring does provide the best potential for impact and will ensure high standards of independent prison monitoring in Scotland’s prisons. The Chief Inspector 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, the Chief Inspector has every opportunity to bring to light any instance where standards fall short of what should be expected in Scottish prisons. A further advantage to bringing independent prison monitoring under the auspices of the Chief Inspector is that it introduces oversight and leadership from an individual already working in this field. The addition of monitoring to the responsibilities of the Chief Inspector is a natural move, which complements his core business, and plays to existing strengths.

3.2 Monitors

3.2.1. Two Types of Monitors

Concerns raised at consultation:
Some concern was raised in the responses to the creation of two types of independent monitors: Prison Monitors, who would be salaried, and Lay Monitors, who would be voluntary. Concern on this issue ranged from the perception that having two separate roles may have an impact on the service to a view that such a hierarchical structure may increase the complexity and bureaucracy of the service. There was also a view that having monitors with different powers could lead to confusion amongst monitors, prisoners and prison staff.

Further concern was raised that having two tiers of monitors would impact on prisoners’ trust and confidence in the system and that Prison Monitors would be viewed as ‘professionals’ while Lay Monitors would be seen as ‘amateurs’. Some respondents were also concerned that the new system would be more expensive, given that Prison Monitors would be receiving a salary and wondered why this system was necessary given that a different model had been adopted for Independent Custody Visitors, who are responsible for visiting those detained in police custody.

The Scottish Government’s response:
One of the main reasons behind the introduction of the new system of independent prison monitoring was that the current system is not as efficient or co-ordinated as it could be. As discussed previously, there is currently no national approach to monitoring and the service which is provided throughout the country is inconsistent. The current structure also does not allow for assessing the performance of Prison Visiting Committees or individual Prison Visiting Committee members. Due to the lack of formal structure and accountability currently in place, it is not possible to ensure, or to demonstrate, that all aspects of prisons are monitored on a regular basis.

The creation of the role of PMC in the updated draft Order will ensure that essential oversight, co-ordination and support is provided to IPMs. The duties of the PMC will include: co-ordinating and supporting IPMs to ensure that all aspects of prisons are monitored effectively; ensuring a consistent approach to monitoring is taken throughout Scotland; ensuring that a professional monitoring service is delivered and that standards are maintained through evaluation of performance; and ensuring the provision of adequate administrative support for IPMs. It is crucial that these functions are carried out effectively and it is felt that it would be unreasonable to expect a volunteer to undertake such a heavy and time-consuming workload. It is therefore not accepted that a single tier
of IPMs would be sufficient to carry out the duties listed above as well as ensuring that the independent monitoring functions are performed to a high standard.

There is no evidence to suggest that having two tiers of monitors would impact on prisoners’ trust and confidence in the system, and in fact, it is unlikely that a prisoner seeking assistance from an IPM would be aware of whether that particular person was receiving a salary or was a volunteer. However, the Scottish Government notes that further distinction between the administrative and operational aspects of independent prison monitoring would be helpful. Therefore, the current draft Order will be amended to include more detail on the separate aspects of both roles. In particular, the role of IPMs will be expanded in the updated draft Order to highlight the exact functions that they will perform.

The system which has been adopted for Independent Custody Visitors is similar to that proposed for independent prison monitoring. While independent monitoring will be under the auspices of the Chief Inspector, independent custody visiting is under the auspices of the Scottish Police Authority. The independent custody visiting service also has a layer of paid regional co-ordinators who are responsible for supporting and co-ordinating the work of the Independent Custody Visitors, similar to the model proposed for independent prison monitoring.

3.2.2. Reporting and communication issues

Concerns raised at consultation:
Some respondents to the consultation raised concern over the reporting and communication aspects of the proposed new system. One specific area of concern included the lack of direct access to Scottish Ministers by monitors, which respondents noted was a change from the current system whereby if any matter of concern which had been brought to the attention of the prison governor had not been remedied within a reasonable period, Scottish Ministers could be notified.

Concerns were also raised that there was no requirement for monitors to submit an annual report to Scottish Ministers and for it to be published thereafter. There was also some concern that, unlike the current system, the current draft Order has no commitment for monitors to meet on a regular basis to hear reports by the prison governor and to discuss relevant issues relating to monitoring. Further concern was expressed about there being no provision for the setting up of a committee for each establishment or any requirement for such a committee to meet throughout the year.

The Scottish Government’s response:
The Scottish Government considers that it is not necessary to replicate in the new system the function whereby IPMs would have direct access to Scottish Ministers. This function was very rarely used by Prison Visiting Committees, and in the new system, PMCs will have the ability to progress such concerns to the Chief Inspector who will be in a position to address concerns. However, it is accepted that there may be times when it is also necessary for IPMs to progress matters of concern which have not been remedied to their satisfaction. The current draft Order will therefore be amended to provide that IPMs can inform the PMC assigned to the establishment in which the concern was raised, along with the Prison Governor, if they feel that such a matter has not been remedied. The PMC can thereafter escalate the issue to the Chief Inspector if they feel it is appropriate.
With regards to IPMs providing an annual report to Scottish Ministers, the Scottish Government feels that is unnecessary. It is intended that IPMs will maintain a record of the date and time of each visit to the prison and the matters considered during the visit, which can be accessed by the PMC. PMCs will then report to the Chief Inspector on an annual basis on each of the prisons to which they are assigned, in addition to reporting on any other matter that the Chief Inspector may request. Currently, the reports issued by Prison Visiting Committees vary greatly in terms of depth and quality. By empowering the Chief Inspector to regulate the form and manner of the reports made by PMCs, we will ensure that reports will be prepared to a high standard and in a more uniform manner.

Furthermore, the Scottish Government strongly believes that it is crucial that inspection and monitoring are viewed equally, and therefore in addition to the annual report on inspection written by the Chief Inspector, there should also be an annual report on monitoring. This report could be considered by the Prison Monitoring Advisory Group, (further details on which can be found at Section 3.3.3) before being submitted to Scottish Ministers and laid before Parliament. The current draft Order will be amended accordingly. In addition, the Chief Inspector will also be given the power to report to the Scottish Ministers at his or her discretion on any matter relating to prisons or prisoners which he or she considers appropriate. This will allow the Chief Inspector to report to Scottish Ministers on any particular issue raised by PMCs or IPMs relating to the monitoring of prisons.

The Scottish Government considers that it is not necessary to include a provision within the legislation for IPMs to meet on a regular basis to hear reports by the prison governor. However, it is accepted that access to the governor would be useful for both PMCs and IPMs and as such further information on this will be included in the guidance documentation which is being taken forward by the Implementation Group. With regards to the setting up of a committee for each establishment, this issue was previously addressed when the Cabinet Secretary remitted Professor Coyle’s 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” to the Implementation Group. As such, the Group will consider this issue in due course but the updated draft Order will place a duty on PMCs to arrange a meeting between the IPMs assigned to the particular prison twice a year.

Complaints reporting is covered in detail at Section 3.2.8

3.2.3. Recruitment and appointment

Concerns raised at consultation:
A number of respondents presented concerns around the recruitment and appointment process, with particular emphasis on the potential difficulty in recruiting suitable Lay Monitors and the possible loss of existing volunteers when the new service is introduced. Concerns were raised that Lay Monitors will have a lower status than Prison Monitors, or will play a subordinate role.

