

## **Justice Committee**

### **Proposed draft Public Services Reform (Prison Visiting Committees) (Scotland) Order 2014**

#### **Response from the Scottish Government to the Committee's 1<sup>st</sup> Report**

I am writing to provide the Scottish Government's response to the Justice Committee's first Report on the proposed draft Public Services Reform (Prison Visiting Committees) (Scotland) Order 2014. I would like to thank the Committee for its careful consideration of the draft Order. I would also like to thank those who contributed by giving evidence.

I have added my comments in the attached Annex beneath each of the Committee's recommendations. I hope the Committee finds this response helpful.

Kenny MacAskill  
Cabinet Secretary for Justice  
11 March 2014

**PROPOSED DRAFT PUBLIC SERVICES REFORM (PRISON VISITING COMMITTEES) (SCOTLAND) ORDER 2014**

**SCOTTISH GOVERNMENT RESPONSE TO THE JUSTICE COMMITTEE'S 1<sup>ST</sup> REPORT**

**OPCAT COMPLIANCE**

***The Committee welcomes the proposal to remove the funding and support of independent monitoring of prisons from the Scottish Prison Service thereby ensuring that prison monitoring in Scotland becomes OPCAT compliant. [Para 16]***

1. I welcome the Committee's support for the proposal to remove the funding and support of independent monitoring of prisons from the Scottish Prison Service thereby ensuring that prison monitoring in Scotland becomes OPCAT compliant. As the Committee heard in evidence, the new structure where monitors will be funded and supported through HM Chief Inspector of Prisons for Scotland (HMCIPS), will meet the requirements of OPCAT.

**INDEPENDENCE OF PRISON MONITORING**

***The Committee agrees that the functions of monitoring and inspection are distinct and complementary. The Committee also agrees that there would be benefits in the two functions working together within the same organisation. The Committee welcomes the goal of improving the consistency and quality of the monitoring of prisons. [Para 32]***

2. I am pleased that the Committee agrees that there are benefits of the functions of monitoring and inspection working together within the same organisation. I strongly believe that this approach will improve the consistency and quality of the monitoring of prisons.

***However, the Committee believes that the operational independence of prison monitors is essential and this may be perceived to be compromised if HMIPS instructs and also pays them. [Para 33]***

3. The Scottish Government is clear about the distinction between the functions of inspection and monitoring. Bringing both functions under the leadership of the Chief Inspector provides for integration where appropriate, while preserving the distinction between the two functions. Her Majesty's Chief Inspector of Prisons (the Chief Inspector) will oversee and support the independent monitoring of prisons but the inspection and monitoring functions will operate separately.

4. It is essential that the Chief Inspector has the power to instruct monitors as this will ensure that identified problem areas within specific prisons are regularly monitored. This structure allows for an effective information flow between inspectors and monitors without the need to cross organisational barriers. The operational independence of prison monitors is not compromised in the proposed structure and I don't believe it will be perceived to be.

5. The Chief Inspector is appointed by Royal Warrant following an open competition and therefore operates independently of the Scottish Prison Service and Scottish Ministers in general. Removing the funding and support of independent monitoring of prisons from the Scottish Prison Service and bringing it under the auspices of HMCIPS, will, in my view, reinforce the operational independence of both paid and lay prison monitors.

***The Committee requires clarification from the Scottish Government on how it now envisages the distinctiveness of monitoring to be “future proofed and person proofed”; and how the draft Order will achieve the independence and representativeness of monitoring. The Committee would welcome more information on how the proposed advisory group will be constituted, whether it will have responsibility for monitoring and appointments and, if so, that these duties should be explicit in the draft Order.***[Para 34]

6. The draft Order will be amended to include more information on the proposed advisory group, including how it will be constituted. Their role will include future proofing and person proofing the operation of independent monitoring. One of the functions of the advisory group will be to review guidance and approve any future changes to the guidance. I believe that the responsibilities assumed by the advisory group will ensure the independence and representativeness of monitoring.

