Further Consultation on the Draft Public Services Reform (Inspection and Monitoring of Prisons) (formerly Prison Visiting Committees) Order 2014
19 September 2014

Interested Parties

FURTHER CONSULTATION ON THE DRAFT PUBLIC SERVICES REFORM (INSPECTION AND MONITORING OF PRISONS) (formerly Prison Visiting Committees) (SCOTLAND) ORDER 2014

This consultation document invites comments on the changes to the proposed draft Public Services Reform (Inspection and Monitoring of Prisons) (Scotland) Order 2014 (formerly the draft Public Services Reform (Prison Visiting Committees) (Scotland) Order 2014). When made, this Order will: abolish Prison Visiting Committees; clarify the role of Her Majesty’s Chief Inspector of Prisons for Scotland; create the roles of Prison Monitoring Co-ordinator (formerly Prison Monitor) and Independent Prison Monitor (formerly Lay Monitor); place a duty on the Governor to assist with inspection and monitoring; and require the Chief Inspector to establish a Prison Monitoring Advisory Group.

The Order is to be made using the powers contained in the Public Services Reform (Scotland) Act 2010 (“the 2010 Act”). The 2010 Act requires formal consultation on the proposed draft Order and as such, a public consultation was launched on 4 October 2013 and ran until 31 January 2014. A total of 36 written responses were received. Following the closing of the consultation, and taking cognisance of the views of the Scottish Parliament’s Justice Committee, the draft Order has been amended to address the issues raised by respondents.

Section 26(4) of the 2010 Act provides that, where the Scottish Ministers consider that it would be appropriate to change the proposals in the draft Order as a result of the consultation, they must undertake such further consultation with respect to the changes as they consider appropriate. Scottish Ministers consider that a further period of consultation is appropriate given the changes that have been made to the draft Order arising out of the original consultation.

The period of further consultation will run from now until 13 October 2014 and we would be grateful to receive your responses to the questions contained on the Consultation...
Questionnaire along with any comments you may have. A Respondent Information Form should also be included with your response. Full details on how to respond to the consultation are contained within the attached consultation document.

If you would like to discuss the draft Order and/or the consultation process in more detail, please contact Lorraine McDonald at Lorraine.McDonald@scotland.gsi.gov.uk or Andrew Corrigan at Andrew.Corrigan@scotland.gsi.gov.uk.

Yours sincerely

Andrew Bruce
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# CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter 1.</td>
<td>Introduction</td>
<td>2</td>
</tr>
<tr>
<td>Chapter 2.</td>
<td>Explanation of Key Provisions</td>
<td>3</td>
</tr>
<tr>
<td>Chapter 3.</td>
<td>Changes to the draft Order following consultation</td>
<td>4</td>
</tr>
<tr>
<td>Chapter 4.</td>
<td>The Scottish Government Consultation process</td>
<td>9</td>
</tr>
<tr>
<td>Chapter 5.</td>
<td>Responding to this consultation paper</td>
<td>10</td>
</tr>
<tr>
<td>Annex A.</td>
<td>Proposed draft Order</td>
<td>12</td>
</tr>
<tr>
<td>Annex B.</td>
<td>Proposed Explanatory Document</td>
<td>26</td>
</tr>
<tr>
<td>Annex C.</td>
<td>Respondent Information Form (RIF)</td>
<td>55</td>
</tr>
<tr>
<td>Annex D.</td>
<td>Consultation Questionnaire</td>
<td>57</td>
</tr>
</tbody>
</table>
Chapter 1. Introduction

Parliamentary Process

1. The relevant Order-making power in the Public Services Reform (Scotland) Act 2010 (“the 2010 Act”) is subject to the super-affirmative procedure, which includes a formal consultation process. As part of that process, a copy of the proposed draft Order and the proposed Explanatory Document must be laid before the Scottish Parliament. Following this, when the consultation responses have been taken into account, the draft Order is then laid for approval by resolution of the Parliament. The purpose of such a consultation is to give stakeholders an opportunity to comment on the proposed draft Order.

Background

2. Last year, Scottish Ministers opened a public consultation on the draft Public Services Reform (Prison Visiting Committees) (Scotland) Order 2014 which proposed to abolish Prison Visiting Committees, clarify the role of HM Chief Inspector of Prisons for Scotland and create the roles of Prison Monitor and Lay Monitor. The consultation opened on 4 October 2013 and was scheduled to run until 13 January 2014, seeking comments on both the draft Order and accompanying Explanatory Document.

3. Following the opening of the consultation, the Explanatory Document was amended to provide further detail on the policy intentions of the draft Order. In order to ensure that stakeholders had sufficient time to consider the revised document, the consultation period was extended to 31 January 2014.

4. A total of 36 responses were received to the consultation. These responses can be found on the Scottish Government website at the following address: http://www.scotland.gov.uk/Publications/2014/02/4705

5. While a number of respondents expressed positive views of the effects of the changes outlined in the draft Order, some respondents highlighted issues or concerns. Some of the issues or concerns raised included: the proposed structure of the new arrangements; proposals for oversight by the Chief Inspector; the nature and roles of the Lay Monitors and Prison Monitors; the lack of distinction between inspection and monitoring; perceived loss of independence for Lay Monitors; and a specific lack of detail on the roles. An analysis of the written responses can be found on the Scottish Government website at the following address: http://www.scotland.gov.uk/Publications/2014/04/8634

6. As a result of the issues and concerns raised by respondents, changes were made to the draft Order. These changes are covered at Chapter 3 of this document.

7. This package also contains copies of the revised draft Order at Annex A and the revised Explanatory Document at Annex B. There are a number of preconditions set in the 2010 Act that have to be met when the Scottish Ministers wish to make an Order under the relevant sections. The proposed Explanatory Document explains why the Scottish Ministers believe the pre-conditions are met in this case.

8. Details of how to respond to this consultation are located in Chapter 5. Responses are requested no later than 13 October 2014.
Chapter 2. Explanation of Key Provisions

1. The purpose of the Order is to abolish Prison Visiting Committees, to clarify the role of the Chief Inspector, create the roles of Prison Monitoring Co-ordinators (PMCs) (formerly Prison Monitor) and Independent Prison Monitor (IPMs) (formerly Lay Monitor) and require the Chief Inspector to establish a Prison Monitoring Advisory Group. The PMCs and IPMs will operate under the auspices of the Chief Inspector. This is to be done by: amending section 7 of the Prisons (Scotland) Act 1989 ("the 1989 Act") and inserting sections 7A to 7G into the 1989 Act. Those parts of the Prisons and Young Offenders Institutions (Scotland) Rules 2011 which relate to Visiting Committees are revoked and other consequential amendments are made.

2. The order also enshrines in legislation that the purpose of independent prison monitoring is in pursuance of the objective of OPCAT (that is, establishing a system of regular visits undertaken by international and national bodies to places where people are deprived of their liberty) by inserting a new section – 6A. A duty is also placed on the Governor to assist with inspection and monitoring – section 7E – and on Scottish Ministers to make arrangements to ensure that the Subcommittee on the Prevention of Torture (SPT) is able to access and monitor the treatment of prisoners detained in Scotland – section 7G.

3. The new independent monitoring service will sit under the auspices of the Chief Inspector. The Chief Inspector will employ no less than three PMCs who will each oversee and support a number of IPMs. PMCs and IPMs will be assigned to specific prisons and will be representative of the local community. The Scottish Government consider that bringing both inspection and monitoring under the leadership of the Chief Inspector provides for integration where appropriate, whilst preserving the distinction between the two. The Chief Inspector will oversee the independent monitoring of prisons but the inspection and monitoring functions will operate separately.
Chapter 3. Changes to the draft Order following consultation

Changes

1. Following the consultation which ran from 4 October 2013 to 31 January 2014, and taking into account the issues and concerns raised by respondents to that consultation, a number of changes have been made to the proposed draft Order.

2. Some of the main changes to the Order are outlined below:
   - the title of the draft Order is changed to “the Public Services Reform (Inspection and Monitoring of Prisons) Order 2014;”
   - a section is inserted outlining that the provisions of the Order are in pursuance of the objective of the Optional Protocol for the UN Convention Against Torture (OPCAT);
   - the sections of the 1989 Act which are amended/inserted by virtue of the Order are now headed as follows:
     - **Section 7** – appointment and functions of the HM Chief Inspector of Prisons
     - **Section 7A** – appointment of PMCs
     - **Section 7B** – the functions of PMCs
     - **Section 7C** – appointment of IPMs
     - **Section 7D** – the functions of IPMs
     - **Section 7E** – duty of the governor to assist with prison monitoring
     - **Section 7F** – Prison Monitoring Advisory Group
     - **Section 7G** – SPT visits
   - **Section 7**: the Chief Inspector is given functions to prepare and publish guidance on the exercise of functions of PMCs and IPMs, and to evaluate the performance of each PMC;
     - in addition to an annual report on the exercise of functions of IPMs, the Chief Inspector is given the power to report to Scottish Ministers on any matter relating to the conditions in prisons, the treatment of prisoners within those prisons or the exercise of functions of PMCs or IPMs;
     - the terms of the payment made to the Chief Inspector by Scottish Ministers are broadened and a provision is inserted for Scottish Ministers to provide staff, property or services to the Chief Inspector to assist the Chief Inspector in the exercise of his or her functions;
   - **Section 7A**: a duty is placed on the Scottish Ministers to appoint the PMCs, consulting the Chief Inspector before making any determination on the number of PMCs or before making an appointment;
     - a provision is inserted allowing for Scottish Ministers to prescribe in regulations the procedures which must be complied with in making any appointments;
     - the Chief Inspector will assign PMCs to prisons
   - **Section 7B**: the role of the PMC has been changed to become more of an administrative and supporting role, albeit that a provision is retained for the PMC to visit the prison and speak to any prisoner, visitor, staff or any other person working in the prison;
     - a duty is placed on the PMC to report to the Chief Inspector on any specific matters investigated by the IPMs, and annually in relation to the monitoring of each prison
a provision is inserted to allow the PMC to notify the governor and Chief Inspector of any matter relating to the prison, or prisoners within the prison, which the PMC considers appropriate;

- **Section 7C:**
  - the IPMs are to be appointed on such terms as the Chief Inspector may determine, but for no longer than 3 years and may not be re-appointed more than twice.

- **Section 7D:**
  - the role of the IPM is explained in further detail, focussing on them being the independent monitor of the prison;
  - provision is made for IPMs to assist prisoners in any complaints process provided under the Prison Rules;
  - a duty is placed on IPMs to attend all training arranged by PMCs;
  - a duty is placed on the IPM to report to the PMC in relation to any specific matter investigated or otherwise in relation to such matters as the PMC instructs;

- **Section 7E:**
  - a duty is placed on the governor to ensure that the Chief Inspector, IPMs and PMCs are provided with such assistance as is necessary to allow them to exercise their functions in relation to the prison;

- **Section 7F:**
  - a provision is inserted to require the Chief Inspector to establish a Prison Monitoring Advisory Group comprising of the Chief Inspector, each of the PMCs, at least 3 IPMs and such other persons as the Chief Inspector considers appropriate;
  - functions are given to the Advisory Group to keep the effectiveness of prison monitoring and training arrangements for IPMs under review, to contribute to the preparation of the guidance published by the Chief Inspector and keep it under review, and to make recommendations for improvement in respect of any of those matters;

- **Section 7G:**
  - a duty is placed on Scottish Ministers to ensure that members of the SPT are able to access and visit the prison
  - the Prisons and Young Offenders Institutions (Scotland) Rules 2011 are amended to make provision for IPMs to provide assistance to prisoners in any complaints process under the Prison Rules;
  - a number of savings and transitional provisions are inserted which will allow any work of the Visiting Committees, ongoing on the date that the Order comes into force, to be completed

**Consultation Questions**

3. Detailed below are questions on some of the main changes that have been made to the draft Order following the original consultation. It would be extremely helpful if you could consider these questions and respond using Consultation Questionnaire which should be submitted along with the Respondent Information Form (RIF), both of which are included within this pack. Further details on exactly how to respond are contained within Chapter 5.

4. As far as possible, a brief explanation for the reasons for making the change to the draft Order has been included below the relevant question. Further information on the Scottish Government’s reasons for the changes can also be found within the SG Consultation Report.
Q1) Do you support the change of the role titles from ‘Lay Monitor’ to ‘Independent Prison Monitor’ (IPM) and from ‘Prison Monitor’ to ‘Prison Monitoring Co-ordinator’ (PMC)?

5. The role titles have been changed in the draft Order to better reflect the duties that will be performed by the IPMs and PMCs. Concerns had previously been expressed that the titles of ‘Lay Monitor’ and ‘Prison Monitor’ did not adequately reflect the functions that would be carried out by those performing the roles. The word ‘independent’ is now included in the IPM title to underline the impartial nature of the role, while the term ‘co-ordinator’ is included in the PMC title to highlight the role that they will take on in administering and co-ordinating the work of IPMs.

Q2) Does the revised draft Order provide greater detail on the functions to be carried out by the IPM?

6. The draft Order now contains a greater level of detail on the role that will be carried out by the IPMs. While it has always been the intention for the operational monitoring of the prison to be carried out by the lay members, there was some uncertainty from respondents to the original consultation about how the monitoring would be done in practice, leading some to the impression that the main monitoring duties were to be carried out by the paid members, assisted by the lay members. The Order now gives more detail what the functions of both the IPMs and PMCs will be.

Q3) Do you support the clarifications that have been made to the role of the PMC which seek to explain their administrative role, in relation to prison monitoring?

7. As outlined above, in the original draft Order, the Prison Monitor was given an operational role in the monitoring of the prisons. In the revised draft Order, while the PMC is able to visit and access the prison should the need arise, the emphasis of the role of the PMC has moved towards one of co-ordination and support.

Q4) Do you support the inclusion of provisions in the draft Order whereby the PMC is required to provide support, and arrange for the training, of IPMs?

8. The function of the PMC will be to ensure the effective monitoring of each prison to which they are assigned. This will include, amongst other duties, providing such support to the IPMs to assist them in carrying out their duties, arranging the training of the IPMs, arranging a meeting with IPMs every six months and evaluating the performance of each IPM.

Q5) Do you welcome the inclusion of a provision that places a duty on the prison governor to ensure that the Chief Inspector, IPMs and PMCs are provided with such assistance as is necessary to allow them to exercise their statutory functions?

9. The draft Order has been updated so that the Governor of the prison must now ensure that the Chief Inspector, IPMs and PMCs are provided with such assistance as is necessary to allow them to exercise their functions in relation to the prison. This may include the provision of an area in which they can speak to prisoners or staff in private, the
provision of office facilities and equipment or any other such assistance as the Chief Inspector, IPMs or PMCs may require.

**Q6)** The draft Order contains provisions for IPMs to support prisoners in raising a complaint through the existing complaints process while retaining a discretion for them to resolve personally any particular matter which it is assessed cannot be dealt with through this route. Do you consider that this provides the basis for a clearer and more consistent complaint-handling process for prisoners?