The Scottish Government’s response:
The Scottish Government notes the concerns raised by respondents, however, we believe that these volunteer positions will be attractive and will appeal to high quality candidates. It is not the intention, nor is it felt that it will be the perception, that IPMs will
have a lower status than PMCs, or play a subordinate role. The PMCs will perform a role which focusses on the support and co-ordination of the IPMs, however it is necessary that there is an element of direction provided to IPMs. Currently, there is no oversight of Visiting Committee members and so the quality of monitoring is extremely variable throughout the country. The Association of Visiting Committees is not a statutory body and has no power to ensure Visiting Committee members follow any instructions given. This has led to a system where the Visiting Committees of each establishment operate independently and there is no certainty that every area or aspect of a prison is being monitored regularly. The new service, as will be provided for in the updated draft Order, with its structured arrangement of PMCs co-ordinating and supporting IPMs, will therefore assist in ensuring that all aspects and areas of prisons are effectively monitored.

The Scottish Government believes that the recruitment and appointment of the PMCs and IPMs is vitally important to the success of the new service. As such, work on this is being taken forward by a dedicated workstream of the Implementation Group. One of the recommendations made by Professor Coyle in his Review, and which was raised during the course of the consultation, was that “monitors should be appointed under an open public appointments system for specified periods”. The Cabinet Secretary remitted this recommendation to the Implementation Group and it will therefore be addressed by the Group.

However, the intention is for the updated draft Order to provide that PMCs will be appointed by the Scottish Ministers in consultation with the Chief Inspector and IPMs will be appointed by PMCs in such numbers as the Chief Inspector considers appropriate. The appointment processes for PMCs and IPMs are being considered by the Implementation Group and will be addressed by the Advisory Group as part of their functions. If a more formal appointment process for PMCs is considered appropriate the updated draft Order will create a power for Ministers to set out that process in subordinate legislation.

Much of the detail in relation to the appointment process, which some respondents felt was an omission from the current draft Order, was omitted intentionally. As noted previously, there are many facets of the new system in which it is more appropriate to provide detail in supporting documentation rather than on the face of the legislation. The detail on a number of aspects of the appointment process will be covered in the guidance which, as previously mentioned, is being taken forward by the Implementation Group. The recruitment process will also ensure that those who are recruited for IPM positions come from a variety of backgrounds, with a range of life experience and that there is the ability to work flexibly (i.e. at different times of the day or night, weekdays and weekends).

### 3.2.4. Independence

Concerns raised at consultation:

Some concerns surrounding independence were previously addressed under Section 3.1.10, which focussed mainly on independence in terms of the proposed structure, however, the issue was also raised by respondents in terms of the independence of monitors and the monitoring process. Some respondents felt that Prison Monitors would be viewed as civil servants and that the independence of both types of monitors would be compromised by having to take instructions from the Chief Inspector or by virtue of being
paid. Some were also specifically concerned with the independence of Lay Monitors being called into question by virtue of having to comply with instructions issued by Prison Monitors.

There was also some concern expressed that the need for Lay Monitors to comply with instructions of Prison Monitors would not be OPCAT complaint. In addition, some respondents asserted that there would be a perceived loss of confidence in the system, or in the monitors themselves, if prisoners were to be aware that some of the monitors were paid.

The Scottish Government’s response:
As discussed at Section 3.1.7, the Scottish Government is confident that the proposed new system is OPCAT compliant. The updated draft Order will provide that PMCs will be appointed by the Scottish Ministers in consultation with the Chief Inspector, who in turn is appointed by Royal Warrant and retains clear independence from direction by Scottish Ministers or civil servants. There is no evidence to support the assertion that the independence of PMCs will be compromised by being paid or that there will be a loss of confidence in the system or PMCs themselves because of this.

There was also a misapprehension over what ‘instruction’ the Lay Monitors were likely to receive from the Prison Monitors, with some Visiting Committee members believing that Lay Monitors will be utilised indiscriminately by Prison Monitors. The intention in the updated draft Order is to ensure that IPMs can be given a direction by PMCs to look into a particular issue which has been highlighted to the PMC by the Chief Inspector or which the PMC has otherwise become aware of. As mentioned previously, it is not currently possible to ascertain which areas or aspects of the prison estate are not monitored regularly, and having this oversight will enable PMCs to address specific issues within the prisons to which they are assigned.

The Scottish Government accepts that some of the terminology used in the current draft Order could be construed as being ambiguous and could provide the wrong impression of what Lay Monitors could realistically expect from Prison Monitors. Some of the terminology used in the current draft Order will be updated including the titles of these roles and, coupled with the additional detail being added on the administrative and operational roles, should provide a more thorough picture of the interface between the PMCs and IPMs.

3.2.5. Number and composition of monitors

Concerns raised at consultation:
Concerns were also expressed in relation to a perceived lack of detail on the number of monitors that will be necessary in the new system, as well as the overall composition of the monitor teams.

The Scottish Government’s response:
The current draft Order states that “the Chief Inspector must ensure that at least three prison monitors are appointed at any given time”. This will be retained in the updated draft Order. The Implementation Group are considering models which will ensure that all parts of the country will have sufficient coverage by PMCs and IPMs. The current draft Order does not specify the amount of Lay Monitors that each geographical area, or each prison, will require and this will remain the position in relation to IPMs in the updated draft.
Order. This is because each of the establishments are of different sizes, prisoner populations and demographics, and so the number of IPMs is likely to vary significantly across the prison estate. However, the number of IPMs is an aspect which is vitally important to the success of the new service. As such, the Implementation Group has been working to identify the number of IPMs that will be required across the country.

The recruitment and appointment process for IPMs will be informed by a dedicated workstream of the Implementation Group. In recruiting IPMs, the Chief Inspector and the PMCs will ensure that each geographical area and establishment has a sufficient mix of expertise, gender balance and ethnic representation where possible.

3.2.6. Training and support

Concerns raised at consultation:
Some respondents raised concerns over a perceived lack of information about the training and administrative support that would be available to the Monitors in the new system.

The Scottish Government’s response:
While provisions for training are not contained within the current draft Order, the Scottish Government recognises that this is an integral feature of the new system and we will therefore ensure that it features heavily in the guidance being drawn up by the Implementation Group which will be provided to all PMCs and IPMs. Training will be co-ordinated by the PMCs and delivered by a range of providers. Such provision will cover both introductory and ongoing specialist training.

With regards to administrative support this will be considered by the Implementation Group as previously outlined in the Cabinet Secretary’s Response to the Review by Professor Coyle. In his Review, Professor Coyle recommended that “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.” This recommendation was remitted to the Implementation Group for consideration, however it is intended that this role could be performed by the PMC as part of their duties.

3.2.7. Frequency of visits

Concerns raised at consultation:
Concern was raised in the responses regarding the frequency of visits to prisons by monitors, with respondents giving particular emphasis to the lack of specific detail in the current draft Order. Respondents noted that the current draft Order states that Prison Monitors should visit the prison once a month but does not specify the frequency with which Lay Monitors should visit the prison.

