

Crime and Justice

Consultation on the Draft Public Services Reform (Prison Visiting Committees) (Scotland) Order 2014: Analysis of Written Responses

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A Scottish Government consultation on the Draft Public Services Reform (Prison Visiting Committees) (Scotland) Order 2014 took place between 4th October 2013 and 31st January 2014. A total of 36 written submissions were received. The most common category of respondent was "Visiting Committees" (39%). Others included "local authorities" (22%); "criminal justice organisations" (17%); inspection, monitoring or complaints organisations (8%); human rights organisations (6%); individuals (6%); and professional or representative organisations (3%)

Main Findings

- The main focus of comments on the proposed changes was upon the identification of issues or concerns with the proposals, and suggestions for further consideration.
- Although respondents were not asked to indicate their support or otherwise for the proposals, there was some clear variation by type. Visiting Committees (VCs) and individual respondents generally expressed disagreement or highlighted substantial concerns. There were more mixed views among other types of respondent, with both support and concerns.
- Most respondents made comments on the current situation (e.g. the need for reform; positive aspects of the current system; and the importance of independent monitoring).
- Most, whatever their view of the proposals, expressed support for, or positive views of some aspect of developments to the system of independent monitoring of prisons.
- Several expressed positive views of the effects of the changes (e.g. promotion of consistency; compliance with OPCAT; the nature and effectiveness of the approach).
- The identification of issues or concerns and / or suggestions was very common. The broad areas covered included: the general structure and proposals for oversight by Her Majesty's Chief Inspector of Prisons for Scotland (HMCIPS); the proposed nature and roles of Monitors; and other aspects of the draft Order and related issues.
- Concerns about structure and oversight related to: lack of a clear distinction between inspection and monitoring; a negative impact on the independence of Monitors and monitoring; the level of costs and use of resources; and the nature and effectiveness of the proposed system.
- The most common themes on which issues or concerns were raised, and / or suggestions made about Monitors related to the inclusion of two types of Monitors with different roles, with one role involving paid Prison Monitors.
- Other issues or concerns with the proposed nature and roles of Monitors related to: a lack of reporting and communication requirements; potential recruitment and appointment difficulties; perceived loss of independence of Monitors; general and specific lack of detail of roles and other issues (including prisoner complaints); and concerns about Monitors being assigned to any prison.
- Other issues were raised about further aspects of the draft Order and related issues, including: the nature of the draft Order and proposed Explanatory Document; potential for amendment of the system without recourse to Parliament; lack of reference to an Advisory Board or Group; concerns about access to space and documents; protection of rights; scrutiny and accountability; and meeting the pre-conditions of reform.
- A range of suggestions were made, as well as additional requirements identified.
- Comments were also made on the consultation (respondents, responses and process).

Background

The Scottish Government is committed to taking forward reform of the system for independent monitoring of prisons to meet the obligations under the Optional Protocol to the UN Convention Against Torture (OPCAT). In 2012, following prior consultation, the Government commissioned a review of its proposals. A report by Professor Andrew Coyle was published in January 2013. Following the review, the Scottish Government's proposals to abolish prison Visiting Committees (VCs) and introduce a new system of independent monitoring were published in April 2013.

A proposed draft Public Services Reform (Prison Visiting Committees) (Scotland) Order was laid before the Scottish Parliament on 4 October 2013, and a revised Explanatory Document was laid in November 2013. The draft Order abolishes VCs and creates new roles of Prison Monitors and Lay Monitors. It also changes the statutory role of HMCIPS to bring monitoring of prisons under his oversight (while retaining the HMCIPS inspection functions).

The consultation

The Scottish Government issued a written consultation on 4th October 2013 to provide stakeholders with an opportunity to comment on the proposed draft Order. The consultation ran until the end of January 2014.

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

Overall pattern of views

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

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

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

- The general structure and proposals for oversight of monitoring by HMCIPS.
- The proposed nature and roles of Monitors.
- Other aspects of the draft Order and related issues.

Structure and proposals for oversight by HMCIPS

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

Among the common themes, most respondents made comments on the current situation, including:

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

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

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

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

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

The proposed nature and roles of Monitors

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

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

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

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

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

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

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

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

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

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

Other aspects of the draft Order and related issues

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

- Additional issues within the draft Order and proposed Explanatory Document.
- Additional requirements for the proposals or their implementation.
- The consultation itself.

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

Several respondents raised concerns relating to the potential for amendment of the system without reference to the Scottish Parliament or the public. It was also argued that the

management and functions would be open to interpretation by HMCIPS.

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

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

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

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

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

Comments were also made on the consultation itself focusing on: the nature of respondents and/or their response; and views of the consultation process.

This document, along with full research report of the project, and further information about social and policy research commissioned and published on behalf of the Scottish Government, can be viewed on the Internet at: <http://www.scotland.gov.uk/socialresearch>. If you have any further queries about social research, please contact us at socialresearch@scotland.gsi.gov.uk or on 0131-244 2111.