

## FURTHER CONSULTATION ON THE DRAFT PUBLIC SERVICES REFORM (INSPECTION AND MONITORING OF PRISONS) (*FORMERLY PRISON VISITING COMMITTEES*) (SCOTLAND) ORDER 2014: ANALYSIS OF WRITTEN RESPONSES

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A further Scottish Government consultation on the Draft Public Services Reform (Inspection and Monitoring of Prisons) (*formerly Prison Visiting Committees*) (Scotland) Order 2014 took place between 19th September and 13th October 2014. 29 submissions were included in the analysis. By far the most common respondent category was “Visiting Committees” (38%). Other categories were: local authorities (14%); individuals (14%); criminal justice organisations (10%); inspection, monitoring or complaints organisations (10%); professional or representative organisations (7%); one organisation with a focus on health and well-being (3%) and one human rights organisation (3%).

### Main Findings

- At Question 1 there was a high level of support for the change of role titles from “Lay Monitor” to “Independent Prison Monitor” (IPM) and from “Prison Monitor” to “Prison Monitoring Co-ordinator” (PMC). Overall, 79% of respondents answered “yes”; none answered “no”; and 21% did not express a specific view.
- At Question 2, views expressed were split evenly about whether the revised draft Order provided greater detail on the functions to be carried out by the IPMs. Overall, 41% answered “yes”; 41% answered “no;” and 17% did not express a specific view.
- At Question 3, the highest proportion of respondents did not support the clarifications to the role of the PMC. Overall, 45% answered “no”; 34% answered “yes”; and 21% did not express a specific view.
- At Question 4, there was a high level of support for the inclusion in the revised draft Order of the requirement for the PMC to provide support, and arrange for the training of IPMs. Overall, 83% answered “yes”; none answered “no”; and 17% did not express a specific view.
- At Question 5, there was a high level of support for a duty on the prison Governor to ensure the provision of assistance to the Chief Inspector, IPMs and PMCs. Overall, 83% answered “yes”; none answered “no”; and 17% did not express a specific view.
- At Question 6, the highest proportion of respondents did not consider that the provisions detailed would provide the basis for a clearer and more consistent complaint-handling process for prisoners. Overall, 45% answered “no”; 28% answered “yes”; and 28% did not express a specific view.
- At Question 7, the highest proportion of respondents did not support the inclusion of provisions relating to the establishment and composition of a Prison Monitoring Advisory Group (PMAG). Overall, 45% answered “no”; 34% answered “yes”; and 21% did not express a specific view.
- At Question 8, there was a high level of support for the inclusion of an explanation of the purpose of inspection and monitoring in pursuance of the objective of the Optional Protocol to the UN Convention Against Torture (OPCAT), as well as a section outlining Scottish Ministers’ duties in relation to Subcommittee on the Prevention of Torture (SPT) visits. Overall, 79% answered “yes”; none answered “no”; and 21% did not express a specific view.
- At Question 9, there was a high level of support for the inclusion of a transitional period of three months. Overall, 83% answered “yes”; none answered “no”; and 17% did not express a specific view.
- At each question, comments highlighted: positive comments or benefits; issues or concerns; and suggestions or requirements, although the balance by theme varied.
- At Question 10, issues or concerns (e.g. on the process of change; the nature of the consultation; and aspects of the nature of the proposals) were the most common theme.

## Background

The Scottish Government is committed to taking forward reform of the system for independent monitoring of prisons, to meet its obligations under the Optional Protocol to the UN Convention Against Torture (OPCAT).

The relevant Order-making power in the Public Services Reform (Scotland) Act 2010 is subject to the super-affirmative procedure which includes a formal consultation process.

This consultation on the Draft Public Services Reform (Inspection and Monitoring of Prisons) (*formerly Prison Visiting Committees*) (Scotland) Order 2014 followed prior Government proposals and a previous consultation on the proposed draft Order.