The Scottish Government’s response:
As with the issue regarding the number of IPMs that will be necessary for each establishment, it is considered that a minimum value for the frequency of visits made by IPMs should not be included in the updated draft Order given that every establishment is different and therefore the frequency of visits to each prison may vary. However, the Scottish Government can provide assurance that the frequency of visits made by IPMs
will not be less than takes place under the current system. The frequency of visits, although not contained on the face of the Order, is intended to be included in the guidance document.

3.2.8. Prisoner complaints

Concerns raised at consultation:
The complaints process was an aspect of the new system which also generated some concern from respondents. The main areas of concern in this regard related to the lack of clarity surrounding the role of monitors in the complaints process.

At present, the current SPS complaints process involves the consideration of a prisoner’s complaint by a member of the prison management team followed by a referral to the Internal Complaints Committee if the prisoner feels the matter is unresolved. In certain cases involving confidential matters, the complaint can also be remitted directly to the Governor for resolution. Once this internal process has been exhausted, the complaint can be referred to the Scottish Public Services Ombudsman for review of the process (not the merits of the complaint).

The current draft Order mentions that Lay Monitors must “investigate any complaint which a prisoner makes to them” and “report the outcome of such an investigation to the governor and the Prison Monitor assigned to the prison”. There was concern from some respondents around how this process would complement the internal SPS complaints process and the extent to which monitors would be able to assist prisoners in the complaints process. This is exacerbated by the confusion which exists surrounding the terminology of ‘complaints’ and ‘requests’. In terms of the current draft Order, Lay Monitors have a duty to investigate prisoners’ complaints, which could be seen as a duplication of the established SPS procedure.

The Scottish Government’s response:
The Scottish Government accepts that in order to avoid unnecessary confusion and complexity, the current draft Order should be amended to ensure that the IPMs’ interaction with prisoner complaints procedures are clearer.

It is envisaged that, in the new system, IPMs will primarily seek to support prisoners to resolve complaints through the complaints process provided. Where a prisoner requests assistance in making a complaint, the IPMs may provide such assistance as they consider appropriate. This may include sign-posting the prisoner to the relevant complaints paperwork, assisting the prisoner with the completion of paperwork, identifying and resolving any issue which may prevent the prisoner from utilising the complaints process, checking the progress of any complaint with prison staff and notifying the Governor of any matter relating to the condition of the prison or treatment of any prisoner or group of prisoners. IPMs will have a general power to monitor prison conditions and the treatment of prisoners which will enable them to consider matters raised with them by individual prisoners, where appropriate.

The interaction of the IPMs with the available complaints process will be detailed in Guidance. This will ensure that the role of the Independent Prison Monitors complements the existing complaints process and ensures that the system is straightforward and easy for the prisoner to use.
3.2.9. Allocation of monitors to prisons

Concerns raised at consultation:
Some respondents also raised concerns regarding the allocation of monitors to prisons. The current draft Order states that both Prison Monitors and Lay Monitors may be assigned by the Chief Inspector to “prisons within a particular area of Scotland; particular prisons within Scotland or all prisons in Scotland”. Respondents felt that, given current Visiting Committee members are recruited by the local authorities where the prisons are located, there was potential for a loss of local knowledge amongst Lay Monitors in the new system. Respondents felt that there was value in building up particular knowledge of an establishment over a period of time and that as prisons become more community-facing, a local connection with the community was even more important.

The Scottish Government’s response:
One of the main reasons for including provisions in the current draft Order to allow Lay Monitors to be assigned to any prison in Scotland rather than a specific prison was that, in the event of illness or staff shortage, a Lay Monitor could be reassigned to assist another prison within their geographical area, or in another geographical area if necessary. The Scottish Government believes that this would provide a greater flexibility than exists at the moment, and would enable Prison Monitors to reassign Lay Monitors in order to provide cover should it be necessary. This position will continue in the updated draft Order and PMCs will be given the role of assigning IPMs to the relevant prisons.

While respondents noted that there is merit in monitors having in-depth knowledge of particular establishments and being recognisable there to staff and prisoners, the Scottish Government believes there is also potential in monitors working across prisons to ensure a greater consistency in the level of service provided. At present there is no uniformity between prisons in terms of the service provided, and this might be addressed if staff were able to monitor different prisons occasionally. However, the policy intention was not to assign a Lay Monitor who, for example, is resident in the south of the country to an establishment in the north of the country or to have Lay Monitors regularly covering large, unmanageable areas.

The current draft Order will be updated to reflect that IPMs will be assigned to a specific prison, however, the PMC will have the flexibility to temporarily assign an IPM to any prison within the specific geographical area the PMC has responsibility for, where circumstances make this necessary.

3.2.10. General function and overall role

Concerns raised at consultation:
In relation to the general function and overall role of monitors, a number of concerns were raised in the responses to the consultation. One such concern was that a number of the requirements for independent monitoring by the current Prison Visiting Committees, which are outlined in existing legislation, are not covered by the draft Order. Some respondents also raised concern with HMIPS being responsible for the creation of guidance for the new system, feeling that it represented a serious reduction of the rights of the prisoner and that it failed to ensure that roles and responsibilities were future-
proofed. Concern was also raised over the lack of detail surrounding the role of Lay Monitors, other than to assist and comply with instructions.

Some respondents also felt that the wording of the draft Order and associated papers was confusing, with ‘inspected’ being used in place of ‘monitored’ on one occasion. This contributed to the interpretation of some respondents that the inspection and monitoring functions were in danger of being merged, or that monitoring could in time become on-going inspection with Lay Monitors being used to collect statistics for inspections. There was also some concern that there was no intention under the new system for Prison Monitors and Lay Monitors to become members of the UK National Preventive Mechanism.

The Scottish Government’s response:
As mentioned previously, the Scottish Government does not believe that it is necessary or appropriate to include all specific details relating to the new service in the draft Order. This level of detail is more appropriately covered in supporting documentation, and therefore will be included in guidance. There will be no reduction in rights for prisoners under the new system.

The Scottish Government accepts that some of the wording in the current draft Order may have caused confusion regarding the functions of Lay Monitors. The current draft Order will be updated to provide clarity as well as further detail. The Scottish Government does not believe that inspection and monitoring functions are in danger of being merged under the new system, or that monitoring could become on-going inspection. As outlined at Section 3.1.9 the Scottish Government is clear about the distinction of inspection and monitoring and is confident that the Chief Inspector will ensure the separation of these functions. However, it is accepted that some of the terminology used in the current draft Order could be revised to make the distinction between inspection and monitoring clearer.

The Scottish Government does not believe it is necessary for PMCs and IPMs to become members of the UK NPM. The Chief Inspector is currently a member and will continue in this regard when monitoring is brought under his remit. With the regular two-way reporting that will exist between the Chief Inspector and PMCs, there is no need for the PMCs (or IPMs) to be members in their own right. The Chief Inspector is capable of representing both inspection and monitoring without any conflict of interest.