10. In the original draft Order, concerns were raised that the process in relation to prisoner complaints was unclear with it being difficult to understand what was expected of IPMs under the new arrangements. Under the new arrangements, the IPMs will, where possible, assist the prisoner in processing their complaint through the existing complaints process. This would not prevent an IPM seeking to resolve a complaint outwith the formal complaints system, however it is intended that an IPM will seek to resolve a matter personally in cases of urgency or where inappropriate to use the complaints process. This is designed to have a clearer and more consistent complaint-handling process for prisoners.

**Q7)** Do you support the inclusion of provisions in relation to the establishment and composition of a Prison Monitoring Advisory Group in the draft Order?

11. A Prison Monitoring Advisory Group will be established by the Chief Inspector and will comprise of the Chief Inspector, each of the PMCs, at least 3 IPMs and such other persons as the Chief Inspector considers appropriate. The functions of the Prison Monitoring Advisory Group will include: keeping the effectiveness of prison monitoring under review; contributing to the preparation of the guidance published by the Chief Inspector and keeping it under review; keeping the training arrangements for IPMs under review; and making recommendations for improvement in respect of any of those matters.

**Q8)** Do you support the inclusion of a provision in the revised draft Order explaining that the purpose of inspection and monitoring is in pursuance of the objective of the UN Optional Protocol to the Convention Against Torture (OPCAT), and a section which outlines Scottish Ministers’ duties in relation to the Subcommittee on the Prevention of Torture (SPT) visits?

12. The current system of prison monitoring is not compliant with OPCAT. A principle aim of the new arrangements is to meet the Government’s obligations under OPCAT. Provisions are made for the visits of the SPT to Scottish prisons. This is to demonstrate the Scottish Government’s commitment to meeting its obligations in this regard.

**Q9)** Do you support the inclusion in the Order of a transitional period of 3 months to allow any work undertaken by the Prison Visiting Committees, at the time the new system comes into force, to be completed?

13. The Scottish Government has made transitional arrangements in the draft Order to allow for any work of the Prison Visiting Committees e.g. any inquiry or investigation of a complaint or completion of the Annual Report, ongoing at the time the new system comes into force, to be completed within a period of 3 months.
Q10) Do you have any further comments on the draft Order or Explanatory Document?

14. Any further comments on the new arrangements as proposed in the draft Order or as explained in the Explanatory note and are not covered by the questions above, or any comments on either of the documents themselves, would be welcomed.
Chapter 4. The Scottish Government Consultation process

1. Consultation is an essential and important aspect of the Scottish Government’s working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

2. The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same. Typically Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government website, enabling a wider audience to access the paper and submit their responses. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentially) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565)

3. All Scottish Government consultation papers and related publications (e.g. analysis of response reports) can be accessed at Scottish Government consultations (http://www.scotland.gov.uk/consultations). The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:
   - indicate the need for policy development or review;
   - inform the development of a particular policy;
   - help decisions to be made between alternative policy proposals; and
   - be used to finalise legislation before it is implemented.

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

4. While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.
Chapter 5. Responding to this consultation paper

Where to respond

1. We are inviting responses to this consultation paper by **13 October 2014**. Please send your completed Respondent Information Forms (RIF), a copy of which is attached at Annex C, along with your Questionnaire response, attached at Annex D, to:

   Andrew.Corrigan@scotland.gsi.gov.uk

Alternatively, respondents may post their completed RIF and questionnaires to:

**Andrew Corrigan**
Community Justice Division
Scottish Government
Room GWR
St Andrew’s House
Regent Road
EDINBURGH
EH1 3DG

Completing the RIF and Questionnaire

2. It is requested that responses are provided electronically, where possible.

3. If completing the RIF electronically, please ensure that any box which requires to be 'ticked' is completed. This can be achieved by double-clicking on the box and selecting the Default Value as ‘Checked’.

4. In the Permissions section of the form, there is the option to respond as either an individual or an organisation. Please note whichever ‘route’ is selected – individual or group/organisation – only one column (questions (a) and (b) for individuals or question (c) for organisations) requires to be completed. Question (d) should be completed by all respondents whether replying as an individuals or on behalf of an organisation.

5. In addition to the RIF, the consultation questionnaire should be completed. We would be grateful if you would use the consultation questionnaire provided or, if you are providing your response hard copy and are using a separate piece of paper, we would appreciate if you could clearly indicate which questions you are responding to as this will aid the analysis of the responses received.

Handling your response

6. We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Completion of the RIF ensures that we treat your response appropriately. If you ask for your response not be published, we will regard it as confidential and we will treat it accordingly.

7. All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.
Next steps in the process

8. Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available to the public in the Scottish Government Library. These will be made available in the Scottish Government Library and on the Scottish Government consultation web pages within 20 working days of the closing of the consultation. You can make arrangements to view responses by contacting the SG library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

9. Following the consultation closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision on independent prison monitoring. We aim to issue a report on this consultation by December 2014.
Annex A. Proposed draft Order

Proposed draft Order laid before the Scottish Parliament under section 26(2)(a) of the Public Services Reform (Scotland) Act 2010 for the purposes of consultation required by section 26(1) of that Act.

S C O T T I S H  S T A T U T O R Y  I N S T R U M E N T S

2014 No.

PUBLIC SERVICES REFORM

The Public Services Reform (Inspection and Monitoring of Prisons) (Scotland) Order 2014

Made - - - 2014

Coming into force - - 2014

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 14 and 15 of the Public Services Reform (Scotland) Act 2010(1) (“the Act”) and all other powers enabling them to do so.

The Scottish Ministers consider that the conditions in section 16(2) and (10) of the Act are satisfied.

The Scottish Ministers have consulted in accordance with sections 25(4) and 26 of the Act.

The Scottish Ministers have laid a draft of this Order and an explanatory document before the Scottish Parliament in accordance with section 25(2)(b) of the Act.

In accordance with section 25(2)(c) of the Act, the draft of this Order has been approved by resolution of the Scottish Parliament.

Citation and commencement

1. This Order may be cited as the Public Services Reform (Inspection and Monitoring of Prisons) (Scotland) Order 2014 and comes into force on 2014.

Amendment of the Prisons (Scotland) Act 1989

2.—(1) The Prisons (Scotland) Act 1989(2) is amended as follows.

(1) 2010 asp 8.
(2) 1989 c.45.
(2) After section 6, insert—

“Purpose of inspection and monitoring of prisons

6A. The provisions of sections 7 to 7G are in pursuance of the objective of OPCAT, that is, the objective of establishing a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.”.

(3) In section 7 (appointment and functions of Her Majesty’s Chief Inspector of Prisons for Scotland), for subsections (2) to (7) substitute—

“(2) The functions of the Chief Inspector are to—

(a) inspect, or arrange for the inspection of, prisons and the treatment of prisoners within those prisons,

(b) inspect the conditions in which prisoners are transported or held in pursuance of prisoner escort arrangements (within the meaning of section 102 (Arrangements for the provision of prisoner escorts) of the Criminal Justice and Public Order Act 1994(3)),

(c) investigate specific matters connected with prisons or prisoners which have been referred to the Chief Inspector by the Scottish Ministers,

(d) prepare and publish guidance on the exercise of the functions of prison monitoring co-ordinators and independent prison monitors,

(e) evaluate the performance of each prison monitoring co-ordinators,

(f) such other functions as are conferred on the Chief Inspector by this or any other enactment.

(3) The Chief Inspector must report to the Scottish Ministers—

(a) following an inspection carried out under subsection (2)(a) or (b),

(b) following an investigation carried out under subsection (2)(c), and

(c) annually, in such form and by such date as the Scottish Ministers may direct, in relation to—

(i) the conditions in prisons,

(ii) the treatment of prisoners within those prisons, and

(iii) the exercise of the functions of independent prison monitors.

(4) The Chief Inspector must lay a copy of any report made under subsection (3)(c) before the Scottish Parliament.

(5) The Chief Inspector may report to the Scottish Ministers in such manner as the Chief Inspector considers appropriate on any matter relating to—

(a) the conditions in prisons,

(b) the treatment of prisoners within those prisons, or

(c) the exercise of the functions of prison monitoring co-ordinators or independent prison monitors.

(6) For the purpose of exercising any of the Chief Inspector’s functions, the Chief Inspector may, without prior notice—

(a) visit any prison, and access any part of a prison, in Scotland,

(b) speak in private with any prison monitoring co-ordinator, independent prison monitor, prisoner, visitor, prison officer or other person working at the prison, and

(c) examine all prison records other than personnel records.

(7) The Scottish Ministers are to pay the Chief Inspector such salary and allowances, and such other sums in respect of the exercise of the Chief Inspector’s functions, as the Scottish Ministers consider appropriate.

(8) The Scottish Ministers may provide staff, property or services to the Chief Inspector to assist the Chief Inspector in the exercise of the Chief Inspector’s functions ”.

(4) After section 7, insert—

(3) 1994 c.33.
Appointment of prison monitoring co-ordinators

7A.—(1) There are to be three (or such higher number as the Scottish Ministers determine) prison monitoring co-ordinators.

(2) It is for the Scottish Ministers to appoint prison monitoring co-ordinators.

(3) The Scottish Ministers must consult the Chief Inspector before—
   (a) making a determination under subsection (1), or
   (b) making an appointment under subsection (2).

(4) The Scottish Ministers may prescribe in regulations the procedures which must be complied with in making appointments under subsection (2).

(5) Regulations under subsection (4) may in particular make provision for or in connection with—
   (a) persons or organisations who must be consulted, in addition to the Chief Inspector, prior to appointments being made,
   (b) terms and conditions of appointment,
   (c) periods of appointment, and
   (d) termination of appointments.

(6) The Chief Inspector must assign prison monitoring co-ordinators to prisons so that each prison has an assigned prison monitoring co-ordinator.

(7) A prison monitoring co-ordinator may be assigned to—
   (a) prisons within a particular area,
   (b) particular prisons, or
   (c) all prisons.

The functions of prison monitoring co-ordinators

7B.—(1) The function of a prison monitoring co-ordinator is to ensure the effective monitoring of each prison to which the prison monitoring co-ordinator is assigned.

(2) In pursuance of that function, a prison-monitoring co-ordinator must—
   (a) appoint independent prison monitors in such numbers as the Chief Inspector considers appropriate,
   (b) assign each independent prison monitor to a prison to which the prison monitoring co-ordinator is assigned,
   (c) arrange for independent prison monitors assigned to a prison to visit the prison—
      (i) in accordance with a rota of visits prepared by the prison monitoring co-ordinator and agreed between the prison monitoring co-ordinator, the independent prison monitors and the governor of the prison, and
      (ii) at such other times, without appointment with the governor of the prison, as may be agreed between the prison monitoring co-ordinator and the independent prison monitor,
   (d) arrange for specific matters which have been referred to the prison monitoring co-ordinator by the Chief Inspector to be investigated by independent prison monitors,
   (e) provide such support to independent prison monitors appointed by the prison monitoring co-ordinator as the prison monitoring co-ordinator considers appropriate to assist those independent prison monitors in carrying out their duties under section 7D,
   (f) arrange such training for independent prison monitors appointed by the prison monitoring co-ordinator as the prison monitoring co-ordinator considers appropriate,
   (g) arrange a meeting with independent prison monitors assigned to a prison at least once every six months at which no fewer than two thirds of all independent prison monitors assigned to that prison must be in attendance,
   (h) evaluate the performance of each independent prison monitor appointed by the prison monitoring co-ordinator
   (i) visit each prison to which the prison monitoring co-ordinator is assigned as instructed by the Chief Inspector, and
(j) maintain a record of the date and time of each visit to a prison in accordance with paragraph (i) and the matters considered during each visit.

(3) In exercising the prison monitoring co-ordinator’s functions, the prison monitoring co-ordinator must—

(a) comply with any instructions issued by the Chief Inspector, and
(b) take account of any guidance published by the Chief Inspector under section 7(2)(d).

(4) For the purpose of exercising any of the prison monitoring co-ordinator’s functions, a prison monitoring co-ordinator may, without prior notice—

(a) visit any prison, and access any part of a prison, to which the prison monitoring co-ordinator is assigned,
(b) speak in private with any independent prison monitor, prisoner, visitor, prison officer or other person working at the prison, and
(c) examine any prison records other than—
   (i) personnel records, or
   (ii) any documents containing information, the disclosure of which would, in the opinion of the governor of the prison, have implications for the security of the prison.

(5) A prison monitoring co-ordinator must report to the Chief Inspector—

(a) in relation to any specific matters investigated by independent prison monitors under subsection (2)(d),
(b) annually in relation to the monitoring of each prison to which the prison monitoring co-ordinator is assigned, and
(c) otherwise in relation to such matters, and in such form and manner, as the Chief Inspector may require.

(6) A prison monitoring co-ordinator may notify the governor of a prison to which the prison monitoring co-ordinator is assigned, and the Chief Inspector, of any matter relating to the prison, or prisoners detained in the prison, which the prison monitoring co-ordinator considers appropriate.

(7) The Scottish Ministers are to pay prison monitoring co-ordinators such salary and allowances as the Scottish Ministers consider appropriate.

Appointment of independent prison monitors

7C.—(1) Subject to subsection (2), independent prison monitors are to be appointed on such terms and conditions as the Chief Inspector may determine.

(2) An appointment as an independent prison monitor is to be for a period of no more than 3 years.

(3) Independent prison monitors may not be re-appointed more than twice following the expiry of a period of appointment.

The functions of independent prison monitors

7D.—(1) An independent prison monitor must, in relation to the prison to which the independent prison monitor is assigned—

(a) visit the prison in accordance with arrangements made under section 7B(2)(c),
(b) monitor the prison conditions and the treatment of prisoners within the prison,
(c) investigate specific matters which have been referred to the independent prison monitor by the prison monitoring co-ordinator,
(d) notify the governor of the prison and the prison monitoring co-ordinator of any matters relating to the condition of the prison or treatment of any prisoner or group of prisoners which the independent prison monitor considers appropriate,
(e) where, in the opinion of the independent prison monitor, a matter notified to the governor of the prison under paragraph (d) has not been remedied to the satisfaction of the independent prison monitor, inform the governor and the prison monitoring co-ordinator, and
(f) maintain a record of the date and time of each visit to the prison and the matters considered during each visit.
(2) Without prejudice to the duty in subsection (1)(a), an independent prison monitor may also visit the prison without prior notice at such times as the independent prison monitor considers necessary.

(3) Rules made under section 39 may make provision for assistance to be provided by independent prison monitors to prisoners in any complaints process provided for under those rules.

(4) In exercising the independent prison monitor’s functions, the independent prison monitor must—
   (a) comply with any instructions issued by the prison monitoring co-ordinator,
   (b) attend all training arranged by the prison monitoring co-ordinator under section 7B(2)(f), and
   (c) take account of any guidance on the monitoring of prisons published by the Chief Inspector under section 7(2)(d).