A report of the findings of the previous consultation was published in April 2014. The Scottish Government then published a report in September 2014, containing their response to the issues and concerns that had been highlighted in the consultation, and detailing the changes to the proposed draft Order resulting from these.

A further consultation document was issued on 19th September 2014, to explore stakeholder views of the revised draft Order. The findings of the further consultation are summarised in this paper.

## The further consultation

The further consultation took place between 19th September and 13th October 2014.

The consultation document posed nine specific questions, each of which contained a “closed”, “yes” or “no” element, along with a request for respondents to give the reasons for their views.

These questions focused on:

- A proposed change of role titles; and the nature of the roles and functions of Independent Prison Monitors (IPMs) and Prison Monitoring Co-ordinators (PMCs) (Questions 1-4).
- Inclusion of a duty on the prison Governor to ensure the provision of assistance to the Chief Inspector, IPMs and PMCs (Question 5).
- Proposed provisions for complaint-handling (Question 6).
- Provisions for the establishment and composition of a Prison Monitoring Advisory Group (Question 7).
- Inclusion of an explanation of the purpose

relating to the OPCAT objective and Scottish Ministers’ duties in relation to SPT visits (Question 8).

- Inclusion of a transitional period of 3 months to allow work by Visiting Committees at the time the new system comes into force to be completed (Question 9).

A further question (Question 10) gave respondents the opportunity to make any further comments on the revised draft Order or Explanatory Document.

A total of 29 written submissions were included in the analysis. One further response was received, but was too late for inclusion. The proportions given relate to the 29 submissions.

By far the most common respondent category was “Visiting Committees” (38%). Other categories included: local authorities (14%); individuals (14%); criminal justice organisations (10%); inspection, monitoring or complaints organisations (10%); professional or representative organisations (7%); one organisation with a focus on health and well-being (3%) and one human rights organisation (3%).

## Titles and roles of “Independent Prison Monitor” and “Prison Monitoring Co-ordinator”

At Question 1, there was a high level of support for the change of role titles from “Lay Monitor” to “Independent Prison Monitor” (IPM) and from “Prison Monitor” to “Prison Monitoring Co-ordinator” (PMC). All of those who expressed a “yes” or “no” view answered “yes”, while none answered “no”.

The most common comments related to positive aspects or benefits of the change (e.g. to reflect the roles better; and emphasise the impartiality of IPMs and the co-ordinating role of PMCs). The most common issues or concerns related to Monitors’ independence and the view that they would be less independent than currently. It was also argued that the terminology in the titles was misleading.

At Question 2, “yes” or “no” views were evenly split about whether the revised draft Order provided greater detail on the functions to be carried out by the IPMs. There were differences by type of respondent, with those who answered “no” comprising VC respondents and individuals.

The most common comments related to issues or concerns (e.g. the lack of detail or omission of specific issues; the nature of the IPM role; a lack of independence; and the impact of these issues).

Positive comments were made about the greater detail (generally and on specific issues).

At Question 3, the highest number of respondents (13, or 45%) answered “no” to whether they supported the clarifications made to the role of the PMC to explain their administrative role in relation to prison monitoring. A slightly lower number (10, or 34%) answered “yes”, with views overall mixed. There were differences of view by type of respondent. Those who did not support the proposals comprised almost all of the VCs, along with half of the individual respondents and one local authority.

The most common comments related to issues or concerns (particularly the view of the PMC role as directive and managerial, with a limited administrative element; and the link to HM Chief Inspector of Prisons for Scotland [HMCIPS] and blurring of the distinction between inspection and monitoring). Positive comments included improved clarity and its benefits, as well as some views of the PMC role.

At Question 4, there was a high level of support for the inclusion of the requirement for the PMC to provide support to, and arrange for the training of IPMs. All of those who expressed a view answered “yes”, while none answered “no”.

The most common comments were positive (e.g. the importance and benefits of support and training). A small number of issues and concerns were raised, relating to the discretion of the PMCs; and the requirement for IPMs to attend all training.