3.2.11. Other issues

Concerns raised at consultation:
One suggestion made was that Prison Monitors and Lay Monitors be renamed. It was felt that there was potential for confusion with two types of monitors performing similar functions and both referred to as monitors. There was also concern over the financial assumptions which underpin the new proposals, including how the Prison Monitors would be paid, as well as the payment of other expenses, e.g. loss of earnings, accommodation costs and childcare.

The Scottish Government’s response:
The Scottish Government accepts that the titles of “Prison Monitor” and “Lay Monitor” in the current draft Order could potentially lead to confusion regarding the respective duties
of those roles. The current draft Order will therefore be amended so that Prison Monitors are called ‘Prison Monitoring Co-ordinators’ and Lay Monitors ‘Independent Prison Monitors’. The Scottish Government believes that this more clearly represents the functions of the roles.

The Scottish Ministers will be responsible for paying the PMCs their salary as well as approving any expenses claims incurred during the execution of their duties. In relation to the expenses claims of the Lay Monitors, these will be administered by the PMCs and will generally cover travel and subsistence costs. Payment of these expenses will also be made by the Scottish Ministers. Further details of remuneration for the Monitors will be included in the Guidance document.

3.3 Other Aspects of the draft Order

3.3.1. Overall views of draft Order

Concerns raised at consultation:
Some respondents mentioned that the proposals for the new system of independent monitoring did not appear to reflect fully the recommendations made by Professor Coyle in his Review and that, if these recommendations had been implemented in their entirety, it would have provided respondents with assurance of a high standard of monitoring.

The Scottish Government’s response:
In his Response to Professor Coyle’s Review, the Cabinet Secretary accepted 17 of the 21 recommendations made and remitted the final four to the Implementation Group. However, the recommendations made by Professor Coyle were used as a helpful baseline from which the new model could be created. Professor Coyle himself noted “Scottish Ministers should make arrangements for the oversight and support of the independent prison monitors. This review provides various options as to how this might be provided”. As such, it should be noted that there was no specific model prescribed by Professor Coyle but various options, one of which was to bring monitoring under the auspices of the Chief Inspector.

The Scottish Government believes that the model which has been proposed will provide a high standard of monitoring and will be fully compliant with OPCAT, unlike the current system.

3.3.2. Amendment of the system

Concerns raised at consultation:
Concerns were raised by respondents that, given that the Guidance will be created by HMIPS, there was potential for any amendment to the proposed new system to be made without ratification by Parliament or a public consultation. One respondent also felt that the independence of the new structure would be undermined if the Scottish Government had the legal authority to alter the mandate, composition and/or powers of the new system at will.

The Scottish Government’s response:
As mentioned previously, the Scottish Government intends that the Guidance document will be prepared and issued informally by the Implementation Group. Once the order
comes into force and the Prison Monitoring Advisory Group is established, it will be in a position to consider the guidance and make recommendations to the Chief Inspector. The Chief Inspector will then be able to issue the guidance under the statutory duty which will be created in the updated draft Order.

The Advisory Group will have a continuing role in contributing to the preparation of guidance issued by the Chief Inspector and this will ensure that PMCs, IPMs and other stakeholders sitting on the Advisory Group can have their say in the formulation of the system of prison monitoring.

3.3.3. Advisory Group

Concerns raised at consultation:
Some respondents raised concern that the Advisory Group, which had been referenced in the Cabinet Secretary’s Response, had been omitted from the draft Order.

Some respondents also raised concerns that the Lay Monitors would have no direct access to the Advisory Group, although given that details of the Advisory Group were not contained in the draft Order, it is unclear how they came to this conclusion.

The Scottish Government’s response:
The Scottish Government has always intended that the Lay Monitors should have access to the Advisory Group. We had previously felt that it was not necessary to include details of such a body on the face of the legislation, however given the concerns raised by respondents, we accept that the establishment of a Prison Monitoring Advisory Group should be included in the updated draft Order.

The Advisory Group will be established by the Chief Inspector and will comprise of the Chief Inspector, each of the PMCs and at least 3 IPMs (likely operating on a rotational basis), as well as such other persons as the Chief Inspector considers appropriate. The Group will have responsibility for reviewing a number of aspects of the new system, including the effectiveness of prison monitoring in any prison or prisons, the guidance issued by the Chief Inspector, the training arrangements and may also consider the annual reports of the Chief Inspector and the PMCs.

3.3.4. Access issues

Concerns raised at consultation:
Some respondents also raised concern that the Order did not contain a duty for the prison Governor to provide a confidential setting for Monitors to hear and deal with requests, which they felt would be necessary for the execution of their duties. Concern was also raised regarding prison Governors having the discretion to withhold documents from Lay Monitors where they felt the security of the prison would be threatened. One respondent in particular felt that this would give Governors discretion to withhold documents without any right of review by either the Prison Monitor or Chief Inspector, as the Order states that Monitors will have access to all prison records other than personnel records and “any documents containing information, the disclosure of which would, in the opinion of the Governor, have implications for the security of the prison”. It was also raised that the proposed amendment to Section 120(3)(b) of the Prison Rules 2011 which removed reference to monitors dealing with ‘requests’ should be remedied. It was
argued that this would mean that Governors would no longer be required to arrange for any requests to be passed on to a monitoring body.

The Scottish Government's response:
The Scottish Government accepts that the provision of facilities, including a confidential setting to hear and deal with prisoners' requests, would be beneficial to the Monitors. This should also extend to access to computer systems. As such, the draft Order will be updated to include a provision for the Governor to ensure that Monitors are provided with such assistance as is necessary to allow them to exercise their functions. As the Chief Inspector, PMCs and IPMs will have a power to speak to prisoners and other persons at the prison in private, the Governor must assist them in the exercise of this function. This would include providing Monitors with a private meeting area in which they can speak with prisoners, prison staff or other persons working within the prison.

It is also noted that, in the current system, the Visiting Committees are granted access to prison records with the exception of "personnel records, prisoners' records and security manuals or other papers which have implications for security". The proposed new system has the Governor identified as making the decision on what should be withheld as, previously, there could be uncertainty over who judged papers as having security implications. It is therefore felt that this change to the system is important and necessary. The updated draft Order will ensure that, should the IPMs be refused access to certain records and disagree with the reasons provided, they will have the power to refer the matter to the PMC who in turn can raise it with the Chief Inspector, who could refer the matter to Scottish Ministers, if necessary.

As discussed at Section 3.2.8, it is accepted that the current draft Order should be updated to ensure clarity over the complaints and requests process. It is not intended that IPMs would investigate complaints.

3.3.5. Rights, protection, scrutiny & accountability

Concerns raised at consultation:
Some respondents felt that there was a lack of reference to OPCAT or other Human Rights standards within the draft Order, which they felt were necessary to establish an effective system to prevent human rights violations in prison. Some elements that respondents felt were necessary included: further detail on roles and responsibilities of monitors, duration of office and appointment for members, composition of the new system (i.e. gender balance and ethnic representation) and remuneration.

It was also raised that the Order does not make provision for monitors to receive such privileges and immunities that some respondents felt were necessary for the independent exercise of monitor functions, such as immunity from personal arrest or detention, seizure or surveillance of papers and documents, non-interference with communications, and protection from legal action in respect of words or acts carried out in the course of the performance of their duties. Some respondents wished to know what mechanisms would be put in place to handle complaints from people who were unhappy with the way that monitors’ duties were carried out.