(5) For the purpose of exercising any of the independent prison monitor’s functions, an independent prison monitor may, with or without prior notice—
   (a) visit any prison, and access any part of a prison, to which the independent prison monitor is assigned,
   (b) speak in private with any prisoner, visitor, prison officer or other person working at the prison, and
   (c) examine any prison records other than—
      (i) personnel records, or
      (ii) any documents containing information, the disclosure of which would, in the opinion of the Governor, have implications for the security of the prison.

(6) An independent prison monitor must report to the prison monitoring co-ordinator—
   (a) in relation to any specific matters investigated by the independent prison monitor under subsection (1)(c), and
   (b) otherwise in relation to such matters, and in such form and manner, as the prison monitoring co-ordinator may instruct.

(7) The Scottish Ministers may pay independent prison monitors such sums in respect of travel and subsistence expenses as the Scottish Ministers consider appropriate.

(8) References in this section to “the prison monitoring co-ordinator” are references to the prison monitoring co-ordinator assigned to the prison in question.

Duty of the governor to assist with inspection and monitoring

7E. The governor of a prison must ensure that the Chief Inspector, independent prison monitors and prison monitoring co-ordinators are provided with such assistance as is necessary to allow them to exercise their functions under this Act in relation to the prison.

Prison monitoring advisory group

7F.—(1) The Chief Inspector must establish a prison monitoring advisory group.

(2) The group is to comprise—
   (a) the Chief Inspector,
   (b) each of the prison monitoring co-ordinators appointed under section 7A(2),
   (c) at least three independent prison monitors, and
   (d) such other persons as the Chief Inspector considers appropriate.

(3) Persons appointed to the prison monitoring advisory group under subsection (2)(c) or (d) are to be appointed for such period as the Chief Inspector considers appropriate (and may be re-appointed on the expiry of a period of appointment).

(4) The functions of the prison monitoring advisory group are—
   (a) to keep the effectiveness of prison monitoring under review,
   (b) to contribute to the preparation of the guidance published by the Chief Inspector under section 7(2)(d),
   (c) to keep the guidance published by the Chief Inspector under review,
   (d) to keep the training arrangements for independent prison monitors under review, and
   (e) to make recommendations for improvement in respect of any of those matters,
SPT visits

7G.—(1) The Scottish Ministers must make arrangements to ensure that members of the SPT may—
(a) visit prisoners,
(b) access information relevant to the treatment of prisoners and the conditions in which they are detained, and
(c) monitor the treatment of prisoners and the conditions in which they are detained.
(2) The arrangements must authorise members of the SPT to do anything which the Scottish Ministers consider necessary to enable the SPT to visit prisoners and monitor the treatment of prisoners and the conditions in which they are detained.
(3) The arrangements may, in particular, authorise members of the SPT to—
(a) access, without prior notice, any prison (accompanied by such experts as the SPT members think fit),
(b) examine prison records relating to the detention of prisoners,
(c) meet any prisoners there (in private) to discuss their treatment while detained and the conditions in which they are detained,
(d) inspect the conditions in which prisoners are detained there (including cell accommodation, washing and toilet facilities and facilities for the provision of food), and
(e) meet such other persons as the SPT members think may have information relevant to the treatment of prisoners and the conditions in which they are detained.
(4) The arrangements may allow access to a prison or a prisoner to be refused only if such refusal is necessary—
(a) to ensure the safety of the SPT members, or
(b) in order to safeguard the good order or security of the prison.
(5) The Scottish Ministers must keep the arrangements under review and revise them as they think fit.
(6) The governor, and any officer, of a prison must have regard to any guidance issued by the Scottish Ministers about SPT visits.”.

(5) Section 8 (visiting committees) is repealed.
(6) In section 14(8) (legalised police cells), for “sections 8 and” substitute “section”.
(7) In section 15(3) (right of sheriff or justice to visit prison)—
(a) for “the visiting committee at their next visit” substitute “an independent prison monitor”, and
(b) after “section” insert “at the next time such a monitor visits the prison”.
(8) In section 19 (remand centres and young offenders institution)—
(a) subsection (3) is repealed, and
(b) for subsection (4), substitute—
“(4) Subject to any exception or modification specified in any provision of this Act and unless the context otherwise requires, this Act applies to remand centres, young offenders institutions and to persons detained there in the same manner as it applies to prisons and prisoners.

(5) Section 11(4) and (5) shall not apply to young offenders institutions.

(6) Sections 1 to 3, 4 to 6, 9, 10, 11(1), 13 to 17, 33A to 37, 41 to 41D shall apply to remand centres, young offenders institutions and to persons detained there in the same manner as those provisions apply to prisons and prisoners subject to such adaptations and modifications as may be made by rules under section 39.”.

(9) In section 34 (notification of an inquiry into death of a prisoner), for “the visiting committee” substitute “an independent prison monitor appointed in relation to the prison”.

(10) In section 42(2) (exercise of power to make rules, etc.), after “containing” insert, “regulations made under section 7A(4),”.

(11) In section 43(1) (interpretation)—
(a) after the entry for “the 1995 Act”, insert—
“Chief Inspector” means the Chief Inspector of Prisons for Scotland,”,
(b) after the entry for “criminal prisoner”, insert—
“independent prison monitor” means an independent prison monitor appointed under section 7B(2)(a).

“OPCAT” means the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199, “

(c) after the entry for “prison”, insert—

“independent prison monitor” means an independent prison monitor appointed under section 7B(2)(a),

(d) after the entry for “prisoner”, insert—

“prison monitoring co-ordinator” means a prison monitoring co-ordinator appointed under section 7A(2),

“SPT” means the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment established under Article 2 of OPCAT.”.

Public Services Reform (Scotland) Act 2010

3.—(1) The Public Services Reform (Scotland) Act 2010(4) is amended as follows.

(2) In schedule 5 (listed parties)—

(a) the entry for Visiting Committees is repealed,

(b) after the entry “Highlands and Islands Enterprise” insert—

“Independent Prison Monitors appointed in accordance with section 7B(2)(a) of the Prisons (Scotland) Act 1989”,

(c) after the entry “any Private Rented Housing Committee” insert—

“Prison monitoring co-ordinators appointed under section 7A(2) of the Prisons (Scotland) Act 1989”.

(3) In schedule 8 (information on exercise of public functions: listed public bodies), the entry for Visiting Committees is repealed.

Amendment of the Prisons and Young Offenders Institutions (Scotland) Rules 2011

4.—(1) The Prisons and Young Offenders Institutions (Scotland) Rules 2011(5) are amended as follows.

(2) In rule 2(1) (interpretation), after the entry “healthcare professional” insert—

“‘independent prison monitor’ means an independent prison monitor appointed under section 7B(2)(a) of the Act;”.

(3) In rule 120 (requests to speak to certain persons)—

(a) for paragraph (1)(b) substitute—

“(b) an independent prison monitor;”, and

(b) for paragraph (3), substitute—

“(3) A prisoner may write to an independent prison monitor and for that purpose the Governor must ensure that—

(a) the prisoner is supplied with paper; and

(b) the letter is posted, or otherwise delivered, to an independent prison monitor without delay.”.

(4) In rule 122 (Complaints to the residential first line manager)—

(a) in paragraph (1)(a), delete “120,”, and

(b) after paragraph (2) insert—

“(2A) Where a prisoner makes a request to an independent prison monitor for assistance in making an oral or written complaint under paragraph (2), the independent prison monitor may provide such assistance to the prisoner as the independent prison monitor considers appropriate.”.

(5) In rule 123 (Referral of complaints to the Internal Complaints Committee)—

(a) after paragraph (2), insert—

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(4) 2010 asp 8.
“(2A) Where a prisoner makes a request to an independent prison monitor for assistance in making a written referral to the ICC under paragraph (1), the independent prison monitor may provide such assistance to the prisoner as the independent prison monitor considers appropriate.”, and
(b) in paragraph (5)(b)(i), for “a member of the visiting committee” substitute “an independent prison monitor”.

(6) In rule 124 (Complaints to the Governor in relation to confidential matters), after paragraph (2), insert—
“(2A) Where a prisoner makes a request to an independent prison monitor for assistance in making a complaint to the Governor under paragraph (2), the independent prison monitor may provide such assistance to the prisoner as the independent prison monitor considers appropriate.”.

(7) Part 17 (visiting committees) is revoked.

(8) Schedule 2 (constitution of visiting committees) is revoked.

(9) Schedule 3 (constitution of visiting committees for legalised police cells) is revoked.

Savings and transitional provisions

5.—(1) In this article—
“the 1989 Act” means the Prisons (Scotland) Act 1989;
“the discontinuance date” means [the date on which the Order comes into force and the PMCs and IPMs assume responsibilities]; and
“the Prison Rules” means the Prisons and Young Offenders Institutions (Scotland) Rules 2011;
“the relevant date” means [the later date on which all VC responsibilities will come to an end].
“visiting committees” means the visiting committees constituted for prisons or young offenders institutions in accordance with—
(a) sections 8 and 19(3) of the 1989 Act, and
(b) rule 146 of, and Schedule 2 to, the Prison Rules.

(2) In this article, any reference to a rule is a reference to the rule in the Prison Rules bearing that number.

(3) Notwithstanding the amendments made by articles 2 and 4—
(a) all visiting committees will continue to exist until the relevant date for the purposes of paragraphs (4) to (8),
(b) all visiting committees and their members will be able to exercise the powers contained in Part 17 in order to comply with paragraphs (4) to (8),
(c) each of the members of those visiting committees appointed in accordance with rule 146 will remain in office until the relevant date unless, prior to the relevant date, he or she ceases to hold office in accordance with rule 146(7),
(d) the chairman and deputy chairman of, and the clerk to, each of those visiting committees will continue to hold his or her appointment until the relevant date unless he or she ceases to hold office in accordance with rule 146(7).

(4) Where, before the discontinuance date, any visiting committee has notified the Governor, in terms of rule 149(2)(a), of any circumstances relating to the administration of the prison or the condition of any prisoner and that matter has not been remedied by the Governor before the discontinuance date, the visiting committee must bring those circumstances to the attention of the Scottish Ministers before the relevant date.

(5) Where, before the discontinuance date, any visiting committee has undertaken an inquiry or inspection in terms of rule 149(3) but has not—
(a) concluded that inquiry or inspection, or
(b) reported to the Scottish Ministers in relation to that inquiry or inspection, the visiting committee must conclude that inquiry or inspection and report to the Scottish Ministers in relation to that inquiry or inspection by the relevant date.

(6) Where, before the discontinuance date, any visiting committee or member of a visiting committee has received a complaint from a prisoner but has not—
(a) concluded a hearing and investigation of the complaint in accordance with rule 150(1), or
(b) complied with the requirements of rule 150(3),
the visiting committee or the member of the visiting committee must comply with rule 150(1) and rule 150(3) by the relevant date.

(7) The minute book and any other documents held by or on behalf of any visiting committees will transfer to Her Majesty’s Chief Inspector of Prisons for Scotland on the discontinuance date and the chairman of each visiting committee must ensure that the minute book and any such documents are delivered to the Chief Inspector before the relevant date.

(8) Before the relevant date, each visiting committee must finalise, so far as reasonably practicable, their annual report for the relevant prison in respect of the period of 12 months ending on 31st March 2015 and deliver that report to the Scottish Ministers.

(9) All visiting committees will cease to exist on the relevant date and the appointment of the members of all visiting committees will be terminated on the relevant date.

**Consequential modifications**

6. The Schedule to this Order (which makes consequential amendments) has effect.

A member of the Scottish Government

St Andrew’s House,
Edinburgh
2014
PART 1 – PRIMARY LEGISLATION

The Law Reform (Miscellaneous Provisions) (Scotland) Act 1980

1. Part 1 of Schedule 1 (ineligibility for and disqualification and excusal from jury service) to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980(6), Group B is amended as follows—

(a) in sub-paragraph (o), repeal “, and members of visiting committees for,”, and

(b) after that sub-paragraph insert—

“(oa) independent prison monitors appointed under section 7B(2)(a) of the Prisons (Scotland) Act 1989 and prison monitoring co-ordinators appointed under section 7A(2) of that Act;”.

The Prisoners and Criminal Proceedings (Scotland) Act 1993

2.—(1) The Prisoners and Criminal Proceedings (Scotland) Act 1993(7) is amended as follows.

(2) In paragraph 6 of Schedule 5 (minor and consequential amendments), sub-paragraph (4) is repealed.

The Criminal Justice and Public Order Act 1994

3.—(1) The Criminal Justice and Public Order Act 1994(8) is amended as follows.

(2) In section 103 (monitoring of prisoner escort arrangements), subsection (2) is repealed.

(3) In section 110 (consequential modifications of the Prisons (Scotland) Act 1989)—

(a) in subsection (3), after “services),” insert “7B (functions of prison monitoring co-ordinators), 7D (functions of independent prison monitors), 7E (duty of the Governor to assist with inspection and monitoring), 7G (SPT visits)”;

(b) in subsection (4), after “services),” insert “7 (Her Majesty’s Chief Inspector of Prisons), 7B (functions of prison monitoring co-ordinators), 7D (functions of independent prison monitors), 7G (SPT visits),”.

(4) In section 116 (minor and consequential amendments), subsection (1) is repealed.

(5) In Schedule 10 (consequential amendments), paragraph 64 is repealed.

The Local Government etc. (Scotland) Act 1994

4.—(1) The Local Government etc. (Scotland) Act 1994(9) is amended as follows.

(2) In paragraph 162 of Schedule 13 (minor and consequential amendments), sub-paragraph (2) is repealed.

The Employment Rights Act 1996

5.—(1) The Employment Rights Act 1996(10) is amended as follows.

(2) In section 50 (right to time off for public duties)—

(a) in subsection (2)(d), the words “or a prison visiting committee” are repealed, and

(b) in subsection (7), paragraph (b) is repealed.

The Crime and Punishment (Scotland) Act 1997

6.—(1) The Crime and Punishment (Scotland) Act 1997(11) is amended as follows.

(2) In section 43 (medical services in prisons), subsection (3) is repealed.
(3) In paragraph 13 of Schedule 1 (minor and consequential amendments), sub-paragraph (2) is repealed.

The Management of Offenders etc. (Scotland) Act 2005

7.—(1) The Management of Offenders etc. (Scotland) Act 2005(12) is amended as follows.
(2) In section 21 (further amendments and repeal), subsection (6) is repealed.

The Public Records (Scotland) Act 2011

8.—(1) The Public Records (Scotland) Act 2011(13) is amended as follows.
(2) In paragraph 1 of Schedule 1 (authorities to which Part 1 applies)—
   (a) after the entry for “Highlands and Islands Enterprise”, insert—
   “Independent prison monitors appointed under section 7B(2)(a) of the Prisons (Scotland) Act 1989;”,
   (b) after the entry for “Principal Reporter”, insert—
   “Prison monitoring co-ordinators appointed under section 7A(2) of the Prisons (Scotland) Act 1989;”, and
   (c) the entry for “visiting committees” is repealed.