### **Prison Monitors and Lay Monitors**

***The Committee welcomes the commitment to provide administrative and secretariat support to independent prison monitors. The Committee has heard evidence of significant opposition to the creation of paid monitors additionally of their managerial role over volunteer monitors. The Committee questions the need for paid monitors and indeed their managerial role and requires more details from the Scottish Government on the benefits of both.*** [Para 43]

7. The current system of independent monitoring is not as efficient or coordinated as it could be. There is no national approach to monitoring and the service is inconsistent throughout the country. The current structure does not allow for assessing the performance of Prison Visiting Committees or individual Prison Visiting Committee members. Due to the lack of formal structure and accountability, it is not possible to ensure that all aspects of prisons are monitored on a regular basis. I believe that this must change and that the introduction of paid monitors is essential to effect this change.

8. Paid monitors will provide essential oversight, coordination and support to lay monitors. Their duties will include: co-ordinating and supporting the lay monitors to

ensure that all aspects of prisons are monitored effectively; ensuring a consistent approach to monitoring throughout Scotland; ensuring that a professional monitoring service is delivered and standards are maintained; paying expenses to lay monitors; and ensuring the provision of adequate administrative support for the lay monitors. It is crucial that these functions are carried out effectively and it would be unreasonable to expect a lay person to undertake such a heavy and time consuming workload. I appreciate that some stakeholders have expressed opposition to the creation of paid monitors: I believe that further clarity on the role of paid monitors will address these concerns and that they will prove to be an invaluable part of the monitoring service. The draft Order will therefore be amended to include more detail on the separate roles of both paid and lay monitors.

***The Committee asks the Scottish Government to respond to the views expressed that having two layers of monitors could adversely affect the trust prisoners have for monitors and the willingness of people to volunteer to be lay monitors. [Para 44]***

9. I note the concerns raised by some stakeholders, however, this is not a view that I share. No evidence has been provided to back up this assertion. My officials are, however, taking this view into account as they consider amending the draft Order. Clarification of the role of the 'paid monitors' should alleviate these concerns.

***The Committee would also welcome clarification from the Scottish Government of why there is a difference in the powers of prison monitors and lay monitors to hear complaints from prisoners, which would seem to cause unnecessary confusion and complexity. [Para 45]***

10. I agree that, in order to avoid unnecessary confusion and complexity, the Order requires to be amended to ensure that the powers in relation to hearing complaints are clearer. The Order will be amended accordingly.

#### **Detail in the Order**

***The Committee agrees that more detail in legislation would provide clarity and security of independence. The Committee recommends that the Scottish Government considers incorporating more detail into the Order in all or any of the areas suggested by the SHRC. [Para 49]***

11. Many facets of the new system, which are not detailed in the legislation, will be covered in guidance.. The drafting of this guidance is being taken forward by an Implementation Group made up of various stakeholders including the Scottish Government, HM Inspectorate of Prisons for Scotland, Scottish Prison Service and the Association of Visiting Committees. This guidance will be subject to regular review by the advisory group, thus ensuring that it is future proofed.

12. Although I agree that more detail on some areas is required in the legislation, such as on the role of monitors, I am advised by lawyers that in other areas it is more appropriate to provide detail in guidance rather than on the face of the legislation.

***The Committee is sympathetic to the view that independent prison monitors should complement the existing complaints process. The Committee asks the Scottish Government to take account of the concerns raised by the SPSO and to consider adding more detail about the role of monitors in the Order in relation to complaints.*** [Para 55]

13. I agree that independent prison monitors should complement the existing complaints process and, as such, the Order will be amended to clarify the role of monitors in relation to complaints

### **Frequency of Visits**

***The Committee recommends that the Scottish Government considers specifying a minimum requirement for the frequency of prison visits by lay monitors in the draft Order.*** [Para 59]

14. I agree that a minimum requirement for the frequency of prison visits by lay monitors should be specified in the draft Order and it will be amended accordingly.