Concern was also raised regarding a perceived lack of open and transparent reporting as some respondents believed that the opportunity for Visiting Committees to submit an
annual report, available to the public, would be replaced with a short section in the HMCIPS annual inspection report and would be predicated on the ad-hoc reporting of salaried monitors.

The Scottish Government’s response:
The Scottish Government accepts that there was a lack of reference to OPCAT contained within the draft Order, although that in no way affected the compliance with the Scottish Government’s responsibilities under OPCAT. As mentioned at Section 3.1.7, we are assured that the new system, with in-depth inspection complemented by frequent lay monitoring, will be OPCAT compliant. Furthermore, the revised Order will include a section explaining that the provisions in relation to the independent monitoring of prisons are in pursuance of the objective of OPCAT.

The Scottish Government accepts that further detail should be included in the Order in relation to the administrative and operational aspects of prison monitoring. This is further detailed at Section 3.2.1. However, as described previously, there are many facets of the new system which are not necessary to include on the face of legislation. We believe that the most appropriate avenue for addressing these elements is within guidance. As such, duration of office, the appointment process for members, the composition of the new system and the process of remuneration will all be covered in the Guidance document, which will be kept under review by the Prison Monitoring Advisory Group.

In relation to complaints against Monitors, the current draft Order makes no provision for a formal complaints process to enable such complaints to be made and no such provision is intended for the updated draft Order. Prisoners could raise concerns with any IPM or with the Governor who could pass the matter on to the relevant PMC. PMCs are tasked with evaluating the performance of IPMs and would therefore require to consider any issues brought to their attention in connection with the behaviour of an IPM. The Scottish Ministers consider that an informal process whereby prisoners draw matters to the attention of prison staff for onward referral to the PMC would be sufficient for this purpose.

With regard to the reporting system for monitoring, the view that monitoring would not have an annual report may have arisen through speculation based on the lack of detail contained within the current draft Order, however the intention was always for a transparent reporting system. Therefore, as mentioned previously in Section 3.2.2, it is accepted that further detail on reporting should be included in the Order. The updated draft Order will provide that PMCs will be expected to provide regular reports, including an annual report on the prisons within their geographical area, to the Chief Inspector who will use this information to produce an annual report on monitoring which will be laid before Parliament.

3.3.6. Preconditions of reform & improving exercise of public functions

Concerns raised at consultation:
Concerns were raised by respondents that some of the preconditions laid out in Section 16 of the Public Services Reform (Scotland) Act 2010 had not been met. One such concern was that they felt that the pre-condition “the provision is proportionate to the policy objective” had not been met. Respondents felt that there was no need to replace the current system, which they felt was being justified by a need to comply with OPCAT, and that the relevant issues could have been rectified without the need for legislation.
Another element which respondents felt the preconditions had not been met on was “that the provision does not remove any necessary protection” arguing that, in their view, some necessary protection was being removed. This relates to the function whereby Visiting Committee members had a power to investigate complaints.

Some respondents were also concerned that the precondition ensuring that the “conferred functions [are] consistent with the general objects or purpose of a person whose functions have been abolished” had not been met given that they felt that not all of the functions of Visiting Committees are being replicated in the new system. Respondents also did not feel that the precondition regarding improving the exercise of public functions (in terms of efficiency, effectiveness and economy) had been met.

The Scottish Government’s response:
While compliance with OPCAT was one of the main reasons for replacing the current system, it was not the only one. As stated previously, the current system has a number of drawbacks including how it is structured, the inconsistency of service provided across the prison estate, the range in quality of reports and the lack of representativeness of Scottish communities amongst Visiting Committee members. With abortive attempts to change the system in previous years, the Scottish Government strongly feels that the time is right for the system to be updated and this requires robust legislation.

While, technically, Visiting Committee members currently have a power to ‘investigate’ complaints, in reality this function has been discharged through VC members assisting prisoners with, and supporting them through, the SPS complaints process.

The Scottish Government accepts that the assistance which IPMs can provide to prisoners who are undertaking the formal SPS complaints process is necessary and vital. Therefore the current draft Order will be updated to give IPMs an enhanced role in supporting prisoners through the prison complaints process. As stated in the Explanatory Document which accompanied the current draft Order, all of the functions of the Visiting Committees are being replicated, although not all functions are being included in legislation with many facets of the new system being included in guidance as described throughout this document. IPMs will have a general power to monitor prison conditions and the treatment of prisoners which will allow them to consider any issues raised with them by a prisoner. In addition IPMs will have a greater role in assisting prisoners with, and supporting them through, the established SPS complaints process. Accordingly the functions of Visiting Committees are being replicated by operation of the Order.

As previously mentioned, the current system is not as efficient as it could be given that there is no national approach to monitoring or any facility for assessing the performance of Visiting Committees or their individual members. In addition, the current system is not as effective as it could be. It does not comply with OPCAT due to the lack of separation of functions between SPS and Visiting Committees. By bringing independent monitoring under the auspices of the Chief Inspector, who is appointed by Royal Warrant and independent of SPS and the Scottish Government, this will be rectified. The new service will provide a consistent approach to independent monitoring with regular training, evaluation and reporting in place.

In relation to economy, it is accepted that the new system will be more expensive than the current system; however, it will better safeguard the rights of prisoners and therefore
provide better value for money and will be more cost effective overall. This is further described at Section 3.1.11.

### 3.3.7. Explanatory Note and Explanatory Document

**Concerns raised at consultation:**
Some respondents thought that there was a lack of clarity in the Explanatory Note which accompanied the draft Order and claimed that the Note recognised some perceived omissions in the draft Order by using different language, although noted that it would be the legislation itself that would ensure the quality and integrity of independent monitoring. Some respondents also made comments on the Explanatory Document with regard to specific sections, including paragraph 1-10, where some respondents felt that it was inaccurate to state that Professor Coyle had recommended the abolition of Visiting Committees as he had actually been asked to review the Cabinet Secretary’s proposals.

Respondents also pointed out that paragraph 1-11 of the Explanatory Document, which notes that the current system is not OPCAT compliant, does not give the reason for this (i.e. that funding is managed by the very body being monitored) and that paragraphs 2-14 to 2-16, while referencing a consultation in 2011, do not give reference to the outcome. One respondent also felt that there was an issue with inaccuracies within the cross-referencing at paragraph 3-26 of the Explanatory Document.

**The Scottish Government’s response:**
The purpose of the Explanatory Note is to provide details on how the Order amends other pieces of legislation, primarily the Prison and Young Offenders Institutions (Scotland) Rules 2011. The Scottish Government feels that the Explanatory Note provides sufficient clarity on the Order’s interaction with other pieces of legislation. As discussed previously, some detail and terminology in the draft Order will be changed which may allay the concerns raised.

Although Professor Coyle did not explicitly state that Visiting Committees be abolished in his Review he did recommend “that Visiting Committees should be replaced by a new system of voluntary independent prison monitors”, and noted that “if the recommendations in this report are accepted Visiting Committees in their present form will no longer exist”. As such, it can be taken that Professor Coyle was proposing the abolition of the Visiting Committees.