PART 2 - SECONDARY LEGISLATION

The Local Government (Allowances to Members) (Prescribed Bodies) (Scotland) Regulations 1981

9. The Local Government (Allowances to Members) (Prescribed Bodies) (Scotland) Regulations 1981(14) are revoked.

The Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999

10.—(1) The Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999(15) is amended as follows.
(2) In paragraph 98 of Part 1 of Schedule 2 (modifications of Acts of Parliament), sub-paragraph (2) is revoked.

The Police Act 1997 (Criminal Records) (Scotland) Regulations 2010

11.—(1) The Police Act 1997 (Criminal Records) (Scotland) Regulations 2010(16) are amended as follows.
(2) In paragraph 3 of regulation 9 (enhanced criminal record certificates; prescribed purpose), for sub-paragraph (c), insert—
   “(c) an individual appointed or seeking appointment—
   (i) to any office, employment or work which is concerned with the administration of, or is otherwise normally carried out wholly or partly within, the precincts of a prison, remand centre, young offenders institution, detention centre or removal centre;
   (ii) as an independent prison monitor under section 7B(2)(a) of the Prisons (Scotland) Act 1989; or
   (iii) as a prison monitoring co-ordinator under section 7A(2) of the Prisons (Scotland) Act 1989.”.

The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013

12.—(1) The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013(17) is amended as follows.
(2) For paragraph 7 of Part 2 of Schedule 4 (excepted professions, offices, employments and occupations), substitute—

(13) 2011 asp 12.
(14) S.I. 1981/1388.
(15) S.I. 1999/1820.
(16) S.S.I. 2010/168.
(17) S.S.I. 2013/50.
“Any office, employment or work which is concerned with the administration of, or is otherwise normally carried out wholly or partly within, the precincts of a prison, remand centre, young offenders institution, detention centre or removal centre, prison monitoring co-ordinators appointed under section 7A(2) of the Prisons (Scotland) Act 1989 and independent prison monitors appointed under section 7B(2)(a) of that Act.”
This Order amends the Prisons (Scotland) Act 1989 (“the 1989 Act”) and the Prisons and Young Offenders Institutions (Scotland) Rules 2011 (“the 2011 Rules”) using the powers in section 14 of the Public Services Reform (Scotland) Act 2010 (“the 2010 Act”). The Order clarifies the functions of Her Majesty’s Chief Inspector of Prisons and confers further functions on that office in accordance with sections 14(3)(a) and 16(10) of the 2010 Act. The Order creates the roles of prison monitoring co-ordinator and independent prison monitor in accordance with section 14(3)(c) of the 2010 Act, transfers the functions of prison visiting committees to those roles and confers further functions on them in accordance with section 14(3)(a), (3)(c) and (5) of the 2010 Act. The Order also abolishes prison visiting committees in accordance with section 14(8) of the 2010 Act; the functions of prison visiting committees having been transferred to prison monitoring co-ordinators and independent prison monitors.

Article 2 of this Order amends the 1989 Act so as to clarify the role of the Chief Inspector of Prisons, to make provision for a system of prison monitoring and to abolish prison visiting committees. Article 2(2) states that sections 7 to 7E of the 1989 Act are designed to ensure compliance with the Optional Protocol to the Convention against Torture adopted by the UN in December 2002. Article 2(3) amends section 7 of the 1989 Act so as to clarify the role of the Chief Inspector of Prisons and add to the powers and duties imposed on that role.

Article 2(4) adds sections 7A to 7G to the 1989 Act. Section 7A makes provision for the appointment of prison monitoring co-ordinators and allows the Scottish Ministers to create, via regulations, a formal process by which those appointments are made. Section 7B specifies the powers and duties imposed on the role of prison monitoring co-ordinator including the duty to appoint independent prison monitors in such numbers as the Chief Inspector considers appropriate.

Section 7C makes provision about the terms and conditions on which independent prison monitors are to be appointed. Section 7D specifies the powers and duties imposed on the role of independent prison monitors, the main duty being to visit the prison to which they are assigned and monitor the prison conditions and the treatment of prisoners within the prison.

Section 7E places obligations on the Governors of prisons in Scotland to provide assistance to the Chief Inspector, prison monitoring co-ordinators and independent prison monitors in carrying out their duties. Section 7F places an obligation on the Chief Inspector to establish a prison monitoring advisory group which is tasked, amongst other things, with keeping the effectiveness of prison monitoring under review. Section 7G obliges the Scottish Ministers to make arrangements for prison visits by the Subcommittee on the Prevention of Torture.

Article 2(5) repeals section 8 of the 1989 Act which obliges the Scottish Ministers to make provision in rules made under section 39 of that Act for the constitution of visiting committees for prisons and young offenders institutions. Article 2(6) amends section 14 of the 1989 Act so as to remove a cross-reference to section 8.

Article 2(7) amends the obligation on the Governor in section 15 of the 1989 Act, to draw to the attention of the visiting committee any entry in the visitors book made by a sheriff or justice of the peace, by substituting independent prison monitors in place of the visiting committee. Article 2(8) replaces section 19(4) of the 1989 Act so as to ensure that sections 7 to 7G of the 1989 Act will apply to remand centres and young offenders institutions and cannot be modified in that application via rules made under section 39 of the 1989 Act.

Article 2(9) amends the obligation on the Governor in section 34 of the 1989 Act to ensure that independent prison monitors are informed on the death of a prisoner in place of visiting committees. Article 2(10) inserts a number of new defined terms into section 43 of the 1989 Act for the purposes of sections 7 to 7G.

Article 3 removes the entry for visiting committees from Schedule 5 to the 2010 Act and adds entries for independent prison monitors and prison monitoring co-ordinators in accordance with sections 15(2)(b) and 14(6)(a) of the 2010 Act respectively. Article 3 also removes the entry for visiting committees from Schedule 8 to the 2010 Act.

Article 4 amends the 2011 Rules so as to remove all references to visiting committees and the powers and duties bestowed upon them. Article 4(2) adds a definition of “independent prison monitor” to rule 2(1) of the 2011 Rules. Article 4(3) amends rule 120 of the 2011 Rules so that prisoners may make a request to speak, and may also write, to independent prison monitors. Article 4(4) and (5) amends rules 122 and 123 so as to give independent prison monitors a number of duties to assist prisoners throughout the prison complaints process where they have been requested to do so by the prisoner. Article 4(6) amends rule 124 so as to create a number of similar duties on independent prison monitors with regard to complaints to the Governor in relation to confidential matters.
Article 4(7), (8) and (9) amends the 2011 Rules so as to revoke Part 17 (which makes provision for the constitution and functions of visiting committees), Schedule 2 (which makes provision for the constitution of visiting committees for prison) and Schedule 3 (which makes provision for the constitution of visiting committees for legalised police cells).

Article 5 makes a number of savings and transitional provisions which continue the powers of visiting committees for a specified period after the coming into force of this Order so as to ensure that ongoing inquiries, investigations and complaints can be finalised before visiting committees are abolished. Article 5 also provides for the completion of the annual report, which must be submitted by visiting committees under rule 153 of the 2011 Rules, prior to the date of abolition of visiting committees.

Article 6 introduces the Schedule to the Order which makes consequential amendments to primary and secondary legislation.
Annex B. Proposed Explanatory Document
(Revised following changes to the initial proposed draft Order)

The Public Services Reform (Inspection and Monitoring of Prisons) (Scotland) Order 2014

Draft Order To Improve The Efficiency Of Public Functions In Relation To The Inspection And Monitoring Of Prisons In Scotland By Amending, Primarily, The Prisons (Scotland) Act 1989 and The Prisons And Young Offenders Institutions (Scotland) Rules 2011.

Chapter 1: Interpretation

1.1 The following terms are used in this document:

- “the 1989 Act” means the Prisons (Scotland) Act 1989
- “the Prison Rules” means the Prisons and Young Offenders (Scotland) Institution Rules 2011 (as amended)
- “the 2010 Act” means the Public Services Reform (Scotland) Act 2010
- “Prison Visiting Committees (PVCs)” means the visiting committees constituted for prisons or young offenders institutions in accordance with the sections 8 and 19(3) of the 1989 Act and rule 146 and Schedule 2 to the Prison Rules
- “OPCAT” means the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment that was adopted by the UN General Assembly on 10 December 1984
- “SPT” means the Subcommittee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment established under Article 2 of OPCAT
- “NPM” means the National Preventative Mechanism. States that ratify OPCAT are required to designate an NPM- a body or group of bodies that regularly examine the treatment of detainees
- “the Chief Inspector” means Her Majesty’s Chief Inspector for Prisons for Scotland
- “PMC” means a prisoner monitoring co-ordinator
- “IPM” means an independent prison monitor

Chapter 2: Introduction

2.1 This proposed Explanatory Document has been prepared in respect of the proposed draft Public Services Reform (Inspection and Monitoring of Prisons) (Scotland) Order 2014 ("the Draft Order"), which is to be made in exercise of powers conferred by sections 14 and 15 of the Public Services Reform (Scotland) Act 2010 ("the 2010 Act").

2.2 This document has been prepared for the purposes of section 25(2) (procedure) and section 26(2) (consultation).

2.3 An Explanatory Document and draft Order was laid before the Scottish Parliament on 4 October 2013 as part of the consultation process under section 26 of

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1 1989 c 45
2 SSI 2011/331
the 2010 Act. This related to an earlier draft version of the Order (then called “the Public Services Reform (Prison Visiting Committees) (Scotland) Order 2014). In the light of representations received to that consultation, a number of amendments have been made to the Draft Order and the Scottish Ministers have decided to open a further consultation on the terms of the amended Draft Order in accordance with section 26(4) of the 2010 Act.

2.4 Section 26(4) provides that, where the Scottish Ministers consider that it would be appropriate to change the proposals as a result of the consultation conducted under section 26(1), they must undertake such further consultation with respect to the changes as they consider appropriate. The Scottish Ministers have decided that a further consultation is appropriate given the changes that have been made to the Draft Order arising out of the consultation. This proposed Explanatory Document has been prepared to assist with that further consultation.

2.5 The proposed Explanatory Document, which must be laid before the Scottish Parliament under section 25(2)(b) along with the Draft Order, must contain the details set out in section 27(1) of the 2010 Act. In light of the earlier consultation and the changes made to the Draft Order in light of that consultation, this proposed Explanatory Document now includes:

- An explanation of the powers under which the amended provisions contained in the Draft Order are made (section 27(1)(a) of the 2010 Act);
- An introduction to the amended provisions and the reasons for those provisions (section 27(1)(b) of the 2010 Act);
- An explanation as to why the Scottish Ministers believe that the conditions in section 16(2) and (10) are satisfied (section 27(1)(c)(i) of the 2010 Act);
- An explanation as to how the amended provisions made by the Order would improve the exercise of public functions (section 27(1)(c)(ii) of the 2010 Act);
- A description of the functions delegated to the Scottish Ministers and the part of the Scottish Administration through which the functions are to be exercised (section 27(1)(c)(iii) of the 2010 Act);
- A statement of, and the reasons for, the functions of legislating conferred by the Draft Order and the procedural requirements attaching to the exercise of those functions (section 27(1)(e) of the 2010 Act);
- The details of the consultation undertaken under section 26, the representations received as a result of that consultation and the changes made to the proposed Draft Order as a result of those representations.

2.6 Following this further consultation, and subject to any further changes required to the Draft Order, the Explanatory Document and the Draft Order will be laid before the Scottish Parliament in accordance with section 25(2)(b) of the 2010 Act. At that stage, the Explanatory Document will be updated to include the details of this further consultation, any representations received during that consultation and any changes made as a result of those representations.
2.7 The overarching purpose of the Draft Order is to improve the efficiency of public functions in the inspection and monitoring of prisons in Scotland by-

- modifying the functions of the Chief Inspector;
- enshrining in domestic legislation that the inspection and monitoring of prisons is in pursuance of the objective of the Optional Protocol to the Convention Against Torture adopted by the United Nations in December 2002 (OPCAT);
- creating the roles of Prison Monitoring Co-ordinators (PMCs) and Independent Prison Monitors (IPMs) on which the functions of prison monitoring are being conferred. (In the previous version of the proposed draft Order these roles were referred to as Prison Monitors and Lay Monitors but the new titles will be used throughout this revised proposed Explanatory Document);
- establishing the process for appointing PMCs and IPMs;
- providing for the functions of PMCs including support, training and oversight of IPMs;
- providing for the functions of IPMs including arrangements for visits to prisons and monitoring prison conditions and the treatment of prisoners within the prison;
- placing a duty on prison governors to assist the Chief Inspector, PMCs and IPMs to allow them to exercise their functions in relation to the prison;
- providing for the establishment of a Prison Monitoring Advisory Group and its functions;
- providing that Scottish Ministers must make arrangements for visits by members of the Sub Committee for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment established under Article 2 of OPCAT; and
- abolishing Prison Visiting Committees;

2.8 The role of the Chief Inspector derives from section 7 of the Prisons (Scotland) Act 1989 ("the 1989 Act"). In terms of section 7, it is the duty of the Chief Inspector to inspect or arrange the inspection of prisons in Scotland and to inspect the conditions in which prisoners are transported or held in pursuance of prisoner escort arrangements. The Chief Inspector must report to the Scottish Ministers on these inspections and, in particular, on the treatment of prisoners and the conditions in prisons. The Chief Inspector must also prepare an annual report to the Scottish Ministers which must be laid before Parliament.

2.9 Prison Visiting Committees ("PVCs") have been in existence for some considerable time but the current legislative basis for Prison Visiting Committees is found in section 8 of the 1989 Act. Section 8 obliges the Scottish Ministers to provide for the continuation of PVCs in rules made under section 39 of the 1989 Act. The rules must provide, in particular, that PVCs are to be appointed by such community justice authorities or local authorities and in such manner as may be prescribed in the rules. The main functions of PVCs under the 1989 Act are for their members to frequently visit prisons and hear any complaints that may be made by prisoners. PVC members must report matters to the Scottish Ministers as they see appropriate and they must be given free access to prisons and prisoners at any time.

2.10 PVCs also have the functions set out in Part 17 of the Prisons and Young Offenders Institutions (Scotland) Rules 2011 ("the Prison Rules"). Part 17 of the Prison
Rules sets out provisions for the constitution of PVCs, the proceedings of PVCs, the functions of PVCs and the duty to provide an annual report to the Scottish Ministers.

2.11 In his *Review of Proposals to Improve Arrangements for Independent Monitoring of Prisons*, Professor Andrew Coyle recommended that Visiting Committees should be replaced with a new system of voluntary independent monitors, to be appointed through a transparent process for specified periods and with a clearly defined role.