## Other changes to processes and provisions

At Question 5, there was a high level of support for inclusion of a duty on the prison Governor to ensure the provision of assistance to the Chief Inspector, IPMs and PMCs, as described in the question. All of those who expressed a view answered “yes”, while none answered “no”.

The most common comments were positive (e.g. the importance and benefits of a co-operative approach). Issues or concerns included potential variation in co-operation; a lack of detail; and a lack of sanctions for non-compliance.

At Question 6, the highest number of respondents (13, or 45%) answered “no”, and did not consider that the provisions detailed would provide the basis for a clearer and more consistent complaint-handling process for prisoners. A lower number (8, or 28%)

answered “yes”. Almost all VCs, half of the individuals and one local authority did not support the proposals.

The most common comments were issues or concerns (e.g. removal of the statutory duty on VCs to hear and investigate complaints; lack of justification for change; weakening of the system; difficulties with the Scottish Prison Service (SPS) complaints system; benefits of the current VC role; and a negative impact of the proposals). Some positive comments were made about the IPM role and perceived benefits of the provisions in relation to clarity and consistency.

At Question 7, the highest number of respondents (13, or 45%) answered “no” and did not support the inclusion of provisions relating to the establishment and composition of a Prison Monitoring Advisory Group. A slightly lower number (10, or 34%) answered “yes”. There were differences by type of respondent, and those who answered “no” were almost all of the VCs and almost all of the individual respondents.

The most common comments were on issues or concerns about the composition and functioning of the group (e.g. lack of independence and ability to challenge). Positive comments were made about the benefits of provision (e.g. in promoting consistency; effectiveness of roles; and responsiveness).

At Question 8, there was a high level of support for the inclusion of an explanation of the purpose of inspection and monitoring in pursuance of the objective of OPCAT, and a section outlining Scottish Ministers’ duties in relation to SPT visits. All of those who expressed a view answered “yes”, while none answered “no”.

The most common comments related to positive views and benefits (e.g. ensuring these issues were not overlooked; identifying responsibilities; and making links to other legislation). Issues and concerns raised related to a potential lack of impact of the proposals on the protection of human rights; and whether the proposed new system addressed all of the OPCAT requirements.

At Question 9, there was a high level of support for the inclusion of a transitional period of three months. All of those who expressed a view answered “yes”, while none answered “no”.

Most made positive comments or identified benefits (e.g. in allowing completion of current work and a more seamless transition). Some issues or concerns were also raised (e.g. a perceived inconsistency between the focus on annual reports in the transitional period, and lack of their inclusion in the new system; the timescale for the new system; and demands on volunteers.)

## Other aspects of the revised draft Order and related issues

Most respondents provided additional comments at Question 10, and a few made additional comments elsewhere. The most common theme was the identification of issues or concerns. The identification of suggestions or requirements was also common, and some respondents also identified positive comments about, or benefits of the proposed changes.

Positive comments or benefits of changes which were identified or reiterated included:

- Expressions of support.
- The perceived need for change.
- Perceived benefits of the proposed changes.

Respondents also identified or reiterated issues or concerns. These related to:

- The overall nature of the change process (e.g. perceived lack of action and timescale; the Implementation Group; and the basis of change).

- The nature of the consultation (e.g. the questions posed; disregard of views; and the consultation materials).
- The nature of the proposals (e.g. management, structure and roles; the focus on inspection and on guidance; lack of specification of details; perceived failure to meet process pre-conditions; negative impact of the changes; and costs).

Many respondents also identified suggestions or requirements (e.g. relating to: the overall approach; inclusion of particular details and specifications; provision of information; and other specific suggestions).

A number of respondents also provided details of their organisation or response (e.g. nature and aims; work; nature of response; and involvement in previous consultation); or made general observations (e.g. on the opportunity to respond or the importance of independent monitoring).

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](mailto:socialresearch@scotland.gsi.gov.uk) or on 0131-244 2111.