Although the reason for the current system’s non-compliance with OPCAT is not contained at paragraph 1-11, it is mentioned elsewhere in the Explanatory Document, including at section 3-35. Similarly, the fact that a consultation was held in 2011 was relevant, but given that the outcome from the consultation did not progress, and events have since moved on, the Scottish Government do not feel it was relevant or necessary to cover the outcome in the Explanatory Document.

In relation to the perceived inaccuracies in paragraph 3-26, the references in this section relate to Article 2(3) of the draft Order which lays out the changes to section 7 of the Prison Rules 2011, namely the duties of the Monitors, and to paragraph 3-23 of the Explanatory Document which refers to the removal of any necessary protection. The Scottish Government believes both these references to be correct.
3.3.8. Roles of other stakeholders

Concerns raised at consultation:
It was suggested that in addition to independent monitoring of prison conditions, there should also be a role for solicitors in this field and that the role for monitors in hearing prisoners complaints should not be allowed to override the prisoner’s right to independent legal advice, particularly where there had been a breach of European Convention on Human Rights articles. Comments were also received in relation to the role of the SPSO in the complaints process and whether the SPSO would have jurisdiction to review complaints about the Prison Monitors and Lay Monitors.

There was a suggestion by one respondent that the co-opting of a Monitor, over a period or for an individual visit, would help support the process of communication with prisoners. Some concern was raised over how Monitors would assist prisoners with community-based issues on aspects such as housing, health or education, particularly as the interface between monitors and the bodies which deliver and/or inspect these aspects was not clear. One respondent also felt that there should be a statutory requirement for the formal involvement of the Scottish Human Rights Commission in the process which could enable the monitoring function to be aware of any new developments in the field of human rights.

There was also a suggestion from one respondent that consideration should be given to an advocacy service if Monitors were unable to assist prisoners in the way that Visiting Committees currently can. Some respondents suggested that a National Council, similar to the current Association of Visiting Committees, should be created for Lay Monitors.

The Scottish Government’s response:
The Scottish Government agrees that the prisoner’s right to independent legal advice should be maintained in the new system, and the guidance will be drafted to ensure that monitors highlight this option to prisoners at the relevant time. The monitors’ interaction with the SPS complaints process has previously been outlined at Section 3.2.8 while the process for prisoners for making a complaint in relation to how a Monitor has carried out their duties is covered at Section 3.3.5.

While there is merit in the co-opting of a Monitor to support communication with prisoners, the Scottish Government does not feel that this is necessary under the proposed new system. There is no suggestion that the process of communication that currently exists between prisoners and Visiting Committee members necessitates this and therefore we feel that this does not require to be amended. In fact, identifying one specific Monitor to support the process of communication with prisoners may prove too restrictive should that Monitor not be available.

The Scottish Government does not feel that it is necessary to include detail on how Monitors can assist prisoners with community-based issues in the legislation, but details on such interfaces will be included in the Guidance documentation which will be available for Monitors, and is unlikely to differ from the current service provided by Visiting Committee members. The Scottish Human Rights Commission are currently part of the Implementation Group who are responsible for developing, guiding and implementing the new proposals. It is intended that an organisation with experience in human rights issues will also be represented on the Advisory Group and that this will ensure that the monitoring function is kept up-to-date on any developments in the field of human rights.
An advocacy service, in addition to the service offered by IPMs under the updated draft Order, will not be necessary under the new system as all the current functions will be replicated in the new system. As mentioned previously, the creation of a council of Lay Monitors was recommended by Professor Coyle in his Review, and this recommendation was remitted to the Implementation Group by the Cabinet Secretary. As such, it is more appropriate for this matter to be decided by the Implementation Group and any detail contained within the guidance. It should be noted that the creation of the AVC was not included in legislation.

3.3.9. Funding

Concerns raised at consultation:
Respondents also raised concerns surrounding funding and in particular suggested that the source and nature of the funding should be added to the legislation, and that it should provide funding at a level which would enable all monitors to carry out their statutory role.

The Scottish Government's response:
It is accepted that some further clarity on funding may be helpful and therefore the current draft Order will be updated in respect of the monies paid to the Chief Inspector by the Scottish Government which will be broadened and generalised so as to cover the general exercise of the Chief Inspector’s functions. The Scottish Ministers will be under a duty to pay the salary and allowances of PMCs and will have the power to pay the travel and subsistence expenses of IPMs. The Scottish Government will ensure that funding is of a sufficient level to ensure the successful delivery of independent monitoring.

3.3.10. Guidance and standards

Concerns raised at consultation:
One respondent suggested that the preparation of a Guide for Monitors in the new system should be clearly laid out in the draft Order. There were also some concerns raised regarding the standards for the new system. Some respondents did not think that the proposals, as drafted, should be considered a ‘gold-standard’. Another respondent believed that the standards expected of Monitors should be included in the draft Order. Some respondents also suggested that Prison Monitors should not be involved in day to day monitoring and should exist in a supporting, administrative capacity.

The Scottish Government’s response:
A Guidance document will be created for use by the Monitors, and this has been provided for in the Order. The guidance will be issued by the Chief Inspector and the Advisory Group will have a role in contributing to the preparation of the guidance. Many of the concerns raised in relation to the standards will be addressed in the creation of supporting documentation, either the Guidance which is being produced by the Chief Inspector or the job specifications and performance standards which will be produced as part of the dedicated Implementation Group workstream on Recruitment.

One of the reasons for bringing in a salaried administrative role is to ensure that IPMs receive adequate support and co-ordination in the exercise of their duties, however for this to be successful, the Scottish Government absolutely feels that it is necessary that PMCs have oversight of IPMs. As mentioned previously, it is felt that the inconsistency surrounding the current provision of monitoring functions will be addressed through the
introduction of this additional layer. The Scottish Government agrees that day to day monitoring should be undertaken by IPMs.

3.3.11. Transition

Concerns raised at consultation:
A small group of respondents felt that there would need to be a transition period between the current service and the proposed new system, arguing that the way this was handled was as important as the establishment of the new system. The respondents also hoped that the experience and expertise of current Visiting Committee members would benefit the new systems as they evolved.

The Scottish Government's response:
There will be a transition period between the two systems in order to allow Visiting Committees to complete any work which is ongoing on the date the Order comes into force. The Order will abolish one system and create another on the date on which it comes into force but certain powers and duties of Visiting Committees will remain in force until a later specified date to allow ongoing investigations and complaints to be finalised. The recruitment and training of PMCs and IPMs will commence whilst the current system is still in operation, but the new monitors will not begin their duties until the Order comes into force. It is hoped that some current Visiting Committee members will apply to become IPMs, however regardless, the Association of Visiting Committees is represented on the Implementation Group in order to share current good practice and are committed to ensuring that a gold standard system for independent monitoring is created.