2.12 Professor Coyle stated that current arrangements for prison monitoring in Scotland do not meet the standards required by the Optional Protocol to the UN Convention Against Torture (OPCAT), but noted that, if his recommendations are implemented, Scotland will in future have a robust system for independent monitoring. The Scottish Government made a commitment to take forward reform of the system for the independent monitoring of prisons which would meet the Government’s obligations under OPCAT and in accordance with the National Preventive Mechanism (NPM).

2.13 The new prison monitoring service will sit under the auspices of the Chief Inspector. The Scottish Government recognises the distinction between the functions of inspection and monitoring but believes that bringing both areas under the leadership of the Chief Inspector provides an opportunity to integrate functions where appropriate, whilst also preserving the distinction between the two. The Chief Inspector will oversee the independent monitoring of prisons but the inspection and monitoring functions will operate separately. The Chief Inspector is also a member of the NPM.

2.14 It is proposed that the 1989 Act is amended to provide greater clarity to the Chief Inspector’s role. The proposal is also to create, in the 1989 Act, the role of PMCs to ensure the effective monitoring of each prison to which the PMC is assigned. PMCs are to be appointed by Scottish Ministers and their performance is to be evaluated by the Chief Inspector. The role of IPMs is also to be created in the 1989 Act to undertake the day to day monitoring of prison conditions and the treatment of prisoners. IPMs are to be appointed, and their performance evaluated, by PMCs. As the functions of PVCs are being conferred on PMCs and IPMs, all references to PVCs are being removed from the 1989 Act and the Prison Rules.

2.15 This proposed Explanatory Document provides a formal assessment of the proposed amendments against the requirements of the 2010 Act, and is arranged as follows:

- Chapter 3 sets out the background and provides an overview of the proposals; and
- Chapter 4 explains how the requirements of sections 16 (preconditions) and 27 (explanatory document) of the 2010 Act are met. It also includes details of the representations made in relation to the initial consultation and the changes made to the Draft Order as a result of those representations.
Chapter 3: Background To The Draft Order

The history of Prison Visiting Committees

3.1 The prison system in Scotland in its current form dates from 1878 when the Prisons (Scotland) Act 1877 came into force and the administration of prisons became the responsibility of central government. A Prison Commission was set up to administer prisons in Scotland on behalf of the Secretary of State and a Visiting Committee, consisting of commissioners of supply, justices of the peace and magistrates, was appointed for each prison. The Secretary of State regulated the number of members on an annual basis. Members of the committees were required to visit the prison frequently and to hear any complaints made to them by prisoners. There was to be no restriction on any committee member from visiting any part of the prison or any prisoner at any time.

3.2 Regular monitoring of conditions in prison and the treatment of prisoners is currently undertaken by Prison Visiting Committees. Members of the PVC are appointed for each prison and undertake this work on a voluntary basis. The statutory arrangements for Visiting Committees have changed little since their enactment other than to take account of local government changes in terms of the appointment of members. Under the current arrangements Local Authorities appoint Visiting Committee members for adult establishments and members for Young Offenders Institutions are appointed by the Cabinet Secretary for Justice.

The current role of Prison Visiting Committees

3.3 The Scottish Ministers are obliged, in terms of section 8 of the 1989 Act, to make provision for the appointment of, and the conferral of functions on, PVCs in rules made under section 39 of the 1989 Act. By virtue of section 19(3) of the 1989 Act, the Scottish Ministers are obliged to appoint Visiting Committees for remand centres and Young Offenders’ Institutions and the Ministers may prescribe, in rules under section 39, the minimum number of women who should be members of these Visiting Committees.

3.4 Section 8 of the 1989 Act is as follows:

(1) Rules made under section 39 of this Act shall provide for the constitution, for prisons, of Visiting Committees appointed,

(a) by such-
   (i) community justice authorities, or
   (ii) councils constituted under section 2 of the Local Government etc. (Scotland) Act 1994,
(b) at such times,
(c) in such manner, and
(d) for such periods,
as may be prescribed by the rules.

(2) Rules made under section 39 of this Act shall prescribe the functions of Visiting Committees, and shall among other things require the members to pay
frequent visits to the prison and hear any complaints which may be made by the prisoners and report to the Secretary of State any matter which they consider it expedient to report; and any member of a visiting committee may at any time enter the prison and shall have free access to every part thereof and to every prisoner.

(3) The Secretary of State may pay-

(a) to the members of any visiting committee appointed under or in pursuance of this section such allowances in respect of loss of earnings or travelling or subsistence or other expenses necessarily suffered or incurred in the performance of their duties, and
(b) to the officers of any such committee such remuneration (whether by way of salary or fees) and such allowances in respect of travelling or subsistence expenses,
as the Secretary of State may with the consent of the Treasury determine.

3.5 Section 19(3) of the 1989 Act is as follows:

(3) The Secretary of State shall appoint for every remand centre and young offenders institution a visiting committee of which not less than two members shall be justices of the peace and not less than such number of members as may be prescribed by rules under section 39 of this Act shall be women.

3.6 Part 17 of the Prison Rules makes provision for the constitution and functions of PVCs. Rule 146 of the Prison Rules provides for PVCs to be constituted for the prisons specified in Schedule 1 to the Prison Rules with the members of each PVC to be appointed by the local authorities specified in Schedule 1. There is a fixed number of members of each PVC who must not be members of the relevant local authorities. Rule 146(7) provides for the cessation of membership of a PVC - PVC members cease to hold office in the event of their resignation, the termination of their membership by the relevant local authority or, where applicable, the cessation of their membership of the local authority.

3.7 Rule 148 makes provision for the proceedings of PVCs. PVCs must elect a chair and a clerk and the names of the members of the PVC (and any change in those details) must be reported to the Scottish Ministers. PVCs must meet at least once every three months and they may set up, and delegate specific duties to, sub-committees of its membership.

3.8 The main functions of PVCs are set out in rules 149 to 151. PVCs must cooperate with the Scottish Ministers and the Governor of the relevant prison in promoting the efficiency of the prison. PVCs must also-

- inquire into and report upon any matter at the request of the Scottish Ministers;
- immediately bring to the notice of the Governor any circumstances relating to the administration of the prison or the condition of any prisoner which appear to be expedient to report for the Governor's consideration;
• bring such circumstances to the notice of the Scottish Ministers if it appears to the PVC that the Governor has not remedied any matter which the PVC has notified to the Governor within such period as appears to the committee to be reasonable.
• from time to time, inquire into the state of the prison premises;
• inspect, in particular, the food and drink provided to prisoners; and
• in relation to any such inquiry into the state of the prison premises-
  • record particulars of every visit made, together with any deficiencies found during such visits, in the committee's minute book; and
  • promptly send a copy of such particulars to the Scottish Ministers and to the Governor;
• discharge such other duties as the Scottish Ministers may from time to time assign to it;
• hear and investigate any complaints made to the PVC (or a member of the PVC);
• record particulars of the PVC's findings in relation to its investigation of a prisoner's complaint in its minute book,
• promptly send a copy of such findings to the Scottish Ministers and to the Governor of the relevant prison and inform the prisoner concerned of its findings.
• ensure that at least two members of the visiting committee for a prison must visit the prison at least fortnightly so that, in every fortnight, at least-
  • one member visits the prison weekly; or
  • two members visit the prison together in that fortnight.

3.9 Under rule 152, PVCs have the power to inspect prison records other than:
• personnel records;
• prisoners' records; and
• security manuals or other papers which have implications for security

3.10 PVCs are obliged to report to the Scottish Ministers annually on the state of the relevant prison and its administration in terms of rule 153. PVCs may make suggestions and provide advice to Scottish Ministers in the annual report.

3.11 Rule 154 provides for the constitution of Visiting Committees for legalised police cells and applies the preceding provisions of Part 17 to those Visiting Committees subject to certain modifications.

The need for change

3.12 In his review, Professor Coyle recommended that PVCs should be replaced with a new system of voluntary independent monitors. At the moment arrangements for prison monitoring in Scotland do not meet the standards required by OPCAT and the system must be reformed to address this.

3.13 The Scottish Government is working to make external scrutiny proportionate, risk-based and co-ordinated so that potentially vulnerable service users are protected. Visiting Committees have played an important role in monitoring prisons and legalised police cells over many years, but changes to prison practices and developments in
relation to OPCAT mean that the time is right to update the system of independent monitoring in Scotland. Visiting Committees work independently of each other and there is no co-ordination at a national level which is a barrier to identifying and examining issues across the prison system. Professor Coyle made a number of recommendations for improvements which the Scottish Government have accepted, and will implement.

Consultation

3.14 The Scottish Government opened a consultation on independent monitoring of prisons in January 2011. The purpose of the consultation was to seek views on the system for monitoring the quality and safety of prisons and the treatment of prisoners in Scotland, and, in particular, to look at the roles of the Chief Inspector and PVCs. In addition to the formal consultation, the Scottish Government held focus groups with prisoners at a number of prisons.

3.15 In December 2011, the Scottish Government published an analysis of the responses received to its consultation. Responses had been received from PVC members, local authorities, Community Justice Authorities and other organisations.

3.16 After publishing its response to Professor Coyle’s review, the Scottish Government engaged with key organisations including the Association of Visiting Committees and HMCIPS.

3.17 The proposed draft Public Services Reform (Prison Visiting Committees) (Scotland) Order 2014 was laid before the Scottish Parliament on 4 October 2013. The Public Services Reform (Scotland) Act 2010 under which the Order is to be made requires formal consultation on the proposed draft Order and Explanatory Document. The Scottish Government ran a consultation between 4 October 2013 and 31 January 2014 and 36 responses were received. These were analysed by an external contractor and published on the Scottish Government’s website on 25 April 2014. The Scottish Government’s Consultation Report was published on the website on 19 September 2014.

Overview of the Proposals

3.18 The Draft Order provides that the inspection and monitoring of prisons is in pursuance of the objective of OPCAT which is the establishment of a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

3.19 The Draft Order will modify the functions of the Chief Inspector to provide greater clarity and will confer a number of additional functions on that role. The Chief Inspector will be tasked with preparing and publishing guidance on the monitoring of prisons and evaluating the performance of PMCs. The Chief Inspector will be given a power to provide a report to Scottish Ministers on any matter relating to prisons, prisoners or prison monitoring which will sit alongside the duty to report to the Scottish Ministers. The powers and duties of the Chief Inspector are to be set out clearly via amendments to section 7 of the 1989 Act.
3.20 New sections 7A and 7B will be added to the 1989 Act creating the role of PMC and conferring a number of powers and duties on that role. PMCs will be appointed by Scottish Ministers in consultation with the Chief Inspector and will have the core function of ensuring the effective monitoring of each prison to which the PMC is assigned. PMCs will be tasked with the administrative oversight of prison monitoring which includes the appointment, support, training and evaluation of IPMs. PMCs have a number of reporting duties to the Chief Inspector and are to be paid such salary and allowances as the Scottish Ministers consider appropriate.

3.21 New sections 7C and 7D will be added to the 1989 Act creating the role of IPMs and conferring a number of powers and duties on that role. IPMs will be appointed by PMCs in such numbers as the Chief Inspector considers appropriate and on such terms and conditions as the Chief Inspector may determine. IPMs will each be assigned to one prison and will have the core function of visiting that prison and monitoring prison conditions and the treatment of prisoners. IPMs have a number of reporting duties to the PMC and are to be paid such travel and subsistence expenses as the Scottish Ministers consider appropriate.

3.22 A new section 7E will be added to the 1989 Act which places a duty on the Governor to assist with prison inspections and monitoring. Under this section the Governor must provide assistance to the Chief Inspector, PMCs and IPMs to allow them to exercise their functions under the Act.

3.23 A new section 7F will be added which provides for the establishment of a Prison Monitoring Advisory Group by the Chief Inspector. The composition of the Group is specified in section 7F(2) and the functions of the Group are specified in section 7E(4). The Advisory Group is to be tasked with keeping the effectiveness of prison monitoring, the Chief Inspector’s guidance and the training of IPMs under review. The Advisory Group must also contribute to the preparation of the guidance published by the Chief Inspector.

3.24 A new section 7G will be added to the 1989 Act to provide that Scottish Ministers must make arrangements to ensure that members of the Sub Committee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment can visit prisons, access information and monitor prison conditions and the treatment of prisoners.

3.25 The provisions of the 1989 Act relating to PVCs will be repealed and the provisions relating to PVCs in the Prison Rules will be revoked. However, the Draft Order makes a numbers of savings and transitional provisions which will enable PVCs to conclude existing inquiries, investigations, complaints and reports by a later date. All of the changes mentioned above mean that a number of consequential amendments to other pieces of criminal justice legislation will be required and these are provided for in the Draft Order.

**Timetable**

3.26 It should be noted that all dates other than the formal consultation period are subject to change.
Chapter 4: Requirements Of The 2010 Act

4.1 The procedure for making an Order under Part 2 of the 2010 Act is set out in section 25 of that Act. By virtue of section 25(2), an Order under section 14 of the Act cannot be made unless the Scottish Ministers have-

- consulted in accordance with section 26;
- following the consultation, laid before Parliament the draft Order and the explanatory document prepared in accordance with section 27; and
- the draft Order has been approved by Parliament.

4.2 Section 25(3) makes similar provision for Orders made under section 15 of the 2010 Act. The key differences between subsections (2) and (3) are that the consultation exercise must be conducted under section 25(4) and the explanatory document must be prepared in accordance with section 25(5). The section 25(4) obligation is difficult to comply with in the present case as the Draft Order simultaneously creates the roles of PMC and IPMs and adds both to Schedule 5.

4.3 Section 26(1) of the 2010 Act requires the Ministers, where they propose to make a Section 14 Order, to consult-
(a) such organisations as appear to them to be representative of interests substantially affected by the proposals,
(b) where the proposals relate to the functions of one or more persons, bodies or office-holders, those persons, bodies or office-holders, or persons appearing to them to be representative of those persons, bodies or office-holders,
(c) in such cases as they consider appropriate, the Scottish Law Commission, and
(d) such other persons as they consider appropriate.
4.4 For the purposes of the section 26(1) consultation the Ministers must-

(a) lay before the Parliament a copy of the proposed draft order, and a copy of the proposed explanatory document referred to in section 25(2)(b)(ii) (excepting the details required by section 27(1)(f)),
(b) send a copy of the proposed draft order and proposed explanatory document to any person to be consulted under section 26(1), and
(c) have regard to any representations about the proposed draft order that are made to them within 60 days of the date after laying before Parliament.