3.3.12. The wider context

Concerns raised at consultation:
One respondent felt that a local solution should be considered with regards to responsibility for Legalised Police Cells transferring from Prison Visiting Committees to Independent Custody Visitors in respect of the most remote areas of the Highlands and Islands. The respondent argued that, due to the generally short length of time a person is held in a Legalised Police Cell, there would be no opportunity for these prisoners or the conditions to be monitored under the new arrangements. The respondent also felt that there would be great cost in time, travel and accommodation for Independent Custody Visitors attending island areas in particular.

Some respondents felt that there should be a statutory duty on prisons to highlight work of Monitors as they believe that effective communication to prisoners and prison staff would be important in the roll-out across prisons. One respondent also pointed out the importance of reporting by the National Preventive Mechanism, in this case through the Chief Inspector. The respondent also felt that the NPM, its members and staff should be required to regularly review their working methods and undertake regular training, including human rights training in order to enhance their ability to exercise responsibilities under OPCAT.

There was also a suggestion that the new system should be reviewed within a reasonable period following implementation to see how it is working and some respondents felt that there was need to take account of the comments which are made in response to the consultation in further development of the draft Order.
The Scottish Government's response:
The Scottish Government strongly believes that the Independent Custody Visitors (ICVs) who took on responsibility for monitoring the conditions of persons in police custody following the Police and Fire Reform (Scotland) Act 2012, have the necessary training, skills and vetting to take on the monitoring of Legalised Police Cells. The Scottish Government will liaise with the Scottish Police Authority to ensure that the transferring of functions from Visiting Committee to Independent Custody Visitors runs smoothly. The Scottish Police Authority already has plans in place for the recruitment of ICVs to cover the Legalised Police Cells. The coverage provided under the new system will be equal to, if not greater, than the current provision. It is therefore not felt that a separate system will be required for the remoter areas of the Highlands and Islands.

Communication with prisoners and prison staff is an extremely important part of the new system and so has been included in each of workstreams of the Implementation Group with a particularly prominent part in the implementation plans. It is not felt, however, that prisons highlighting the work of Monitors requires to be captured in the legislation.

The Scottish Government agrees that the system should be reviewed at an appropriate point following implementation. One of the reasons for embarking upon a public consultation process was to garner the views of valued stakeholders and members of the public in relation to the proposed new system. The consultation has proven extremely useful and as such there are a number of areas of the draft Order which will be amended. These have been discussed throughout this document but are summarised under **Section 2.**

3.3.13. **The Consultation process**

Concerns raised at consultation:
Some respondents advised that they did not feel that the consultation papers were particularly user-friendly. One respondent felt that it was not appropriate for the Scottish Prison Service to have a role in determining the level of scrutiny it was subjected to by independent monitors.

The Scottish Government's response:
The layout of the consultation papers is a standard document, although it is accepted that the topic of this consultation was very general with only comments requested rather than specific questions asked. This feedback is useful and will inform any future consultation process undertaken in relation to this topic.

The Scottish Government agrees that it is not appropriate for the SPS to determine the level of scrutiny that the prisons will be subject to under the new system of independent monitoring, but we believe that it is crucial, given the role of SPS and the expertise that it has in this area, that SPS are involved in discussions surrounding the level of scrutiny. As such, SPS are represented on the Implementation Group.
4. Next Steps

The draft Order will now be amended in line with the changes outlined at Section 2. Given the changes that require to be made, some of which are substantial, the Scottish Government has opted to undertake a further period of consultation. While this period of consultation is not mandatory, the Scottish Government feels that it is prudent to seek the views of stakeholders and the public on the proposed changes before the Order is laid for approval in Parliament. This further period of consultation is expected to last approximately 4 weeks.

Following this consultation, the responses will be published and analysed. After this, the Order will be laid in Parliament where it must lie for a period of 40 days before being passed. A report on the further period of consultation will also be published.

Work on recruitment and training for the new Monitors cannot begin until the Order has been passed, and due to the process outlined above, this cannot commence until late Autumn 2014 at the earliest. This means that it is likely that the new system of independent monitoring will not come into force until approximately Spring 2015. However, the Scottish Government believes that re-consulting on the changes to the draft Order, despite the slight delay it will cause, is preferable to proceeding with changes to the Order without re-consulting with stakeholders.
5. Annex A: Executive Summary of Analysis Report

EXECUTIVE SUMMARY

This report presents the findings of the analysis of written responses to a Scottish Government consultation on the Draft Public Services Reform (Prison Visiting Committees) (Scotland) Order 2014. The consultation took place between 4th October 2013 and 31st January 2014.

A total of 36 written submissions were received. The most common category of respondent was “Visiting Committees” (VCs), from which 39% of all responses were received. Just over a fifth (22%) of responses were from “local authorities” and just under a fifth (17%) from “criminal justice organisations”. Other respondents included: inspection, monitoring or complaints organisations (8%); human rights organisations (6%); individuals (6%); and professional or representative organisations (3%).

Overall pattern of views

In terms of the general pattern of views, the main focus of comments overall was upon the identification of issues or concerns, and / or the identification of suggestions for further consideration in taking forward the draft Order.

Although the consultation did not ask specific questions about whether or not respondents supported the proposals overall and the proposed structure, it was clear that there was some variation by type of respondent. VCs and individual respondents generally expressed disagreement or highlighted substantial concerns with the proposed changes and / or overall structure. There were more mixed views among other types of respondent, with evidence in most other categories of both support and concerns. There were some respondents whose overall views were unclear.

Within this broad overall pattern, respondents made a wide range of additional comments on the draft Order. These included comments on:

- The general structure and proposals for oversight of monitoring to become part of the function of Her Majesty’s Chief Inspector of Prisons for Scotland (HMCIPS).
- The proposed nature and roles of Monitors.
- Other aspects of the draft Order and related issues.

Structure and proposals for oversight by HMCIPS

A number of themes were identified in relation to the general structure, and in relation to the proposals for oversight of monitoring to become part of the function of HMCIPS.

Among the common themes, most respondents made comments on the current situation. Those identified most frequently were:

- The need for reform (or some changes) or for review.
• Positive aspects of the current system (e.g. general positive working; clarity; independence; transparency; local links; prisoner confidence; support and training provided by the Association of Visiting Committees (AVC).
• The overall importance of independent monitoring.

In terms of other themes, most of the respondents, whatever their overall view of the proposals and structure overall, expressed their support for, or agreement with particular aspects of developments to the system of independent monitoring of prisons. Examples included: the continuation of independent prison monitoring; the need for reform; the purpose, aims or nature of proposed changes (or aspects of these); compliance with the Optional Protocol to the UN Convention Against Torture (OPCAT); and the independent review by Professor Coyle.

A further theme was the provision of positive views of the effects of the proposed changes. Although fewer respondents commented on benefits than raised issues or concerns, several expressed such views. At a general level, several (although none of the VCs or individuals) expressed their overall support for the proposals. The most common perceived benefits related to: the promotion of consistency; compliance with OPCAT; and the nature and effectiveness of the approach.

The identification of issues or concerns, and / or suggestions, however, was the main focus of comments. Several respondents made general comments indicating their overall disagreement or expressing substantial concerns with the proposed changes. In relation to the proposed oversight of monitoring by HMCIPS, or the perceived impact of the structural proposals generally, the overall areas in which issues or concerns were identified, or in which suggestions were made, related to the following themes:

• The distinction between inspection and monitoring (and concerns about the lack of clarity of this).
• The impact of the proposals on the independence of Monitors and monitoring (with concerns about a perceived negative impact of the proposals on this).
• Costs and the use of resources (e.g. the proposals being more expensive than the current system; a lack of clarity of costs; and a perceived lack of value for money).
• The nature and effectiveness of the approach (e.g. a perceived hierarchical structure; less robust arrangements or statutory protection; a negative impact on complaints handling; lack of clarity of arrangements; and lack of links to local communities; and reduced efficiency and effectiveness).

The proposed nature and roles of Monitors

Many respondents also raised issues or concerns, or made suggestions relating specifically to the nature or proposed roles of Monitors. A small number of respondents also made specific comments in support of aspects of these proposals.

The most common issue or concern raised related to the inclusion of two types of Monitors with different roles, with one role involving paid Monitors. Concerns included: a general negative impact; creation of a hierarchy; potential confusion; and
reduced trust. Concerns about the paid role included: a perceived lack of need for Prison Monitors; cost; and perceived lack of added value.

Comments on **reporting and communication issues** were also very common. The two issues or concerns raised most frequently in relation to these issues were: the lack of inclusion in the draft Order of direct access to the Scottish Ministers; and the lack of inclusion of a requirement for an annual report to be submitted to Scottish Ministers and published. Other issues raised included a lack of provision for: Monitors to meet regularly to hear reports by the prison Governor and discuss relevant issues; setting up a Committee for each establishment; or for Lay Monitors to produce a written report and inform a prisoner of their findings.

A further common theme on which comments were made was **recruitment and appointment**. Issues raised included the potential difficulty in recruiting suitable Monitors (particularly Lay Monitors) and the potential loss of existing volunteers. Comments were also made about the appointments process, and it was argued, for example, that the current proposals lacked detail about the appointments process and the requirements for Prison Monitors and Lay Monitors.

The perceived **loss of independence of Monitors** was a concern for many, and the issue raised most frequently related to the proposal that Lay Monitors would report to, and take instruction from Prison Monitors. It was argued, for example, that it would compromise the independence of both types of Monitor, and the monitoring process and may undermine confidence in the Monitors and the system.

A number of other themes were identified. For example, it was argued that there was a perceived lack of detail and specification of the following:

- **The number and composition of Monitors appointed** (e.g. the minimum number of Lay Monitors, and the composition of Monitors).
- **Training and support provision** (including administrative support).
- **Frequency and regularity of monitoring visits**.

A further common theme related to **prisoner complaints**, including: a perceived lack of clarity of the role of Monitors; a concern that they would not be able to support prisoners with the prison complaints process; and potential for overlapping roles and processes in handling complaints.

Several respondents raised issues or concerns about Lay Monitors being able to be **assigned to any or all prisons in Scotland** (e.g. in terms of loss of local knowledge, and lack of representation of the local community).

A number of comments focused on a perceived **general lack of detail** in specifying the role of Monitors, and / or the omission of functions currently undertaken by VCs.

**Other aspects of the draft Order and related issues**

Comments were also made on other aspects of the draft Order and related issues, and the overall themes included:

- Other aspects of the draft Order and proposed Explanatory Document.
• Additional requirements for the proposals or their implementation.
• The consultation itself.

Issues or concerns on other aspects of the draft Order included comments on the Order overall. The most common was that the proposals were not seen to reflect fully the recommendations of the Coyle review. There were also some general criticisms, as well as concerns expressed about the overall lack of detail in the Order.

Several respondents raised concerns relating to the potential for amendment of the system without reference to the Scottish Parliament or the public. It was also argued that the management and functions would be open to interpretation by HMCIPS.

Several respondents made comments on the establishment of an Advisory Board or Group. These included concerns that this had been omitted from the draft Order, and additional comments that there was no detail of the membership or function of such a Board or Group, and that Lay Monitors may have no dialogue with the Board or Group. One respondent questioned the need for such a Group.

Comments were also made relating broadly to access issues. These included concerns about the lack of a duty for the prisoner Governor to provide a confidential setting for lay members to hear complaints. There were also concerns about the discretion of Governors to withhold documents from Lay Monitors if, in their opinion, disclosure would have implications for the security of the prison.

A few additional issues or concerns were raised and / or suggestions made about rights and protection (for prisoners and Monitors) and the level of scrutiny and accountability in the system. A small number of VC respondents argued specifically that they did not believe that the tests in the Public Services Reform Act had been met. Some specific comments were also made on aspects of the Explanatory Note and proposed Explanatory Document.

In terms of the identification of additional requirements for the proposals or their implementation, suggestions related to:

• The roles of other stakeholders (e.g. solicitors; the Scottish Public Services Ombudsman [SPSO]; a “prisoner monitor”; community services; the Scottish Human Rights Commission; an advocacy service; and a national “council” with functions similar to the AVC).
• Funding (e.g. specification of the nature and source of this, and provision at a level to enable Monitors to carry out their statutory role).
• Guidance and standards (e.g. need for clarity; and views of a perceived lack of, and need for a “gold standard”).
• Transition (e.g. the need for a transitional period for changeover)
• The wider context (e.g. specific issues in remote areas; awareness and communication; adapting current systems; the need to take account of wider developments and requirements; the need for review; and the need to take account of views expressed in the consultation).

Comments were also made on the consultation itself focusing on: the nature of the respondent and / or their response; and views of the consultation process.
6. **Annex B: List of Respondents to the Consultation**

All respondents agreed to the publication of their response and are an Organisation unless otherwise specified:

- Aberdeen City Council
- Amnesty International Scotland
- Association of Visiting Committees
- Dickie, Murray *(individual)*
- East Renfrewshire Community Health & Care Partnership
- Falkirk Council
- Freebairn, Anne *(individual)*
- Glasgow City Council Social Work Services
- Glasgow Community Justice Authority
- Her Majesty's Inspectorate of Prisons for Scotland
- HMP Aberdeen Prison Visiting Committee
- HMP Addiewell Prison Visiting Committee
- HMP Barlinnie Prison Visiting Committee
- HMP and YOI Cornton Vale (Over 21s) Prison Visiting Committee
- HMP and YOI Cornton Vale (Under 21s) Prison Visiting Committee
- HMP Dumfries Prison Visiting Committee
- HMP Edinburgh Prison Visiting Committee
- HMP Glenochil Prison Visiting Committee
- HMP Kilmarnock Prison Visiting Committee
- HMP Perth Prison Visiting Committee
- HMP Shotts Prison Visiting Committee
- HMYOI Polmont Prison Visiting Committee
- Howard League Scotland
- Law Society of Scotland, the
- Lerwick Visiting Committee for Legalised Police Cells
- National Council of Independent Monitoring Boards
- North Lanarkshire Council
- Perth and Kinross Council
- Positive Prison? Positive Futures
- Prison Fellowship Scotland
- Renfrewshire Council
- Scottish Consortium on Crime and Criminal Justice
- Scottish Human Rights Commission
- Scottish Prison Service
- Scottish Public Services Ombudsman
- South Lanarkshire Council Social Work Resources