4.5 The provisions dealing with the explanatory document are set out in section 27 of the 2010 Act. The proposed explanatory document laid before Parliament at the start of the 60 day consultation period must, for the purposes of an Order made under section 14 of the Act, include the information required in paragraphs (1) to (4) below. The actual explanatory document, which must be laid in Parliament along with the final version of the section 14 Order following the 60 day consultation period, must include the information required in paragraphs (1) to (5) below:

(1) explain under which power(s) in the Act the provision contained in the draft order is made (section 27(1)(a));
(2) introduce and give reasons for the provision (section 27(1)(b));
(3) in the case of an order under section 14-
(i) explain why the Scottish Ministers consider that the conditions in section 16(2) (where relevant) are satisfied or the condition in section 16(10) is satisfied;
(ii) explain how the provision made by the order would improve the exercise of public functions; and
(iii) if the order relates to the functions of the Scottish Ministers, or confers functions on or transfers or delegates functions to, the Scottish Ministers, describe the functions and identify the part of the Scottish Administration through which the functions are, or are to be, exercised (section 27(1)(c));
(4) identify and give reasons for-
(i) any functions of legislating conferred by the order, and
(ii) the procedural requirements attaching to the exercise of those functions (section 27(1)(e)); and
(5) give details of-
(i) any consultation undertaken under section 26,
(ii) any representations received as a result of the consultation,
(iii) the changes (if any) made to the proposed draft order as a result of those representations (section 27(1)(f)).

4.6 For the purposes of an Order made under section 15, the Scottish Ministers must also produce an explanatory document under section 25(5) which must be laid before Parliament along with the final version of the Order (post-consultation). The explanatory document to be prepared under section 25(5) must give details of-
(a) any consultation undertaken under section 25(4) with the persons, bodies or office-holders that are to be added to Schedule 5;
(b) any representations received as a result of the consultation
(c) any changes made to the proposals to add persons, bodies or office-holders to Schedule 5 as a result of those representations.
Section 27(1)(a): The powers under which the provisions are made.

4.7 The Draft Order is made under sections 14 and 15 of the 2010 Act. The Draft Order is designed to improve the exercise of the public functions of inspecting and monitoring prisons in accordance with section 14(1) of the 2010 Act. The Draft Order also adds PMCs and IPMs to Schedule 5 to the Act in accordance with section 15(2)(a) of the Act.

4.8 Public functions are the functions of those persons, bodies and office-holders listed in Schedule 5 to the 2010 Act (see section 14(2) of the Act). The function of inspecting prisons is a public function as it is a function of Chief Inspector and, as an office-holder in the Scottish Administration, the Chief Inspector is listed in Schedule 5 to the Act. The function of monitoring prisons is a public function as it is a function of PVCs who are also listed in Schedule 5 to the Act.

4.9 Article 2(2) of the Draft Order outlines that the provisions of sections 7 to 7G are in pursuance of the objective of OPCAT, that is the objective of establishing a system of regular visits undertaken by independent, international and national bodies to places where people are deprived of their liberty in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. This is a modification of the functions of the Chief Inspector in accordance with section 14(3)(a) of the 2010 Act as it provides an overarching purpose for prison inspection. Similarly, this is a conferral of a function on PMCs and IPMs also in accordance with section 14(3)(a) as it constitutes an overarching purpose for prison monitoring.

4.10 Article 2(3), and the addition of section 7F to the 1989 Act by Article 2(4), of the Draft Order modifies the functions of the Chief Inspector and confers additional functions on the Chief Inspector all in accordance with section 14(3)(a) of the 2010 Act.

4.11 Article 2(4) of the Draft Order, in so far as it adds sections 7A to 7D to the 1989 Act, creates the roles of PMCs and IPMs and confers functions upon them in accordance with section 14(3)(a) and (c) of the 2010 Act.

4.12 Article 2(4) of the Draft Order, in so far as it adds section 7E to the 1989 Act, confers a function on the Scottish Ministers (prison Governors are employees of the Scottish Ministers) in accordance with section 14(3)(a) of the 2010 Act.

4.13 Article 2(4) of the Draft Order, in so far as it adds section 7G to the 1989 Act, confers functions on the Scottish Ministers in accordance with section 14(3)(a) of the 2010 Act.

4.14 Article 2(5) to (10) of the Draft Order amends the 1989 Act so as to abolish all the functions of PVCs in the 1989 Act and transfer certain functions to IPMs in accordance with section 14(3)(a). Article 2(8)(b) restates section 19(4) of the 1989 Act so as to make it more easily understood in light of the amendments being made to the 1989 Act and this complies with the precondition in section 16(10) of the 2010 Act.
4.15 Article 3 of the Draft Order contains provision removing PVCs from, and adding PMCs and IPMs, to Schedule 5 to the Act in accordance with section 14(6)(a) and 15(2)(b) of the 2010 Act.

4.16 Article 4 of the Draft Order modifies the Prison Rules so as to abolish the functions conferred on PVCs in the Prison Rules, transfer some of those functions to IPMs and confer further functions on IPMs all in accordance with section 14(3)(a) of the 1989 Act.

4.17 Articles 2 to 4 of the Draft Order modify a number of enactments, and an instrument, all in accordance with section 14(7)(a) of the 2010 Act. Articles 5 and 6 together with the Schedule make a number of savings, transitional and consequential provisions in accordance with section 14(7)(b) of the 2010 Act.

Section 27(1)(b): Introduction to the provisions and reasons for them.

Purpose of inspection and monitoring of prisons

4.18 The Draft Order provides that sections 7 to 7G are in pursuance of the objective of OPCAT – the establishment of a system of regular visits by independent bodies to places where people are deprived of their liberty in order to prevent torture and other cruel, inhuman or degrading treatment. This provision reflects that provided for independent custody visitors in section 93 of the Police and Fire Reform (Scotland) Act 2012 and is intended to provide an overarching purpose for the inspection and monitoring of prisons.

The Chief Inspector

4.19 The Draft Order modifies section 7 of the 1989 Act to clarify the existing functions of, and confer further functions on, the Chief Inspector. The Chief Inspector continues to have responsibility for the inspection of both prisons and the treatment of prisoners in Scotland but is now given a new role of overseeing prison monitoring in Scotland. Section 7(2) of the 1989 Act (as amended by the Draft Order) will oblige the Chief Inspector to prepare and publish guidance on the monitoring of prisons in Scotland and evaluate the performance of PMCs.

4.20 The Chief Inspector will also be given a power and a duty to report to the Scottish Ministers in relation to prison monitoring by IPMs. In addition, the Chief Inspector must be consulted by the Scottish Ministers in the appointment of PMCs (section 7A(3)) and may also determine the numbers of IPMs to be appointed by PMCs (section 7B(1)) and the terms and conditions on which they are appointed (section 7C(1)).

4.21 Section 7 of the 1989 Act as amended by the Draft Order will contain provision for the Scottish Ministers to pay such sums as they consider necessary to the Chief Inspector in respect of salary and allowances and the performance of the Chief Inspector’s functions. It also contains a provision for the Scottish Ministers to provide staff, property or services to assist the Chief Inspector in the exercise of the Chief Inspector’s functions.
4.22 The amendments to section 7 of the 1989 Act are necessary to clarify the existing obligations of the Chief Inspector and to confer the function of overseeing prison monitoring on the Chief Inspector. Taking into consideration Professor Coyle's recommendations, the Cabinet Secretary for Justice believes that the Chief Inspector is best placed to oversee future independent monitoring of prisons. Bringing prison monitoring under the auspices of the Chief Inspector provides an opportunity to integrate scrutiny and monitoring effectively, in a way that preserves the distinct functions of both. It will also enhance the impact and profile of monitoring, given the Chief Inspector's access to Ministers, Parliament and the media.

4.23 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 adding monitoring to the Chief Inspector's responsibilities is a natural move which plays to existing strengths.

Prison Monitoring Co-ordinators

4.24 The role of PMC is introduced in the new sections 7A and 7B to be added to the 1989 Act. The new section 7A provides that PMCs are to be appointed by the Scottish Ministers in consultation with the Chief Inspector and are to be assigned by the Chief Inspector to such prisons as the Chief Inspector may determine. The new section 7A also creates a regulation making power for Ministers should they wish to create a formal appointment process for PMCs.

4.25 The powers and duties conferred on PMCs are set out in the new section 7B. The PMC's main objective is to ensure the effective monitoring of each prison to which they are assigned. In pursuance of this function, PMCs must appoint, assign, support, evaluate and ensure the training of IPMs. They must arrange for prison visits by IPMs and have a duty to report to the Chief Inspector as detailed in section 7B(5).

4.26 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 ensure that all aspects of prisons are monitored effectively; that a consistent approach to monitoring is taken throughout Scotland; that standards are maintained through evaluation of performance; and the provision of support for IPMs.

Independent Prison Monitors

4.27 The role of IPM is introduced in the new sections 7C and 7D to be added to the 1989 Act. Section 7C makes some provision in relation to the appointment of IPMs and section 7D sets out the powers and duties conferred on IPMs. IPMs are given the core functions of visiting prisons and monitoring both prison conditions and the treatment of prisoners. IPMs can bring matters to the attention of the Governor and bring the matter to the attention of the PMC if it is not remedied to the IPMs' satisfaction. IPMs have a duty to report to PMCs and the Scottish Ministers have a power to pay the travel and subsistence expenses of IPMs.

4.28 The introduction of IPMs is required to support adherence to OPCAT and the NPM by ensuring that there is a system of independent and regular visits to Scottish
prisons and also to ensure that the treatment of prisoners or groups of prisoners within those prisons and the conditions in which those in prison are detained are monitored.

Governor’s duty to assist with inspection and monitoring

4.29 A duty is placed on the Governor, in the new section 7E to be added to the 1989 Act, to assist with the inspection and monitoring of the prison. The Governor must provide the Chief Inspector, PMCs and IPMs with such assistance as is necessary to enable them to exercise their functions under the Act.

4.30 There had previously been concerns raised by visiting committees that, in their view, Governors could do more to assist them so that they could exercise their functions. Section 7E is designed to address these concerns by creating a statutory obligation on the Governor to assist both in prison inspections and in prison monitoring.

Prison Monitoring Advisory Group

4.31 A body to be known as the “Prison Monitoring Advisory Group” is introduced in section 7F. The Chief Inspector is obliged to establish a Prison Monitoring Advisory Group comprised of the persons listed in section 7F(2). The Group’s functions are specified in section 7F(4) and include the review of prison monitoring, the Chief Inspector’s guidance and the training of IPMs.

4.32 The Prison Monitoring Advisory Group is considered necessary to ensure that the working methods of independent prison monitoring in Scotland are assessed and reviewed on a regular basis with a view to the identification of good practice and gaps in protection.

Visits by the Sub-committee for the Prevention of Torture (SPT)

4.33 A new section 7G is to be added to the 1989 Act obliging the Scottish Ministers to make arrangements for members of the SPT to visit prisons, access information and monitor both the treatment of prisoners and prison conditions.

4.34 The Scottish Ministers are being given these functions to support their obligations under the OPCAT and the NPM. It is a principle of OPCAT that the NPM should be clearly set out in constitutional or legislative text.

Further amendments to the 1989 Act

4.35 The provisions of the 1989 Act relating to PVCs are repealed and some of the functions of PVCs in the 1989 Act are transferred to IPMs. Under amendments to section 15 of the 1989 Act, entries in the prison visitors book made by visiting sheriffs or justices of the peace are to be drawn to the attention of an IPM rather than a member of a PVC. Section 19(4) of the 1989 Act is restated to make it more easily understood and to provide that sections 7 to 7G apply to young offenders institutions. The amendment to section 34 will ensure that IPMs will be notified, instead of members of the PVC, of the death of a prisoner.
4.36 These amendments are necessary to remove any existing functions conferred on PVCs and to ensure any continuing functions are transferred to IPMs.

Amendments to the Prison Rules

4.37 Article 4 of the Draft Order makes a number of amendments to the Prison Rules to remove all reference to PVCs, to transfer some of the functions of PVCs to IPMs and to confer further functions on IPMs. The amendments to rule 120 will ensure that prisoners have a right to request to speak to IPMs instead of members of PVCs and that prisoners will be assisted in writing to IPMs.

Savings and transitional provisions

4.38 Article 5 of the Order makes a number of savings and transitional provisions designed to ensure that ongoing inquiries, investigations and complaints can be concluded by PVCs within a specified period after the Draft Order comes into force. Notwithstanding the amendments made by Articles 2 and 4 of the Draft Order, PVCs will continue to exist and will continue to have the powers contained in Part 17 of the Prison Rules for a specified period to enable them to-

- notify the Scottish Ministers of any matters of concern that have not been remedied by the time the Draft Order comes into force;
- conclude inquiries or inspections under rule 149 and report to the Scottish Ministers;
- conclude any complaints ongoing at the coming into force of the Draft Order;
- transfer the minute book and other documents held by the PVC to the Chief Inspector; and
- finalise their annual report.

Consequential modifications

4.39 The Schedule to the Draft Order makes a number of consequential amendments to other pieces of criminal justice legislation in light of the changes being made to the 1989 Act.

Section 27(1)(c)(i): Section 16 preconditions.

Section 16(2)(a): The provision is proportionate to the policy objective

4.40 The policy objective is to establish a system of independent prison monitoring for Scotland which is professional, robust and accountable. The effect of the provisions in the Order is to abolish PVCs and introduce IPMs who will monitor prisons in Scotland and PMCs who will be responsible for the appointment, support and evaluation of IPMs. This system of independent prison monitoring will be placed under the auspices of the Chief Inspector. This is a significant change to the provision of independent monitoring of prisons in Scotland and the necessity of this change can be assessed by comparing the benefits of the new system to the drawbacks of the existing system.
There are a number of drawbacks in the current system of independent prison monitoring, for example: it is not OPCAT compliant; there is no uniform approach to monitoring across Scotland; there is no standardised reporting mechanism; the performance of PVC members is not regularly evaluated; and there is a lack of accountability. The introduction of a new monitoring regime will address these issues and the monitoring regime we have proposed is no more than is necessary to achieve that aim. The new system will: be OPCAT compliant; ensure a uniform approach to monitoring across Scotland; introduce standardised reporting; ensure that the performance of PMCs and IPMs is regularly evaluated and ensure that the arrangements for monitoring in Scotland are effective and kept up to date. The Scottish Ministers therefore consider that the effect of the provisions in the Order is proportionate to the policy objective as the provision of a new system of independent monitoring is required and this necessitates the abolition of PVCs.

Section 16(2)(b): The provision does not remove any necessary protection

The provision does not remove any necessary protection. We are adapting functions already conferred on PVC members to provide greater clarity of the role and ensure the system of independent monitoring is more robust. PVC members have a function whereby they can investigate complaints. This is not expressly replicated in the new system, however, IPMs are being given powers to assist the prisoner throughout the prison complaints process detailed in the Prison Rules. In addition, IPMs will have broad powers to visit and monitor the prison and will be able to speak to any prisoner or prison officer in the prison. If a prisoner raises an issue of concern with an IPM, the IPM will have the power to investigate the matter.

Section 16(2)(c): Modified functions consistent with the general objects or purpose of the person concerned

The general purpose of the Chief Inspector, at present, is to inspect, and report to the Scottish Ministers on, the treatment of prisoners and conditions in prisons. Article 2(3) of the Order modifies the Chief Inspector's functions to provide greater clarity on the role in general, and to place on a statutory basis some functions which he currently undertakes on a non-statutory basis. The Chief Inspector currently has access to prisons, prisoners, prison staff and prison records; Article 2(3) merely places this on a statutory footing. The modified functions in new subsections (3) to (7) of section 7 of the 1989 Act (as inserted by Article 2(3)), clarify and enhance existing functions in relation to the inspection of prisons and prison conditions and this is consistent with the general purpose of the Chief Inspector.

Section 16(2)(d): Conferred functions consistent with the general objects or purpose of the person concerned

Article 2(2) of the Order confers new powers on the Chief Inspector in relation to the oversight of prison monitoring. The Chief Inspector must publish guidance on prison monitoring and evaluate the performance of PMCs. Prisons are inspected against a set of inspection standards which focus on safety; decency; humanity; and respect for legal rights. Adding the oversight of independent prison monitoring to the functions of the Chief Inspector is consistent with these overarching objectives. Inspection and monitoring are clearly linked as both aim to ensure adequate...
conditions for, and treatment of, prisoners. This new structure will ensure that the findings from monitoring activities feed into inspection outcomes and vice versa, therefore joining up all available information in order to provide a full picture of prison conditions to the Scottish Ministers.

4.45 The Chief Inspector is given a power, in new section 7(5) of the 1989 Act, to report to the Scottish Ministers as the Chief Inspector considers appropriate. The Chief Inspector already has a duty to report to Ministers so this new function complements the existing duty by allowing the Chief Inspector the flexibility to issue a report to Ministers even if there is no duty to report at that time.

4.46 The Chief Inspector will also be given the duty to establish a Prison Monitoring Advisory Group (see the new section 7F of the 1989 Act). The Group is to comprise the Chief Inspector, each of the PMCs, at least 3 Independent Prison Monitors and such other persons as the Chief Inspector considers appropriate. The Group will, amongst other things, review the effectiveness of prison monitoring and issue recommendations for the improvement of prison monitoring. The Prison Monitoring Advisory Group is consistent with the purpose of the Chief Inspector which will ensure that monitoring of prisons is carried out effectively.

4.47 The Governors of prisons are being given a duty to assist with inspection and monitoring (see the new section 7E of the 1989 Act). The Governor is responsible for the supervision of the prison and the control of prisoners in terms of rule 90 of the Prison Rules. This new function in section 7E is consistent with the governor's role in supervising the prison and controlling prisoners – the Governor can take steps to ensure that prison inspections and prison monitoring can be undertaken effectively by the Chief Inspector and IPMs.

4.48 The Scottish Ministers are being given the function of making arrangements for SPT visits to prisons (see the new section 7G of the 1989 Act). The Scottish Ministers are already responsible for the general superintendence of prisons in Scotland under section 3(1) of the 1989 Act, read alongside section 53 of the Scotland Act 1998. The new function in section 7G is therefore consistent with the Scottish Ministers’ existing role in the overall control of prisons in Scotland.

Section 16(2)(e): Conferred functions consistent with the general objects or purpose of a person whose functions have been abolished

4.49 The powers and duties conferred on IPMs by the new sections 7C and 7D of the 1989 Act (to be added by Article 2(3) of the Order) and by the general amendments to the 1989 Act and the Prison Rules replicate and extend the general objects or purpose of PVCs. The functions conferred on IPMs are set out in clearer terms and more detail is given on the main operational function of IPMs, which is to visit and monitor prisons and report the findings of those visits. The functions and operation of PVCs have remained generally unchanged for many years and all of the functions are being replicated for IPMs (subject to paragraph 3.23 above). This new system will provide a modern, accountable and professional independent monitoring system building on the current functions of PVCs. Accordingly, the functions conferred on IPMs in the Order are consistent with the general purpose of PVCs, who are in turn being abolished by the Order.
4.50  Similarly, the role given to PMCs, albeit with administrative functions which were not previously exercised by PVCs, is consistent with the overall purpose of PVCs which is to monitor prison conditions and the treatment of prisoners. The role of PMCs is intended to support IPMs to enable them to better exercise their functions and to ensure a uniform standard of prison monitoring. The overall intention is to improve the effectiveness of prison monitoring in Scotland.

4.51  The creation of a Prison Monitoring Advisory Group and the placing of an obligation on Governors to assist with prison monitoring is also intended to improve the standard of prison monitoring in Scotland which is consistent with the purpose of PVCs. The creation of an obligation on Ministers to make arrangements for SPT visits is intended to ensure open access to the prison for the SPT which in turn allows a further tier of prison monitoring albeit on a less frequent basis. This will enhance the effectiveness of prison monitoring which is consistent with the purpose of PVCs.

Section 16(10): Restatement of an enactment

4.52  The inspection duties in section 7(2)(a) and (b) of the 1989 Act are restated in the new section 7(2)(a) and (b) as inserted by the Order. The reporting duties in section 7(2)(a) and (b) of the 1989 Act are restated in section 7(3)(a). Section 7(4) of the 1989 Act is partially restated in the new section 7(2)(c) as inserted by the Order. Section 7(4) currently allows Ministers to refer matters to the Inspector and have the Inspector report on them. The new section 7(2)(c) allows Ministers to refer matters to the Inspector and have the Inspector investigate them, the reporting duty now being contained in section 7(3)(b).

4.53  Section 7(5) of the 1989 Act is partially restated by the new section 7(3)(c) and (4) as inserted by the Order. Section 7(5) currently obliges the Inspector to submit an annual report to Ministers and obliges Ministers to lay the report before Parliament. The new section 7(3)(c) obliges the Inspector to report annually to Scottish Ministers in relation to (i) the conditions in prisons; (ii) the treatment of prisoners within those prisons; and (iii) the exercise of the functions of IPMs. The new section 7(4) provides for the report to be laid before Parliament but places this obligation on the Inspector.

4.54  The new section 7(2)(a) and (b) as inserted by the Order are expressed as part of a wider subsection which sets out the functions of the Inspector. This is part of the restructuring of section 7 to distinguish the functions of the Inspector, the reporting duties placed on the Inspector and the powers which allow the Inspector to perform the functions. The new section 7(2)(c) as inserted by the Order replicates the ability of Ministers to refer matters to the Inspector but in the context of the Inspector's function of investigating those matters. This is placed alongside the Inspector's functions of inspecting prisons and prison conditions as there is a clear correlation between the three functions. The new section 7(3) replicates the duty on the Inspector to report following an inspection in the current section 7(2)(a) and (b) but combines it with the duty to report on individual investigations (currently section 7(4)) and prepare an annual report (currently section 7(5)). The purpose of this is to have all of the reporting duties together in one subsection to clarify the Inspector's duties to report to Ministers.
The restatement of these provisions is intended to make section 7 more accessible and easier to understand by giving it a clearer structure and grouping similar functions and duties in subsections. By grouping the restated provisions alongside the further powers being conferred on the Chief Inspector, the restated provisions are given greater context and purpose.

Section 27(1)(c)(ii): Improving the exercise of public functions

The provisions will improve the exercise of public functions having regard to efficiency, effectiveness and economy.

Efficiency

The current system of independent prison monitoring is not as efficient 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 PVCs or individual PVC 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.

Under the new system there will be a consistent approach to independent prison monitoring across Scotland and a centralisation of support, guidance and management through the Chief Inspector and PMCs. IPMs will be recruited against a set of skills and competencies and their performance will be regularly evaluated by PMCs. This formal structure will ensure that all aspects of prison conditions and prison life can be monitored regularly. The new system will raise the profile of independent prison monitoring amongst prisoners and ensure increased engagement with them. There will also be improved standardised reporting with the imposition of duties on IPMs to report to the PMC and duties on the PMCs to report to the Chief Inspector.

Situating the independent prison monitoring service under another public body would be inefficient and uneconomical as an entire new system would require to be designed. In this case, whilst the Scottish Government recognises the distinction between inspection and monitoring, bringing these two functions together under the auspices of the Chief Inspector allows for integration into an existing system. This structure allows for an efficient system of information flow between the Chief Inspector on the one hand and PMCs and IPMs on the other without the need to cross organisational boundaries. The integration of guidance and standards in relation to monitoring and inspection also provides for an efficient use of resources. The Scottish Ministers therefore consider that the provisions in the Order will make the exercise of the function of independent prison monitoring more efficient.

Effectiveness

The current system is not as effective as it could be. Article 17 of OPCAT requires that each State Party shall maintain, designate or establish one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Under Article 18, State Parties must guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.
4.61 The current system does not comply with OPCAT due to the lack of separation of functions between the Scottish Ministers and PVCs. The new independent prison monitoring system will address this by situating independent prison monitoring under the Chief Inspector who is appointed by Royal Warrant and therefore operates independently of the Scottish Prison Service and the Scottish Ministers in general. Compliance with OPCAT will allow the Scottish system of independent monitoring to form part of the UK National Preventive Mechanism which currently is not the case for PVCs. The Chief Inspector is a member of the UK National Preventive Mechanism and is best placed to support and oversee prison monitoring and to bring to light any instance where standards fall short of what would be expected in a modern prison service.

4.62 The new system of prison monitoring will be more effective than the monitoring provided by PVCs as it will ensure; OPCAT compliance; a higher profile amongst prisoners; increased accountability; standardised reporting; and evaluation and appraisal of IPMs. The link to inspection will also be a considerable benefit of the new system as, when necessary, the Chief Inspector can ensure that identified problem areas within specific prisons are regularly monitored. The effectiveness of the new system will also be evidenced through the ability to provide a fuller picture to Scottish Ministers through the reporting by IPMs to PMCs, by PMCs to the Chief Inspector and onward reporting of the Chief Inspector to the Scottish Ministers. The Scottish Ministers therefore consider that the provisions in the Order will make the exercise of the function of prison monitoring more effective.

Economy

4.63 Although the new system is more expensive, it will better safeguard the rights of prisoners thus providing better value for money than the existing regime of independent prison monitoring. The new regime will cost more but it will produce better results and, accordingly, will prove more economical overall. The new system of independent 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 independent prison monitoring more economical.

Section 27(1)(c)(iii): Transfer of functions to the Scottish Ministers

4.64 The Chief Inspector is independent of Scottish Ministers but is an office holder in the Scottish Administration. The functions of issuing guidance on prison monitoring, evaluating PMCs and establishing the Prison Monitoring Advisory Group together with a role in the appointment of PMCs and IPMs are all being conferred on the Chief Inspector.

4.65 The Scottish Ministers are being given the function of paying the salary and allowances of PMCs and the travel and subsistence expenses of IPMs. This function is to be exercised by the Scottish Government.
The Scottish Ministers are also being given the function of making arrangements for SPT visits to prisons. The intention is that this function will be exercised by the Scottish Prison Service.

Section 27(1)(e): Functions of legislating

The Scottish Ministers are being given a function of legislating in the new section 7A(4) to be added to the 1989 Act by Article 2(3) of the Draft Order. Under this provision, the Scottish Ministers may prescribe in regulations the procedures which must be complied with in appointing PMCs. Article 18(1) of OPCAT requires that the national preventive mechanisms for the prevention of torture must be functionally independent of government and their personnel must be independent of government.

The powers and duties to be given to PMCs in the new sections 7A and 7B of the 1989 Act ensure the functional independence of PMCs from the Scottish Ministers. In addition to this, the procedures for appointing PMCs must ensure that the persons appointed to that role are sufficiently independent of the Scottish Ministers. This regulation making power is designed to enable Ministers to create formal appointment processes for PMCs should it be considered that the appointment processes being used are falling short of this requirement.

The regulation making power could be used to set up formal procedures for consultation of wider stakeholders, beyond the Chief Inspector, in the appointment of PMCs or it could be used to establish an independent assessment panel should that be considered necessary.

As this regulation making power is designed to safeguard against any potential breach of OPCAT in the appointment procedures adopted for PMCs it is considered that some Parliamentary scrutiny of the proposed appointment procedures is necessary. As these regulations will simply prescribe procedure it is considered that the negative procedure would be sufficient.

Section 27(1)(f): Details of the section 26 consultation

The Scottish Government opened a consultation (published on its website) on 4 October 2013 to provide stakeholders with the opportunity to comment on the proposed draft Order. No specific questions were posed with respondents being invited to comment on any aspect of the draft Order or Explanatory Document. The consultation closed on 31 January 2014 with a total of 36 written submissions received from the following respondents:

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)
4.72 The submissions to the consultation and the analysis of these submissions were subsequently published on the Scottish Government’s website and can be accessed using the following links:
http://www.scotland.gov.uk/Publications/2014/02/4705 (Submissions)
http://www.scotland.gov.uk/Publications/2014/04/8634 (Analysis of Submissions)

4.73 The Scottish Government’s Consultation Report was published on 19 September 2014 and can also be found on the Scottish Government’s Publications web pages. The main issues raised through the consultation process are described in further detail in Chapter 5.

4.74 The Justice Committee of the Scottish Parliament considered its approach to the draft Order at its meeting on 8 October 2013. It agreed to issue a call for written views on the draft Order and also to take oral evidence. The Committee received 29 responses to its call for evidence and took oral evidence from a number of stakeholders on 20 November 2013. The report of the Justice Committee can be found at:
http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/71803.aspx

Chapter 5: Issues raised during the consultation

5.1 The main issues raised through the consultation process were:

**The Roles of Monitors**

The need for 2 types of monitor was questioned. Views were expressed that the proposed structure would increase the complexity and bureaucracy of the service provided and that having two separate roles may impact on service provided.

**Titles**

There were reservations over the proposed titles for the 2 types of monitor (paid monitor and lay monitor) and concern that this would lead to a perception that the former were professionals and the latter amateurs.

**Reporting and communication arrangements**

Concern was expressed around the access that monitors would have to Scottish Ministers under the proposed arrangements and over the potential for monitoring to feature only as a small element of the Chief Inspector’s annual inspection report.

**Recruitment and appointment process**

More information was sought in relation to the recruitment process with a request for transparency including details of how long monitors would be appointed for.

**Independence**

There was some concern around independence both in terms of the proposed structure and independence of monitors and the monitoring process. There was a
view that the requirement for IPMs to comply with instructions of PMCs would not be OPCAT compliant; that the latter 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.

**Training and support**

It was suggested that there was a lack of information about the training and administrative support that would be available to the monitors in the new system.

**Prisoner complaints**

Concern was expressed over the lack of clarity around the role of monitors in the complaints process.

**Assigning of monitors to prisons**

Some respondents considered that there was potential for a loss of local knowledge amongst IPMs in the new system given the reference in the draft Order to both PMCs and IPMs being assigned by the Chief Inspector to “prisons within a particular area of Scotland; particular prisons within Scotland or all prisons in Scotland”.

**Terminology and detail**

There were representations to the effect that there was a lack of detail surrounding the role of Lay/Independent Prison Monitors. Some respondents considered that the wording of the draft Order and associated documentation was confusing, with the word ‘inspected’ being used in place of ‘monitored’ on occasion.

**Changes to the system**

It was suggested that as Guidance on the new system of independent prison monitoring will be created by the Chief Inspector, there was potential for an amendment to be made to the proposed new system without ratification by Parliament or a public consultation. One respondent took the view that the independence of the new structure would be undermined if the executive government had the legal authority to alter its mandate, composition and powers at will.

**Prison Monitoring Advisory Group**

Some respondents highlighted that the Prison Monitoring Advisory Group, which had been referenced in the Cabinet Secretary’s Response to the Justice Committee, had been omitted from the draft Order.

**Provision of facilities**

Some respondents highlighted that the Order did not contain a duty for the prison Governor to provide a confidential setting for members to hear and deal with requests, which they felt would be necessary for the execution of the Monitors’ duties.
Rights, protection, scrutiny and accountability

Some respondents considered that there was a lack of reference to OPCAT or other Human Rights standards within the draft Order, which they considered necessary to establish an effective system to prevent human rights violations in prison.

Transition

A number of respondents highlighted that there would need to be a transition period between the current service and the proposed new system, asserting that the way this was handled was as important as the establishment of the new system.

Progression of issues/matters not remedied

Concern was expressed around the lack of direct access by Monitors to Scottish Ministers whereby if a 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.

Chapter 6: Changes made to the proposed draft Order as a result of representations received to the first consultation

Proposed amendment to the Prisons (Scotland) Act 1989

Section 6A (purpose of inspection and monitoring of prisons)

6.1 A new section 6A is inserted to specify that the purpose of prison monitoring is to meet the objectives of OPCAT, that is the objective of establishing a system of regular visits undertaken by international and national bodies to places where people are deprived of their liberty in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

Section 7 (appointment and functions of Her Majesty’s Chief Inspector of Prisons for Scotland):

6.2 Section 7(2)(d) is inserted to include that the Chief Inspector has a function to prepare and publish guidance on the monitoring of prisons;

6.3 Section 7(2)(e) is inserted to include that the Chief Inspector has a function to evaluate the performance of each PMC appointed under section 7A(1);

6.4 Section 7(3)(c)(iii) is inserted to specify that the Chief Inspector will report annually, in such form as the Scottish Ministers may direct, on the monitoring of prisons by IPMs;

6.5 Section 7(5) is inserted to provide that the Chief Inspector may report to Scottish Ministers on any matter relating to prisons, prisoners or prison monitoring which the Chief Inspector considers appropriate to enable the Chief Inspector to raise immediate concerns with Scottish Ministers about anything raised by PMCs or IPMs;
6.6 In section 7(6)(c) [previously section 7(5)] the word “inspect” is changed to “examined” to better reflect the Chief Inspector’s dual roles for inspecting and monitoring;

6.7 Section 7(8) is inserted so that Scottish Ministers may provide staff, services or property to the Chief Inspector to assist the Chief Inspector in the exercise of the Chief Inspector’s functions.

Section 7A (appointment of Prison Monitoring Co-ordinators)

6.8 The title of “prison monitors” is changed to “prison monitoring co-ordinators”;

6.9 Section 7A in the previous proposed draft Order has been split into two separate sections dealing firstly with the appointment of PMCs and secondly the functions of PMCs.

6.10 Section 7A(1) to (3) now provides for PMCs to be appointed by the Scottish Ministers in consultation with the Chief Inspector. No fewer than three PMCs must be appointed at any given time and the Scottish Ministers must consult the Chief Inspector if more than three are to be appointed.

6.11 Section 7A(4) is inserted to provide that the Scottish Ministers may prescribe in regulations the procedures which must be complied with in appointing PMCs under subsection (2) and further detail as to what may be prescribed is given in subsection (5).

6.12 Section 7A(6) now provides that PMCs must be assigned to prisons by the Chief Inspector ensuring that every prison has an assigned PMC. Subsection (7) replicates the provisions of what was section 7A(3) in the previous draft proposed Order.

Section 7B: Functions of prison monitoring co-ordinators

6.13 The provisions in what was previously section 7A which related to the functions of prison monitors are now contained in section 7B of the Draft Order and now form the functions of PMCs.

6.14 Section 7B(1) provides an over-arching purpose for PMCs – they must ensure the effective monitoring of each prison to which they are assigned.

6.15 Section 7B(2) states the duties of PMCs in relation to their core function of ensuring the effective monitoring of prisons. PMCs must appoint IPMs and assign them to a prison to which the PMC is assigned. PMCs must arrange for IPMs to visit prisons, arrange for specific matters to be investigated by IPMs, provide support and arrange training for IPMs and arrange a meeting between the IPMs assigned to the prison. PMCs must evaluate the performance of IPMs. The duties given to PMCs are now markedly different to those that were to be conferred on prison monitors. PMCs are to be given a more administrative role in co-ordinating the delivery of independent prison monitoring.
6.16 The duties on prison monitors to comply with instructions, and take account of guidance, from the Chief Inspector are replicated for PMCs as are the powers to visit prison, speak to people at the prison and examine prison records. The reporting duties which were to be imposed on prison monitors have been clarified and extended for PMCs.

6.17 The previous draft proposed Order made provision for the payment of the salary and allowances of prison monitors by the Chief Inspector. This has been changed in the Draft Order so that the salary and allowances of PMCs are to be paid by the Scottish Ministers.

Section 7C (Appointment of Independent Prison Monitors)

6.18 The title of “Lay Monitors” is changed to “Independent Prison Monitors”.

6.19 Section 7C makes some provision in relation to the appointment of IPMs following the format of the provisions for PMCs. The Chief Inspector is given power to determine the terms and conditions on which IPMs are appointed and IPMs are to be appointed for a period of 3 years and may not be reappointed more than twice following the expiry of the period of appointment.

Section 7D (Functions of independent prison monitors)

6.20 The provisions in what was previously section 7B which related to the functions of lay monitors are now contained in section 7D of the Draft Order and now form the functions of IPMs. The previous proposed draft Order placed the main functions of monitoring on prison monitors and lay monitors were obliged to assist prison monitors in the exercise of those functions. The duties given to IPMs are now markedly different to those that were to be conferred on lay monitors. IPMs are to be given a more operational role with responsibility for the day to day monitoring of prisons.

6.21 Section 7D(1) contains the main duties which were previously placed on prison monitors. IPMs are now obliged to visit the prison according to the rota agreed with the PMC and the Governor and monitor both prison conditions and the treatment of prisoners. IPMs must investigate matters referred to them by the PMC and can notify the Governor of any matters of concern. IPMs must inform the Governor and the PMC if any matter notified to the Governor has not been remedied to the satisfaction of the IPM.

6.22 Section 7D(2) is inserted which provides that notwithstanding the duty to visit the prison according to the pre-agreed rota, IPMs may visit the prison without prior notice.

6.23 Section 7D(3) clarifies the existing rule-making power in section 39 of the 1989 Act to ensure that the Prison Rules may make provision for IPMs to assist the prisoner in any complaints process which may be provided for in the Prison Rules.

6.24 The duties on lay monitors to comply with the instructions of prison monitors and take account of guidance from the Chief Inspector are replicated for IPMs (instructions now being issued by PMCs). IPMs now have the added duty to attend
training arranged by the PMC. The powers to visit prison, speak to people at the prison and examine prison records which were previously conferred on lay monitors are replicated for IPMs. The reporting duties which were to be imposed on lay monitors have been clarified and extended for IPMs.

6.25 The previous draft proposed Order made provision for the payment of the travel and subsistence expenses of lay monitors by the Chief Inspector as considered appropriate. This has been changed in the Draft Order so that the travel and subsistence expenses of IPMs may be paid by the Scottish Ministers as considered appropriate.

Section 7E (Duty of the Governor to assist with prison monitoring)

6.26 A new section 7E is inserted into the 1989 Act to place an obligation on the Governor to assist with prison inspections and monitoring. The Governor must ensure that the Chief Inspector, IPMs and PMCs are provided with such assistance as is necessary to allow them to exercise their functions under the 1989 Act.

Section 7F (Prison Monitoring Advisory Group)

6.27 A new section 7F is inserted into the 1989 Act to provide for the establishment of a Prison Monitoring Advisory Group by the Chief Inspector. The Advisory Group must comprise (a) the Chief Inspector, (b) each of the PMCs (c) at least three IPMs, and (d) such other persons as the Chief Inspector considers appropriate. Section 7D(3) makes provision for the term of appointment of Advisory Group members.

6.28 Section 7F(4) makes provision for the functions of the Advisory Group including keeping the effectiveness of prison monitoring under review and making recommendations for the improvement of prison monitoring.

Section 7G (SPT visits)

6.29 A new section 7G is inserted into the 1989 Act in similar terms to section 95 of the Police and Fire Reform (Scotland) Act 2012. This section obliges the Scottish Ministers to make arrangements to ensure that the Subcommittee for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment may visit prisons, access information about the prison and monitor the treatment of prisoners. Section 7G(2) provides that the arrangements must authorise members of the SPT to do anything which the Scottish Ministers consider necessary to enable the SPT to visit prisoners and monitor the treatment of prisoners and the conditions in which they are detained.

6.30 Section 7E(3) makes further provision about the nature of the arrangements while section 7E(4) provides restricted conditions where access to a prison or a prisoner may be refused. Section 7E(5) provides that the Scottish Ministers must keep the arrangements under review and section 7E(6) provides that the Governor and prison officers must have regard to any Scottish Ministers’ guidance about SPT visits.
Changes to the Prison Rules

6.31 Article 4 of the Draft Order replicates many of the provisions in Article 4 of the previous proposed draft Order but also makes a number of significant changes. Part 17 of, and Schedules 2 and 3 to, the Prison Rules are still being revoked but IPMs are being given an enhanced role in the prison complaints process provided in Part 12 of the Prison Rules. Rule 120 is being amended so as to enable prisoners to make a request to speak to an IPM and Governors must provide assistance where a prisoner wishes to write to an IPM. Rules 122 to 124 are being amended to enable an IPM to provide, following a request from a prisoner, such assistance as they consider appropriate to the prisoner in the complaints processes detailed in those rules.

Savings and transitional provisions

6.32 The Draft Order now includes some savings and transitional provisions to ensure a smooth transition from the existing system of prison monitoring to the new system. The coming into force of the Draft Order would otherwise end the powers and duties of PVCs but the provisions in Article 5 of the Draft Order will ensure that certain powers and duties of the PVCs will continue for a specified period in order to enable them to conclude:

- any matter raised with the Governor which has not been remedied by the Governor; the PVC must notify the Scottish Ministers during the specified period;
- any inquiry into the state of the prison or inspection of the food and drink provided to prisoners; and
- any hearing and investigation of a complaint made to the PVC.

6.33 Article 5 also obliges the PVCs to deliver the PVC minute book and any other documents held by or on behalf of the PVC to the Chief Inspector by the end of the specified period. In addition, the PVC is obliged to finalise, in so far as is practicable, their annual report for the prison for the year ending 31st March 2015 and deliver it to Scottish Ministers by the end of the specified period.
Annex C. Respondent Information Form (RIF)

FURTHER CONSULTATION ON THE DRAFT PUBLIC SERVICES REFORM (INSPECTION AND MONITORING OF PRISONS) (formerly PRISON VISITING COMMITTEES) (SCOTLAND) ORDER 2014

Please Note this form must be returned with your response to ensure that we handle your response appropriately.

1. Name/Organisation Name

Name

Title Mr ☐ Ms ☐ Mrs ☐ Miss ☐ Dr ☐
Please tick as appropriate (if completing electronically, double click on box and select default value as 'checked')

Surname

Forename

2. Postal Address (if organisation, please provide organisation address)


Postcode

Phone

Email

3. Permissions - I am responding as…

Individual / Group/Organisation

☐ Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate
☐ Yes ☐ No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

(c) The name and address of your organisation will be made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your response to be made available?

Please tick as appropriate
☐ Yes ☐ No
Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

☐ Yes

☐ No
Annex D. Consultation Questionnaire

Questionnaire in relation to
Further Consultation on draft Public Services Reform
(Inspection and Monitoring of Prisons) (formerly Prison Visiting Committees)
(Scotland) Order 2014

Respondents should not feel obliged to answer all of the questions listed below. However, the Scottish Government would appreciate all responses, whether from individuals or from organisations, with views on any or all of these matters.

Where possible, please explain the reasons for each answer that you give.

1) Do you support the change of the role titles from ‘Lay Monitor’ to ‘Independent Prison Monitor’ (IPM) and from ‘Prison Monitor’ to ‘Prison Monitoring Co-ordinator’ (PMC)?

☐ Yes ☐ No

(if responding electronically, please double click on one of the boxes above and select the default value as ‘checked’)

Please give reasons for your answer:


2) Does the revised draft Order provide greater detail on the functions to be carried out by the IPM?

☐ Yes ☐ No

Please give reasons for your answer:


3) Do you support the clarifications that have been made to the role of the PMC which seek to explain their administrative role in relation to prison monitoring?

☐ Yes ☐ No

Please give reasons for your answer:


4) Do you support the inclusion of provisions in the draft Order whereby the PMC is required to provide support, and arrange for the training, of IPMs?

☐ Yes  ☐ No

Please give reasons for your answer:


5) Do you welcome the inclusion of a provision that places a duty on the prison governor to ensure that the Chief Inspector, IPMs and PMCs are provided with such assistance as is necessary to allow them to exercise their statutory functions?

☐ Yes  ☐ No

Please give reasons for your answer:


6) The draft Order contains provisions for IPMs to support prisoners in raising a complaint through the existing complaints process while retaining a discretion for them to resolve personally any particular matter which it is assessed cannot be dealt with through this route. Do you consider that this provides the basis for a clearer and more consistent complaint-handling process for prisoners?

☐ Yes  ☐ No

Please give reasons for your answer:


7) Do you support the inclusion of provisions in relation to the establishment and composition of a Prison Monitoring Advisory Group in the draft Order?

☐ Yes  ☐ No

Please give reasons for your answer:


8) Do you support the inclusion of a provision in the revised draft Order explaining that the purpose of inspection and monitoring is in pursuance of the objective of the UN Optional Protocol to the Convention Against Torture (OPCAT), and a section which outlines Scottish Ministers’ duties in relation to the Subcommittee on the Prevention of Torture (SPT) visits?

☐ Yes  ☐ No
Please give reasons for your answer:


9) Do you support the inclusion in the Order of a transitional period of 3 months to allow any work undertaken by the Prison Visiting Committees, at the time the new system comes into force, to be completed?

☐ Yes  ☐ No

Please give reasons for your answer:


10) Do you have any further comments on the draft Order or Explanatory Document?

Please provide any further comments below:


