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

Analysis of Written Responses

Crime and Justice



social
research

**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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EXECUTIVE SUMMARY

This report presents the findings of the analysis of written responses to a further Scottish Government consultation on the Draft Public Services Reform (Inspection and Monitoring of Prisons) (*formerly Prison Visiting Committees*) (Scotland) Order 2014. The consultation took place between 19th September and 13th October 2014.

The consultation followed an earlier consultation (which took place from October 2013 until the end of January 2014), after which changes were made to the proposed draft Order. This consultation sought views of specific details of these changes.

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 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 Optional Protocol to the UN Convention Against Torture (OPCAT) objective and Scottish Ministers’ duties in relation to the Subcommittee on the Prevention of Torture (SPT) visits (Question 8).
- Inclusion of a transitional period of 3 months to allow work by Visiting Committees (VCs) 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 the inclusion of a duty on the prison Governor to ensure the provision of assistance to the Chief Inspector, IPMs and PMCs. 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 (PMAG). 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).

SECTION 1: INTRODUCTION

1.1 This report presents the findings of the analysis of written responses to a further Scottish Government consultation on the Draft Public Services Reform (Inspection and Monitoring of Prisons) (*formerly Prison Visiting Committees*) (Scotland) Order 2014¹. The consultation took place between 19th September and 13th October 2014. A total of 29 written submissions were included in the analysis. One further response was received, but was too late for inclusion². The proportions given in the report, therefore, relate to the 29 responses.

Summary of Section 1

The Scottish Government carried out a further consultation on the Draft Public Services Reform (Inspection and Monitoring of Prisons) (*formerly Prison Visiting Committees*) (Scotland) Order 2014 between 19th September and 13th October 2014.

A total of 29 written submissions to the further consultation were analysed. 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%).

The material has been analysed and presented quantitatively and qualitatively, reflecting the nature of this consultation process and the material received. The methodology involved: creating an analysis document with the verbatim material for each question and part of question (and any additional material); carrying out quantitative analysis of the “closed” parts of questions; and carrying out detailed analysis of the qualitative material to a series of themes and sub-themes generated from the data.

This report presents the findings which emerged, along with the range and depth of views expressed at the questions. The full responses are available for inspection on the Scottish Government website.

Background

1.2 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.

¹ Referred to as “the revised draft Order”.

² This respondent was advised that, while the material would not be included in the analysis, the response would be read by the Scottish Government and made available on the website.

1.3 This consultation on the revised draft Order followed prior Government proposals and consultation in relation to reform of the system. In 2012, following previous consultation, the Government commissioned a review of its proposals, and a report by Professor Andrew Coyle was published in January 2013³. Following that 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) Order⁴ was laid before the Scottish Parliament on 4 October 2013, and a revised Explanatory Document was laid in November 2013. The proposed draft Order was to: abolish Prison Visiting Committees; clarify the role of HM Chief Inspector of Prisons for Scotland (HMCIPS); and create the roles of Prison Monitor and Lay Monitor.

1.4 The Scottish Government issued a written consultation on 4th October 2013 giving stakeholders an opportunity to comment on both the proposed draft Order and the accompanying Explanatory Document. The consultation ran until the end of January 2014, and a total of 36 written responses were received. A report of the findings was published in April 2014⁵.

1.5 In terms of the general pattern of views in the previous consultation (referred to in para 1.4 above), the consultation did not ask specific questions, but the main focus of the comments overall was upon the identification of issues or concerns and / or the identification of suggestions for further consideration in taking forward the proposed draft Order. Some of these related to: the proposed structure of the new arrangements; proposals for oversight by HMCIPS; 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; costs and use of resources; the nature and effectiveness of the approach; and a lack of detail of roles.

1.6 The Scottish Government published a report in September 2014 containing their response to the issues and concerns that had been highlighted in the previous consultation⁶, and detailing the changes to the proposed draft Order resulting from these. A further consultation document⁷ was issued on 19th September 2014 to explore stakeholder views of the revised draft Order.

The revised draft Order and further consultation

1.7 The further consultation document included details of the background and process, as well as an explanation of the key provisions of the revised draft Order. It identified the purpose of the revised draft Order as being to abolish Prison Visiting Committees, to clarify the role of the Chief Inspector, create the roles of Prison

³ Coyle, A. (2013) *Review of Proposals to Improve Arrangements for Independent Monitoring of Prisons* Edinburgh: Scottish Government.

⁴ Referred to as "the proposed draft Order".

⁵ Scottish Government (2014) *Consultation on the Draft Public Services Reform (Prison Visiting Committees) (Scotland) Order 2014: Analysis of Written Responses* Edinburgh: Scottish Government.

⁶ Scottish Government (2014) *Consultation Report on Draft Public Services Reform (Prison Visiting Committees) (Scotland) Order 2014* Edinburgh: Scottish Government.

⁷ Scottish Government (2014) *Further Consultation on the Draft Public Services Reform (Inspection and Monitoring of Prisons) (formerly Prison Visiting Committees) Order 2014* Edinburgh: Scottish Government.

Monitoring Co-ordinators (PMCs) (*formerly Prison Monitors*) and Independent Prison Monitors (IPMs) (*formerly Lay Monitors*) and require the Chief Inspector to establish a Prison Monitoring Advisory Group (PMAG). The PMCs and IPMs would operate under the auspices of the Chief Inspector.

1.8 The document indicated that this would be done by amending the Prisons (Scotland) Act 1989 and revoking those parts of the Prisons and Young Offenders Institutions (Scotland) Rules 2011 which relate to Visiting Committees, and making other consequential amendments.

1.9 The document set out that the revised draft Order would enshrine in legislation that the purpose of independent prison monitoring is in pursuance of the objective of OPCAT (establishing a system of regular visits undertaken by international and national bodies to places where people are deprived of their liberty). A duty would also be placed on the Governor of each establishment to assist with inspection and monitoring, 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.

1.10 The document also identified that the new independent monitoring service would sit under the auspices of HMCIPS. The Chief Inspector would employ not less than three PMCs who would each oversee and support a number of IPMs. PMCs and IPMs would be assigned to specific prisons and would be representative of the local community. The Chief Inspector would oversee the independent monitoring of prisons, but the inspection and monitoring functions would operate separately.

1.11 Chapter 3 of the document provided information about the changes which had been made to the proposed draft Order following the October 2013 – January 2014 consultation. These included:

- A change of title to “The Public Services Reform (Inspection and Monitoring of Prisons) (Scotland) Order 2014”.
- Insertion of a section outlining that the provisions of the Order are in pursuance of the objective of OPCAT.
- Changes to Section 7 and Sections 7A-G, relating to:
 - The appointment and functions of HMCIPS.
 - The appointment and functions of PMCs and IPMs.
 - The duty of the Governor to assist with prison monitoring.
 - The Prison Monitoring Advisory Group.
 - SPT visits.

1.12 The consultation posed 9 detailed questions on some of the main changes, and provided a brief explanation at each for the reasons for the changes. The 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 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 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).

1.13 Each of these questions contained a “closed” element inviting a “yes” or “no” response relating to agreement or disagreement with aspects of the proposed changes, as well as a request for the reasons for the answer.

1.14 An additional question (Question 10) provided an opportunity for respondents to make any further comments on the revised draft Order or Explanatory Document. The full questions and the brief explanations given for the relevant changes are provided in Annex 2.

1.15 Respondents were asked to submit their responses using a consultation questionnaire and a Respondent Information Form (RIF).

1.16 The document also provided information about the Scottish Government consultation process. Annexes provided: a copy of the revised draft Order; a copy of the revised Explanatory Document; the RIF; and the consultation questionnaire.

Submissions and respondents

1.17 Of the 29 written responses analysed, almost all (90%) followed the consultation questionnaire. As in the previous consultation, respondents have been categorised according to the general type of their organisation, or as individuals. It is recognised that, again, there are overlaps between the organisational categories, and that some subjective judgement was required. It was considered important, however, to provide an indication of the respondent types for the analysis, and the specific perspective of Visiting Committees made it important to provide a category for them. Most, but not all of the respondents had submitted a response to the previous consultation.

1.18 The table below provides an indication of the general pattern of responses to this consultation. A full list of respondents is given at Annex 1.

Table 1. Respondents by category

Category	No.	%⁸
Visiting Committees	11	38
Local authorities	4	14
Individuals	4	14
Criminal justice organisations	3	10
Inspection, monitoring or complaints organisations	3	10
Professional or representative organisations	2	7

⁸ N.b. Tables in the report do not always sum to 100, due to rounding.

Health and well-being organisations	1	3
Human rights organisations	1	3
	29	

1.19 By far the most common respondent category was “Visiting Committees” (VCs), from which 38% of all responses were received. Respondents in this category included individual VCs in Scotland and the Association of Visiting Committees (AVC). Other categories from which smaller numbers of responses were received included: local authorities; individuals; criminal justice organisations; inspection, monitoring or complaints organisations⁹; professional or representative organisations; one organisation with a focus on health and well-being; and one human rights organisation.

Analysis of the data and presentation of the information

1.20 The analysis of the material in this consultation involved both quantitative and qualitative elements. The process included:

- Assigning an identifier code and number to each response.
- Reading all of the responses.
- Creating a series of analysis documents, with one for each question (and part of question), as well as one for any other comments. These comprised, in each case, a two column table with the respondent identifier and their response.
- Carrying out a quantitative analysis of the material provided at the closed elements of the questions.
- Carrying out detailed analysis of the material to a series of themes and sub-themes for each question, generated from the data.
- Summarising the findings and preparing this report.

1.21 Quantitative information is provided in relation to: the overall number and types of respondents to the consultation (provided in Table 1 above); and the numbers responding “yes” or “no” to the “closed” elements of Questions 1-9.

1.22 The presentation of the qualitative material highlights the themes and sub-themes identified, and the range and depth of views expressed at each question.

1.23 As in the previous report, qualitative terms are used for the presentation of the more detailed information, and it would be inappropriate to quantify this material further. Given the number of responses analysed (29), some of the specific qualitative points were made by very small numbers, or sometimes single respondents, but these have been reflected in the analysis. Additionally, as respondents were self-selecting, it would be inappropriate to generalise from the views expressed in this report to all relevant stakeholders.

1.24 While the report does not identify the type of respondent(s) raising every issue, patterns of views are highlighted by category, and some examples are given of respondents raising particular themes. Where the term “respondent” is used, this

⁹ Abbreviated to IMCOs for the purposes of this report, for ease of reading.

refers to one response, even where that response may represent the views of more than one contributor.

1.25 Again, as in the previous consultation report, the wording used in presenting the qualitative data sometimes follows the wording of the response closely, in order to reflect the respondent's intended messages. However, quotations have not been used, as this might imply that a particular view was being given more weight than others.

1.26 The report is not a compendium of the material submitted, but it summarises the overall themes, sub-themes and issues raised. All of the respondents agreed that their responses could be made available. The full texts of responses can be viewed on the Scottish Government website.

1.27 In the presentation of the detailed comments at each question, the material is set out using the same overall themes which emerged in each case. These were: "positive comments or benefits"; "issues or concerns"; and "suggestions or requirements". Although the relative prevalence of each of these themes varied by question, the ordering of their presentation at each question has not been varied in the report (in order to provide consistency and enable ease of reading). In each case, however, the balance of views by theme has been highlighted.

1.28 The remainder of the report presents the findings, as follows:

- Section 2 covers the findings about the titles; and the nature of the roles and functions of IPMs and PMCs in the revised draft Order (explored in Questions 1-4).
- Section 3 covers the findings about other proposed changes to processes and provisions under the revised draft Order (explored in Questions 5-9).
- Section 4 covers the findings about any other aspects of the revised draft Order and other related issues explored in Question 10.

SECTION 2: TITLES AND ROLES OF INDEPENDENT PRISON MONITOR AND PRISON MONITORING CO-ORDINATOR

2.1 This section presents the findings relating to the titles; and the nature of the roles and functions of IPMs and PMCs in the revised draft Order (Questions 1-4).

Summary of Section 2

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”, and 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 were: that monitors would be less independent than currently; and 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. 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 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, related to the discretion of the PMCs; and the requirement for IPMs to attend all training.

Question 1 Change of role titles

2.2 Question 1 asked:

“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)? Please give reasons for your answer.”

Overall pattern of views

2.3 Most respondents (79%) addressed the quantitative part of Question 1¹⁰ and there was a high level of support for the change of role titles. All of those who expressed a view answered “yes”, while none answered “no”. Six respondents (21%) did not express a specific “yes” or “no” view, although two of these made additional comments relevant to Question 1.

2.4 By type, all of the Visiting Committee; local authority; individual; and health and well-being respondents answered “yes”. A small number of respondents (from the criminal justice; inspection, monitoring or complaints; professional or representative; and human rights organisation categories) did not express a “yes” or “no” view (but those who did so expressed agreement). The pattern of quantitative views is summarised in the table below.

Table 2. Support change of role titles?

	Number	%¹¹
Ticked or stated “yes”	23	79
Ticked or stated “no”	0	0
Did not express a “yes” or “no” view	6	21
Total	29	

2.5 Most respondents made additional comments relating to Question 1 (including two who did not address the quantitative part of the question). Only four respondents did not address this question in some way.

2.6 The most common theme for additional comments was the identification of positive aspects or benefits of the change of role titles. Also common, however, were comments identifying issues or concerns. A few respondents identified specific suggestions, perceived requirements or developments.

Positive comments or benefits

2.7 Most respondents, including respondents of all types, made positive comments at Question 1. These included overall comments in favour of the changes (e.g. welcoming these; expressing general agreement; or suggesting that they were an improvement on the previous proposals).

¹⁰ Throughout the report this proportion relates only to those respondents who ticked a box or specifically stated “yes” or “no” in their response to the question.

¹¹ Throughout the report, this figure refers to the proportion of all analysed responses.

2.8 Comments were also made on specific benefits of the change of titles, and several respondents stated that these were appropriate or reflected the roles, duties and functions of the IPMs and PMCs more accurately. One local authority respondent stated that the changes modernised the terminology.

2.9 Several respondents made specific comments on the benefits of the change of role title from Lay Monitor to Independent Prison Monitor, particularly the importance of inclusion of “Independent” in the title, to emphasise the impartiality of the role. One IMCO stated that the prison monitoring function would be a separate arm of HMIPS, with HMIPS itself independent of the Scottish Government. One VC respondent stated that the changes recognised who would actually be undertaking independent monitoring, while another stated that IPM was a much more meaningful title. It was also argued that the previous term “Lay Monitor” did not give appropriate weight to the role.

2.10 A few respondents made specific comments on the benefits of the change of role title from Prison Monitor to Prison Monitoring Co-ordinator. For example, it was argued that the changes highlighted their role in administering, co-ordinating and supporting the work of the IPMs. It was also argued that the change provided a more robust description of the role, clarifying the distinction between the roles of IPM and PMC.

2.11 Some respondents, however, qualified their comments with additional concerns, and these are discussed below, along with other issues or concerns raised.

Issues or concerns

2.12 As noted, around half of the respondents raised additional issues or concerns. These were raised most commonly by VC respondents (almost all of which made such comments), as well as by a small number of others.

2.13 The most common theme in relation to issues or concerns related to specific concerns about the independence of the Monitors. For example, some respondents questioned how “independent” the Monitors would be, or argued that they would be significantly less independent than was the case currently. Related to these issues, it was also argued that the terminology used was misleading.

2.14 Several respondents raised specific issues which they considered would hinder or compromise the independence of Monitors, and these were seen to be:

- Recruitment of PMCs by HMCIPS.
- The means of reporting concerns (with a lack of mechanism for IPMs to go directly to the relevant Governor or to Scottish Ministers).
- A lack of independence of monitoring from inspection.
- A hierarchical structure.
- IPM visits to prisons in accordance with a rota agreed by the Co-ordinator and Governor.
- Appointment and management of IPMs by the PMCs, and compliance with instructions issued by them.

- Prisoners' access to IPMs being reliant on the co-operation of the SPS.
- Abolition of the duties of VCs to hear and investigate complaints.

2.15 One VC expressed general disagreement with the PMC title, while a few respondents noted that the revised draft Order still empowered PMCs to carry out monitoring functions, suggesting that this was obscured by the title. A small number of VCs also argued that it was misleading in terms of the primary functions of the PMC.

2.16 A few VC respondents stated generally that the changes did not resolve concerns raised in previous consultation responses, and a few made specific references to the differences to the current situation for VCs, or to the situation in other parts of the UK. One VC respondent stated that they were more concerned with the change of roles than the name changes themselves. Another stated that the proposals did not constitute a "gold standard" of prison monitoring.

Suggestions or requirements

2.17 A small number of respondents made additional suggestions or identified perceived requirements (although clearly some of the issues and concerns highlighted above also imply these).

2.18 Specific additional suggestions which focused on independence included to:

- Maintain the level of independence currently available to VCs.
- Ensure priority for independence in the guidance.

2.19 Suggestions in relation to the role of the PMC included to ensure that:

- The role is made clear.
- The role is only in support of IPMs.
- The role is purely administrative and not managerial.

2.20 One respondent suggested more generally that a case could be made for strengthening the ties between prisons and local communities.

Question 2 Functions of the IPM

2.21 Question 2 asked:

"Does the revised draft Order provide greater detail on the functions to be carried out by the IPM? Please give reasons for your answer."

Overall pattern of views

2.22 Most of the respondents (83%) addressed the quantitative part of Question 2 and there were mixed views of whether the revised draft Order provided greater detail on the functions to be carried out by the IPM. Amongst those who expressed a view, these were split evenly between those who answered "yes" and "no". Five

respondents (17%) did not express a specific “yes” or “no” view, although two made additional comments relevant to Question 2.

2.23 There were clear differences of view by type of respondent. Those who answered “yes” included: all of the local authority respondents; the professional or representative organisations; and the health and well-being organisation; as well as half of the individual respondents and those criminal justice organisations and IMCOs who expressed a specific view. Only one VC respondent answered “yes”. Those who answered “no” comprised almost all of the VC respondents, along with half of the individual respondents. The pattern of quantitative views is summarised in the table below.

Table 3. Greater detail provided on the functions of the IPM?

	Number	%
Ticked or stated “yes”	12	41
Ticked or stated “no”	12	41
Did not express a “yes” or “no” view	5	17
Total	29	

2.24 Most of the respondents made additional comments relating to Question 2 (including two who did not address the quantitative part of the question). Only three respondents did not address this question in some way.

2.25 The most common theme for additional comments in this case was the identification of issues or concerns. A less common theme (although identified by a number of respondents) related to positive comments or benefits of the proposed changes. Several respondents also identified specific suggestions or requirements.

Positive comments or benefits

2.26 Positive comments or perceived benefits relating to the revisions to the functions to be carried out by the IPMs were identified only by respondents who expressed agreement with Question 2 (thus reflecting the general pattern identified at paragraph 2.23 above).

2.27 These included expressions of general agreement that greater detail had been provided, and / or comments that this represented an improvement. One respondent stated that the level of detail was helpful in considering the proposals, and one local authority respondent suggested that the previous consultation had clearly guided the revised draft.

2.28 Amongst issues identified as being clearer (or specifically welcomed) were:

- The role of IPM.
- How the functions fit with the responsibilities of the PMC.
- Assignment of an IPM to a specific prison.
- The primary role of an IPM as being monitoring.
- The IPM’s role in the complaints process.
- Recognition of the need for rotas alongside unannounced visits.
- The requirement for formal training.

- Recognition of evaluation.

Issues or concerns

2.29 As noted above, the largest number of comments at Question 2 related to issues or concerns. Although these were made primarily by those who expressed disagreement (VCs and individual respondents), some respondents who answered “yes” or who did not express a specific “yes” or “no” view to the quantitative element of the question also raised issues or concerns.

2.30 A common theme was a perceived general lack of clarity, or insufficient detail in relation to the functions, profile and role of IPMs, particularly (in the view of some respondents) when compared to existing legislation relating to VCs. It was argued, for example, that the current legislation set out the key duties and tasks for lay volunteers, while the revised draft Order contained only limited information on their detailed functions. It was also stated that there was no job description available for IPMs.

2.31 A number of respondents raised concerns about the omission of particular issues. These included:

- The number and composition of IPMs required; the number per prison; a formula for calculation of the minimum number for a prison; or a mechanism for establishing a minimum number.
- The frequency and regularity of visits to each prison, or a minimum number of visits.
- Appointment criteria, or the circumstances in which an individual may become ineligible.
- A duty to hear and investigate complaints; the requirement to produce a written report and inform the prisoner of the findings; and the duty of the Governor to provide a confidential setting to hear complaints.
- Provision for regular IPM group meetings to share information, ensure continuing professional development (CPD), and discuss issues with the Governor and other staff.
- Requirement to produce an annual report on a prison.

2.32 A few respondents argued that previous comments on the need for detail in the legislation (or particular aspects of the detail) had not been taken into account, or that the changes made may be insufficient.

2.33 Concerns were also raised with the actual nature of the IPM role, including the view that the functions were limited in scope and authority compared to current VCs. It was also argued that the new monitoring arrangements appeared less robust. In terms of additional comments on specific aspects of the IPM role, one VC respondent argued that a term of three years was not sufficient. The same respondent stated that the achievement of a good cross-section of people to be IPMs would not always be possible. Another VC respondent expressed disappointment that the annual reporting requirement did not specifically demand IPM input.

2.34 Some concerns also reflected issues raised at Question 1 relating to factors which were seen to compromise independence, such as:

- IPM visits to prisons in accordance with a rota agreed by the Co-ordinator and Governor.
- Appointment and management of IPMs by the PMCs, and compliance with instructions issued by them.
- The requirement on IPMs to investigate specific matters referred by the PMC.
- Evaluation of the performance of each IPM by the appointing PMC.
- The proposal to remove the need for the Governor to respond timeously to any circumstances which concern IPMs.

2.35 Other concerns about the impact or implications of the issues raised included views that:

- The omissions would weaken monitoring generally.
- The lack of detail about the scope and authority of the role of the IPM may have a negative impact on the ability to recruit suitably qualified volunteers.
- The lack of specification of the number of IPMs or frequency of visits may make the voluntary aspect of the role “onerous”.
- Less frequent visits by IPMs could lead to less visibility to prisoners and staff.
- The lack of regular meetings would undermine the establishment of a robust system and lead to a loss of influence of IPMs.
- The complaint-handling arrangements would be less robust than current arrangements and a retrograde step for prisoners.
- The quality of reporting may be reduced.
- The ability to call the Governor to account would be weakened and ineffective.

2.36 One VC respondent, while supporting the recognition for evaluation, stated that this would require the determination of quality standards, and expressed concern about who would devise these and how they would be applied.

2.37 One respondent stated that there was confusion over terminology in relation to what was meant by “function”, “role”, “independence” and “monitoring”. Another raised a specific concern about a wording issue in the revised draft Order (Section 7D [3]) relating to the inclusion of the word “may”. It was argued that this did not accord with the wording in the consultation paper [page 5 Section 7D]).

2.38 Several VC respondents expressed concern about the high level of reliance on guidance rather than legislative provisions, arguing that this could be written and altered without parliamentary scrutiny.

Suggestions or requirements

2.39 Fewer comments focused on particular suggestions or perceived requirements (although clearly some of the concerns highlighted above again imply

suggestions and perceived requirements). Where specific additional suggestions were made, some of these related to the areas of concern identified above.

2.40 For example, one respondent argued that the revised Order should include the frequency and regularity of visits and that this should be in accordance with current practice as specified in Part 17 (Section 151) of the Prisons and Young Offenders Institutions (Scotland) Rules 2011.

2.41 The same respondent argued that the number and composition of IPMs would follow the need to meet the specified frequency and regularity of visits, and should therefore be included in the Prison Monitoring Guidance documents rather than being a matter for legislation.

2.42 One human rights organisation respondent made comments relating to the composition of members and staff for independent monitoring of prisons, stating that they should not only be independent, but should be knowledgeable and have the relevant professional expertise. They stated that there should be a multidisciplinary approach, with the required variety of different fields of professional knowledge, as well as being representative of wider society (e.g. in terms of gender and being representative of BME and other groups). The same respondent argued that any limitations on Monitors visiting prisons should be set out clearly.

2.43 One of the VC members stated specifically that Monitors must be allowed to investigate complaints. Suggestions were also made about meetings, including that: there should be at least bi-monthly meetings; and that the meeting dates should relate to quarterly reports from Governors. It was also argued by a human rights organisation respondent that annual reporting on individual prisons was highly desirable (a view also expressed by a VC respondent, who also argued that there was a need for a regular report from the Governor to the IPMs).

2.44 A small number of additional suggestions were made about wording. One respondent stated that the wording (and the order of the wording) could be improved and made specific suggestions relating to Sections 6A and 7G of the revised draft Order (which are not set out here, but are available to the Scottish Government).

2.45 Some additional suggestions or perceived requirements were also highlighted in relation to guidance. For example, one criminal justice organisation respondent suggested that practice guidance for the IPM could complement the detail in the Order. One of the VC respondents argued that, if guidance was used to set out duties, then a detailed mechanism for reporting changes to Parliament should be set out within the Order. The same respondent stated that any guidance should be developed in partnership with current members of VCs.

2.46 One respondent stated that some of the specific details could not be “set in stone” at this stage. They argued that the “building blocks” were in place, and the fine details could be established once the scheme was operational and evolving.

Question 3 Clarifications to explain the administrative role of the PMC

2.47 Question 3 asked:

“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? Please give reasons for your answer.”

Overall pattern of views

2.48 Most respondents (79%) responded to the quantitative part of Question 3. Views were mixed, but the highest number of respondents (13, or 45%) answered “no”, and did not support the clarifications to the role of the PMC as outlined in the question. A slightly lower number (10, or 34%) answered “yes” while six respondents (21%) did not express a specific “yes” or “no” view (although one of these made additional comments relevant to Question 3).

2.49 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. By contrast, only one VC answered “yes” in support of the clarifications, along with the three remaining local authorities; the other individual respondents; and small numbers of respondents of other types who expressed a view. The pattern of quantitative views is summarised in the table below.

Table 4. Support clarifications to explain the administrative role of the PMC?

	Number	%
Ticked or stated “yes”	10	34
Ticked or stated “no”	13	45
Did not express a “yes” or “no” view	6	21
Total	29	

2.50 Most respondents made additional comments relating to Question 3 (including one who did not address the quantitative part of the question). Only five respondents did not address this question in some way.

2.51 The most common theme for additional comments at Question 3 was the identification of issues or concerns (largely by respondents who did not support the changes). A number of respondents (all of whom supported the changes) identified positive comments or benefits. A small number of specific suggestions or requirements were also highlighted.

Positive comments or benefits

2.52 Positive comments included overall agreement or satisfaction with the clarifications made in the revised draft Order relating to the administrative role of the PMC. It was suggested, for example, that the definition and role purpose was clearer in the Order, including, for example, the addition of responsibility for rotas, recruitment and training.

2.53 A few additional comments were made about the impact or benefits of the clarification, including that this would:

- Help identify the PMC administrative role, as well as contributing to the overall responsibility of monitoring prison conditions and treatment of prisoners.
- Help remove confusion about who is responsible for the day to day work of monitoring.

2.54 Positive comments were also made about the PMC role (e.g. in relation to this becoming more administrative and supporting). One respondent stated that the additional responsibility to report annually in relation to the monitoring of each prison to which the PMC was assigned would provide good performance information about prisons, and enable accurate annual reporting to Scottish Ministers. Another stated that the changes of role of the employed staff in relation to administration, training and support introduced a note of realism into the plans. They suggested that it was clear that most monitoring work would be undertaken by lay persons who would need administrative input, training and support.

Issues and concerns

2.55 The issues and concerns raised related to two main issues:

- The nature of the PMC role.
- The link to HMCIPS.

2.56 In terms of the nature of the role, it was argued that the role of the PMC was not administrative, or that it contained only a small administrative element. Some of the respondents detailed or summarised the main functions identified in the revised draft Order, and suggested that this meant that the administrative role of the PMC was a very limited one.

2.57 Several respondents argued specifically that the role was directive and managerial (involving managing the IPMs on behalf of HMCIPS), rather than being administrative.

2.58 Linked to these issues, several respondents expressed concerns about the link to HMCIPS. Comments included that the PMCs would:

- Act in accordance with the wishes of the Inspectorate, and be required to comply with instructions.
- Report to HMCIPS on investigations referred to the IPMs.
- Effectively be agents of HMCIPS and managers of IPMs.

2.59 A few VC respondents stated that the emphasis on following instructions from the Chief Inspector suggested that a major part of the PMC role would be to ensure that IPMs followed up on inspection findings. It was also suggested that the PMC role pointed more to inspection than monitoring.

2.60 A few respondents expressed a specific concern that the distinction between inspection and monitoring would be blurred or lost, with monitoring becoming

ongoing inspection or a “tick box” exercise. One VC respondent argued that this concern (raised previously) had not been addressed by these clarifications. It was also argued that these arrangements would compromise the independence of monitoring, and reduce the time available for this.

2.61 A few respondents made other comments about the PMC role. One VC, for example, expressed concern that the PMCs seemed to be responsible for supporting individual IPMs, rather than coherent teams. Another contrasted the proposed system to that of Independent Custody Visitors (ICVs), within which, it was said, police Co-ordinators administer, but do not manage.

Suggestions or requirements

2.62 A small number of specific suggestions or requirements were also highlighted.

2.63 At a general level, one professional or representative organisation respondent stated that the PMC should facilitate the role of IPMs rather than diminish this. One local authority argued that the role crossed several functions and would require to remain transparent, given that it would engage with prisoners, prisons and the IPMs. One of the VC respondents also emphasised the importance of talking with staff and prisoners.

2.64 One respondent expressed the view that details on recruitment processes; how rotas would work; and training requirements should be included in the Prison Monitoring Guidance Document.

2.65 As at Question 2, one respondent stated that some of the specific details of the system could be established once it was up and running.

Question 4 Role of the PMC in support and training

2.66 Question 4 asked

“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? Please give reasons for your answer.”

Overall pattern of views

2.67 Most respondents (83%) addressed the quantitative part of Question 4, and 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. All of those who expressed a view answered “yes”, while none answered “no”. Five respondents did not express a specific “yes” or “no” view, although one of these made additional comments relevant to Question 4.

2.68 By type, all of the VC; local authority; individual; professional or representative; and the health and well-being organisation respondents expressed agreement. A small number of criminal justice; inspection, monitoring or complaints; and human rights organisations did not express a specific view, but those who did

expressed agreement. The pattern of quantitative views is summarised in the table below.

Table 5. Support requirement of PMC re support and training of IPMs?

	Number	%
Ticked or stated “yes”	24	83
Ticked or stated “no”	0	0
Did not express a “yes” or “no” view	5	17
Total	29	

2.69 Most respondents made additional comments relating to Question 4 (including one of those who did not address the quantitative part of the question). Only four respondents did not address this question in some way.

2.70 The most common additional comments related to the identification of positive comments or benefits of the requirement for the PMC to provide support, and arrange training for IPMs. A further common theme was the identification of suggestions or requirements relating to these provisions. A small number of issues or concerns were also raised.

Positive comments or benefits

2.71 Almost all of the respondents who made additional comments at Question 4 made positive comments or identified benefits relating to support and training. Among these, some respondents welcomed the provision, or expressed their general agreement or support (although a few VCs qualified their comments, and these issues are discussed below). One local authority respondent welcomed the clarification that the PMC role would include providing support to the IPMs and arranging the training of the IPMs, but also arranging a meeting with the IPMs every six months and evaluating the performance of the IPMs.

2.72 Many respondents made comments on the importance of both support and training, or the need for this. One individual respondent expressed the view that the scheme would only be successful if proper support and training were provided.

2.73 One IMCO respondent stated that responsibility for training had been omitted from the previous Order, and had been identified in the previous consultation analysis. They stated that this provision clarified responsibility and placed a requirement on the IPMs to attend as part of their role. One criminal justice organisation and several VCs stated that requests for training had previously been made, and that this provision was overdue. One VC respondent stated that training provision was currently “haphazard” and that they undertook a lot of their own training.

2.74 A few respondents identified particular benefits of the proposed changes, in terms of providing clarity of role and preventing duplication. Several respondents identified the benefits of support and training per se, and these included to enable:

- Effective monitoring.
- Sharing of practice information.

- Consistency of practice and processes.
- Development and maintenance of further knowledge, information and competence.
- Consistency of skills and knowledge.
- Credibility in the process.
- Maintenance of the integrity of the IPM role.

Issues or concerns

2.75 A small number of issues or concerns were raised by some of the VCs and one of the individual respondents. The most common related to the approach to support and training, and the exercise of these functions being at the discretion of the PMCs. A few VC respondents expressed concern that there was no guarantee that training would cover all of the important topics, and that this could lead to inconsistencies across Scotland. It was also suggested that the support provided may not be appropriate to the needs of IPMs.

2.76 Some of the VCs and one individual respondent raised a concern relating to the requirement for IPMs to attend all training arranged by the PMC. It was argued that this could leave the IPM in breach of the Order if, for reasons outwith their control, they were prevented from attending a training session on a particular date. It was also argued that it seemed “overly prescriptive”.

2.77 A small number of other issues were raised. One VC expressed the view that it would be difficult to meet the specific needs of individual IPMs if these were a cross section of the community. A few VCs stated that very little of the PMC role related to support and training. One VC raised an issue relating to who could provide the training. The same VC respondent expressed concerns about the demands the requirements would place on a small number of staff with a broad remit.

Suggestions or requirements

2.78 A number of respondents made suggestions or identified requirements relating to support and training. The two most common themes related to: the provision of additional detail; and suggestions about the actual nature of the provision.

2.79 In terms of additional information, one local authority respondent, for example, suggested generally that more information about the support and training that would be available would be helpful. Some respondents argued that more a detailed specification (and, for example, a definition of “support”) should be provided, in order to avoid inconsistency and to ensure that each IPM received the same advice and level of input. Related to this, it was argued that it should not be at the discretion of the PMCs, but should be standardised across Scotland.

2.80 A number of suggestions were made about the nature of training, including that this should be:

- Of a high standard.
- Focused and relevant to the current legislative landscape.
- Tailored to the needs of IPMs.

2.81 Suggestions were also made about issues to be covered in training, and these included:

- Mental health.
- Suicide awareness.
- International requirements.
- Human rights legislation.
- Necessary personal safety.
- Familiarisation with the role of the IPM.

2.82 It was also suggested that the issues to be covered in training could be set out in guidance. Additionally, a few respondents argued that attendance requirements for training would best be detailed in guidance. It was also argued that there should be some flexibility in the attendance requirement, in order to ensure that suitable candidates were not excluded as a result of occasional limited availability. Another respondent suggested that it should be made clear that training would take account of individual circumstances, and that there may be a need to give IPMs choices of dates and times to attend.

2.83 One VC respondent expressed the view that the proposed resources available for the “paid” Monitors (the PMCs) could be more usefully directed to providing a funded training programme for the “lay” Monitors (the IPMs).

SECTION 3: OTHER CHANGES TO PROCESSES AND PROVISIONS

3.1 This section presents the findings relating to other proposed changes to processes and provisions under the revised draft Order (Questions 5-9).

Summary of Section 3

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. 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 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 PMAG. A slightly lower number (10, or 34%) answered “yes”. Almost all VCs and individuals answered “no”. The most common comments raised issues or concerns about composition and functioning of the group (e.g. lack of independence or ability to challenge). Positive comments were also made on the benefits (e.g. 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”, and none answered “no”. The most common comments related to positive views or benefits (e.g. ensuring these issues were not overlooked; identifying responsibilities; and making links to other legislation). Issues and concerns related to a potential lack of impact on protection of human rights; and whether the system would address all 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.)

Question 5 Duty on a prison Governor to ensure assistance

3.2 Question 5 asked:

“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? Please give reasons for your answer.”

Overall pattern of views

3.3 Most of the respondents (83%) responded to the quantitative part of Question 5, and there was a high level of support for the inclusion of a duty on the Governor to ensure the provision of assistance to the Chief Inspector, IPMs and PMCs, as described above. All of those who expressed a view answered “yes”, while none answered “no”. Five respondents did not express a specific “yes” or “no” view.

3.4 By type, all of the VC; local authority; individual; professional or representative; and health and well-being organisation respondents expressed agreement. A small number of criminal justice; inspection, monitoring or complaints; and human rights organisations did not express a specific view, but those who did expressed agreement. The pattern of quantitative views is summarised in the table below.

Table 6. Welcome inclusion of duty on Governor to ensure assistance?

	Number	%
Ticked or stated “yes”	24	83
Ticked or stated “no”	0	0
Did not express a “yes” or “no” view	5	17
Total	29	

3.5 Most respondents made additional comments relating to Question 5. Only five respondents did not address this question in some way.

3.6 The most common additional theme was the expression of positive comments or benefits of the inclusion of a duty on the Governor to ensure the provision of assistance. A smaller number of respondents raised issues or concerns, and some identified additional suggestions or requirements.

Positive comments or benefits

3.7 Most respondents made positive comments or identified benefits of this provision. These included some who stated that they welcomed or supported this inclusion (although a few VCs qualified their support, and the issues raised are discussed below). One local authority identified the inclusion of this provision as being a result of the previous consultation.

3.8 Several respondents stressed the perceived need for, and importance of the inclusion of a duty on the Governor to ensure assistance. A few VC respondents

provided examples of positive co-operation from the Governors in their own establishments. One individual respondent stated that they believed that the scheme could come to a halt without the support and assistance of the Governor and the SPS. One of the criminal justice organisations expressed the view that a collaborative approach was essential, and an IMCO stated that it was incumbent on Governors to develop co-operative relationships with IPMs and PMCs.

3.9 Some of the specific perceived reasons for the need for this, or potential benefits of such an approach, were seen to include to:

- Enable Governors to recognise the opportunity to support the aspiration of “flourishing prisons” as identified by the SPS Organisational Review.
- Ensure that Governors, as leaders in the justice system and subject to external scrutiny, recognise their part in the process, and the legislative authority of the IPMs and PMCs.
- Ensure that Governors recognise the alignment of this domestic legislation with national and international law.
- Allow IPMs and PMCs to undertake their roles and statutory functions efficiently.
- Develop a more consistent and independent monitoring arrangement across the whole of the prison estate.
- Ensure universal co-operation from Governors.

Issues or concerns

3.10 A small number of issues or concerns were identified. The most common concern was that the provision of assistance would be dependent on a Governor’s co-operation, and that this could vary and was not always forthcoming. A few respondents cited difficulties experienced by some VCs (e.g. the lack of provision of basic office facilities).

3.11 Related to these concerns, it was argued that the phrase “such assistance as is necessary” was too subjective and the nature of the assistance was unspecified. One professional or representative organisation respondent also stated that there was no further detail of how the proposal would work in practice.

3.12 A few VCs and one of the individual respondents expressed concern about the ability of the provision to effect change where a Governor was intent on non-co-operation, or refused to act on concerns raised by IPMs. They also argued that there was no sanction to be applied in the event of non-compliance with the duty by a Governor.

Suggestions or requirements

3.13 A small number of additional suggestions were made.

3.14 A few respondents suggested a need for greater clarity and specification, and that more details of the proposal and requirements should be provided. It was also argued that this would help to ensure consistency. One VC also argued that the requirement must be enforced in the Order.

3.15 One additional suggestion by a VC respondent was that they would be happier to see some commitment by prison staff generally to supporting quality monitoring, and for them to see its value to themselves and to prisoners.

Question 6 Complaint handling

3.16 Question 6 asked:

“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? Please give reasons for your answer.”

Overall pattern of views

3.17 Just under three quarters of respondents (72%) responded to the quantitative part of Question 6. Views were mixed, but 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”, while just over a quarter of respondents (8, or 28%) did not express a specific “yes” or “no” view (although five of these made additional comments relevant to Question 6).

3.18 There were differences by type of respondent, and those who did not support the proposals comprised almost all of the VCs, along with half of the individual respondents and one local authority. By contrast, only one VC answered “yes” in support of the clarifications, along with the remaining local authorities and small numbers of respondents of most other types. The pattern of quantitative views is summarised in the table below.

Table 7. Provision of the basis for a clearer and more consistent complaint-handling process?

	Number	%
Ticked or stated “yes”	8	28
Ticked or stated “no”	13	45
Did not express a “yes” or “no” view	8	28
Total	29	

3.19 Most of the respondents made additional comments relating to Question 6 (including five who did not address the quantitative part of the question). Only three respondents did not address this question in some way.

3.20 The most common theme for additional comments at Question 6 was the identification of issues or concerns with the provisions (generally, but not only by those who answered “no” at the quantitative question). Suggestions or requirements were also common from respondents with differing overall views. A number of

respondents also made positive comments (most, although not all, of whom answered “yes” at the quantitative question).

Positive comments or benefits

3.21 Positive comments or perceived benefits in relation to the provisions outlined in Question 6 included expressions of general agreement or support for the proposal. Some described the nature of the proposed role for IPMs, or commented on the importance of IPMs hearing prisoners’ requests or complaints, and assisting them as appropriate.

3.22 Two respondents highlighted that the provision of such assistance was an important support and advocacy role (e.g. with the levels of learning disability and literacy problems across the prison population; and given prisoners’ vulnerability). One respondent stated that an IPM would have unfettered access to the prison, and that a prisoner could request to speak with any IPM at any time, which they considered to be a welcome and balanced approach.

3.23 It was argued that the proposed provisions would:

- Clarify the IPM’s role and responsibility in the complaints process.
- Reduce the potential for overlapping roles and processes.
- Provide the basis for a more consistent complaint-handling process for prisoners.
- Strengthen the ability of IPMs to help prisoners.
- Not prevent IPMs acting swiftly and informally in urgent situations.

3.24 One IMCO respondent stated that they were pleased that it had been clarified that the IPMs would not replicate the role of the Scottish Public Services Ombudsman (SPSO) in investigating complaints. The same respondent stated that, in the provisions of the revised draft Order, the SPSO would not be able to take complaints about IPMs. The respondent argued that, given that the IPMs would have a role in assisting prisoners to complain, this was considered appropriate.

3.25 A few respondents, however, qualified their positive comments, and the issues raised are discussed below, along with other issues or concerns and suggestions.

Issues or concerns

3.26 Issues or concerns identified focused on a number of themes. Some related to the nature of the proposal overall. For example, a few VCs stated that this was, for them, one of the most worrying aspects of the latest proposals. A few respondents argued that the presentation of the proposal was misleading, and concerns were expressed that the existing statutory duty on VCs to hear and investigate complaints would not be retained for the IPMs, and that they would be expected to direct prisoners to the SPS system.

3.27 It was also argued that the IPMs would have limited discretion, and it was argued that it would be almost impossible for them to follow up on progress of individual SPS complaints without a high level of information and co-operation from

Governors. A few VCs also expressed the view that, although it was stated that IPMs would be able to investigate urgent matters, or where the SPS system would not work, this meant little without a system of confidential requests to the IPM and some statutory protection.

3.28 Some VC respondents and one of the individual respondents questioned the justification for change. They argued, for example, that there was no existing confusion about the means by which prisoners could raise a complaint. Some of the VCs also took issue with the suggestion that VCs did not, in practice, presently investigate complaints but instead assisted prisoners to use the SPS complaints process. They argued that this was not the case.

3.29 Concerns were also expressed that the provision would be less robust than current arrangements. One criminal justice organisation respondent, for example, stated that the provision for independent Monitors to handle prisoner complaints had been substantially weakened, with the only reference to this in the revised draft Order being at 7D(3). They suggested that the inference was that IPMs should assist prisoners to lodge complaints via the SPS internal complaints system provided for under the Prison Rules. Similarly, one human rights organisation respondent stated that the proposal that the independent Monitors provide assistance in relation to the existing internal complaints process was a significant weakening of the role. A few VCs made reference to concerns relating to the complaints system having been raised in previous consultations.

3.30 A further common theme for issues or concerns related to perceived difficulties with the SPS complaints system. These were seen to include concerns about:

- A lack of trust or confidence in the system by prisoners.
- Fear of retribution or recrimination.
- Lack of effectiveness.
- Lack of action.
- Lack of confidentiality.
- The prevalence of literacy problems, and difficulties for prisoners experiencing these issues in using a paper-based system.
- Inability to provide a quick resolution to some issues.
- Potential lack of knowledge among prisoners of the provisions for IPMs to support them through the process.

3.31 Some respondents made specific comments on the role of the SPSO. One of the criminal justice organisations, for example, provided details of the circumstances in which prisoners could seek recourse to independent adjudication in this way (i.e. where complaints had been through the formal complaints procedure of the organisation concerned). A few other respondents stated that the SPSO could only rule on failure of the process by the SPS in dealing with a complaint, and not the outcome of the complaint.

3.32 These concerns were seen to link to the issues raised above, and the perceived reasons why prisoners may not wish to raise concerns or complaints through the SPS system. One human rights organisation respondent, for example,

stated that, while the SPSO played an important role, the need to exhaust internal complaints mechanisms could discourage complaints and could lead to significant delays. One of the VC respondents also suggested that the SPSO route was not able to fully address prisoner concerns and a few provided statistical information about the number of complaints from prisoners to the SPSO, and the number partly or fully upheld.

3.33 Linked to these concerns, a further common theme related to perceived benefits of the current VC role in complaints. Some made general positive comments about the current system, while others identified specific positive aspects, which included that this:

- Has the trust and confidence of prisoners.
- Provides an external avenue giving prisoners the opportunity to speak face to face with an independent person.
- Involves people operating in a voluntary capacity.
- Provides the opportunity to air a grievance and be listened to (sometimes before it becomes a complaint).
- Is straightforward; confidential; rapid; responsive; and efficient.
- Does not require literacy skills.

3.34 Concerns were also expressed about the perceived impact of the proposed provisions. These included:

- Reducing prisoners' rights, safeguards and protection.
- A lack of independence.
- A lack of confidentiality.
- Erosion of trust.
- Limited inclusion of prisoners experiencing literacy problems and vulnerable prisoners.
- Increased bureaucracy and delays.

3.35 One respondent reiterated reservations (noted earlier at para 2.37) about the inclusion of the word "may" in Section 7D(3) of the revised draft Order.

3.36 A small number of respondents stated that the SPS did not publish statistics on prisoner complaints through the SPS process. They cited statistics obtained by the BBC (using Freedom of Information legislation) which identified a high level of prisoner complaints.

3.37 A few VCs stated that the proposed system for prisoners in Scotland compared unfavourably to arrangements elsewhere in the UK.

Suggestions or requirements

3.38 Some respondents identified additional suggestions or perceived requirements (although, as at previous questions, some of the issues or concerns highlighted also imply these).

3.39 Several suggestions related to the nature of the system overall. One human rights organisation argued, for example, that it was essential for those deprived of

liberty to have access to an external and independent mechanism for dealing with complaints. One criminal justice respondent also stressed the need for prisoners to have access to a means of raising concerns and complaints that was independent of the complaints system managed by the SPS. The need for an independent process was also raised by some VC and individual respondents, as was the need for confidentiality.

3.40 A few respondents identified specific aspects of the nature of the IPM role in complaints. For example, one local authority respondent stated that care should be taken to ensure that the IPM role remains independent and transparent. One VC respondent stated that they would like the existing entitlement of prisoners to have support at an internal complaints committee (ICC) meeting specifically included. The same respondent stated that they would welcome the involvement of IPMs in the ongoing evaluation of the prison complaints system.

3.41 A small number of respondents identified other forms of support and provision relating to the complaints process that they considered may be appropriate. One criminal justice organisation argued that support from another third party may be welcome where it is deemed inappropriate for an IPM to assist a prisoner with a complaint due to the nature of this. One professional or representative organisation, while agreeing that there would continue to be a role for IPMs in providing a quick and easy route for advice, argued that there may be cases where professional legal advice on the application of the Rules may be appropriate. One local authority respondent stated that support and training for IPMs would be essential to ensure their competent and confident use of discretion in deciding what route complaints should take.

3.42 One respondent raised a specific question about whether the SPSO would have a role in taking complaints about PMCs. They stated that they would welcome clarity about how such complaints should be handled, and the reasons for this.

Question 7 Prison Monitoring Advisory Group

3.43 Question 7 asked:

“Do you support the inclusion of provisions in relation to the establishment and composition of a Prison Monitoring Advisory Group in the draft Order? Please give reasons for your answer.”

Overall pattern of views

3.44 Most of the respondents (79%) responded to the quantitative part of Question 7. Views were mixed, but 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 (PMAG). A slightly lower number (10, or 34%) answered “yes”, while six respondents (21%) did not express a specific “yes” or “no” view (although one of these made additional comments relevant to Question 7).

3.45 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. Only one VC

answered “yes”, as did all of the local authorities, and small numbers of respondents in most of the other categories. The pattern of quantitative views is summarised in the table below.

Table 8. Support provisions relating to establishment and composition of PMAG?

	Number	%
Ticked or stated “yes”	10	34
Ticked or stated “no”	13	45
Did not express a “yes” or “no” view	6	21
Total	29	

3.46 Most of the respondents made additional comments relating to Question 7 (including one who did not address the quantitative part of the question). Only five respondents did not address this question in some way.

3.47 The most common theme for additional comments at Question 7 was the identification of issues or concerns (generally by those who did not support the proposals). Several respondents (generally those who supported the proposals) also made positive comments or identified suggestions or requirements.

Positive comments or benefits

3.48 Several respondents made positive comments or identified benefits of the inclusion of provisions relating to the establishment and composition of a PMAG. While a few expressed general support for this, additional comments included that this was, for example, a practical and appropriate arrangement. A few respondents stressed the perceived importance of the inclusion of these provisions. One welcomed specifically that a minimum number of IPMs would be required to attend the PMAG meetings.

3.49 One IMCO respondent, in expressing agreement with the inclusion of the provisions, stated that HMIPS had always intended to instigate a PMAG, but that this had been omitted from the previous order.

3.50 Some of the identified benefits of this were that it would:

- Bring consistency across the prison estate.
- Support the effectiveness of different roles.
- Ensure appropriate training to meet changing demands.
- Ensure a more relevant and dynamic review process is embedded into all aspects of prison monitoring.
- Provide a forum to raise common issues arising across areas.
- Enable a responsive process.

Issues or concerns

3.51 The main focus of issues or concerns raised was upon two themes:

- The composition of the group as currently known.

- The functioning of the group.

3.52 In terms of the composition of the PMAG, comments were made about the intended membership as comprising HMCIPS, each of the PMCs, at least 3 IPMs and such others as the Chief Inspector considers appropriate. It was argued that the impact of the anticipated composition would be that:

- The group would be weighted in favour of HMCIPS.
- It would not provide a robust and transparent challenge mechanism.
- Any concerns expressed by the IPMs could be over-ridden.
- It would involve “window dressing” and have no function other than to support decisions already made, or make recommendations to HMCIPS (which HMCIPS could listen to or dismiss).
- Independence would be compromised.

3.53 One VC respondent described the proposed membership as principally “insiders”, while a few argued that the inclusion of only three IPMs constituted a token gesture, and would not provide sufficient balance.

3.54 In terms of the functioning of the group, concerns included that:

- This would be a management group rather than an advisory group.
- The group would be a “toothless body”.

3.55 One VC respondent questioned whether the arrangement would comply with OPCAT. A few outlined the intended purpose of the PMAG, in terms of being to ensure that the new system was “future-proofed” and “person-proofed” so that it would remain robust without statutory protection. It was argued that the PMAG, as proposed, would not meet this purpose.

Suggestions or requirements

3.56 Several respondents identified suggestions or requirements.

3.57 Some related to the nature of the group overall. For example, one VC respondent suggested generally that a different mechanism should be developed to ensure the independence of prison monitoring. Another suggested that, in order to enjoy the trust of the public and IPMs, it should be separate from the system. One individual respondent suggested that what was required was a group to give direction to HMCIPS in respect of monitoring arrangements, not a body reporting to HMCIPS.

3.58 A few respondents made suggestions about the appointments process. These included that:

- Appointments should be made by advertising.
- Appointments should be made by an independent committee.
- Recruitment to the group should be carried out under an open public appointments system for specified periods.

3.59 A few respondents made additional comments on the composition of the PMAG, including that it should:

- Include independent members.
- Include mental health expertise.
- Be composed principally of “outsiders”.

3.60 One respondent suggested that any staff involved in monitoring should attend the group as observers rather than members. Another stated that it would be much more open to have a chairperson, and the bulk of members, appointed externally, with places for HMCIPS, one PMC and three IPMs.

3.61 One respondent stated that they may themselves be well-placed to provide input to the group.

3.62 Comments were also made on the role of the PMAG, with suggestions including that it should:

- Provide a challenge function to those carrying out monitoring work.
- Provide a forum for strategic discussion on current and future challenges of legislative direction at a national and international level.
- Augment the knowledge, understanding and thinking of the Board and HMCIPS through “expert outsiders”.
- Play a significant role (with the involvement of the “advisors”) in future-proofing and person-proofing the continued success of independent monitoring in Scotland.

3.63 One individual respondent, reiterating comments made previously, suggested that the “fine details” of the monitoring scheme could be put in place at a later stage, and should not be “set in stone” at this time.

Question 8 The UN Optional Protocol to the Convention Against Torture / Subcommittee on the Prevention of Torture visits

3.64 Question 8 asked

“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? Please give reasons for your answer.”

Overall pattern of views

3.65 Most of the respondents (79%) responded to the quantitative part of Question 8, and 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, as

well as a section outlining Scottish Ministers' duties in relation to SPT visits. All of those who expressed a view answered "yes", while none answered "no". Six respondents did not express a specific "yes" or "no" view.

3.66 By type, all of the VC; local authority; individual; and health and well-being respondents expressed agreement. A small number of criminal justice; inspection, monitoring or complaints; professional or representative; and human rights organisation respondents did not tick or state "yes" or "no", but those who did so expressed their agreement. The pattern of quantitative views is summarised in the table below.

Table 9. Support inclusion of explanation of purpose relating to the OPCAT objective and Scottish Ministers' duties re SPT visits?

	Number	%
Ticked or stated "yes"	23	79
Ticked or stated "no"	0	0
Did not express a "yes" or "no" view	6	21
Total	29	

3.67 Most respondents made additional comments relating to Question 8 (including two of those who did not express a "yes" or "no" view). Only four respondents did not address this question in some way.

3.68 The most common additional theme was the identification of positive comments on, or benefits of the inclusion of the issues outlined in the question. Some issues or concerns were also identified, and a few additional suggestions made.

Positive comments or benefits

3.69 Positive comments included overall views in agreement with, or supporting the suggestions, or some aspect of these. Two respondents who did not tick or state "yes" or "no", also expressed general agreement. One, for example, expressed agreement with reference being made to the Scottish Government's commitments to meet its obligations in regard to the OPCAT objectives and the SPT obligations; and the other with the inclusion of the statement that the purpose of independent prison monitoring is in pursuance of the objective of OPCAT.

3.70 One health and well-being organisation respondent, in expressing support, stated that this seemed to be one of the main reasons for the proposed changes, while one local authority respondent stated that the current system of prison monitoring was not compliant with OPCAT. One IMCO respondent specifically welcomed the explicit wording at 6A and 7G, and stated that this reflected the responsibilities arising from the UK's ratification of OPCAT and the official designation of members to the UK's National Preventive Mechanism (NPM).

3.71 A few respondents emphasised the perceived need for the explanations relating to the OPCAT objective and SPT duties, and / or the importance of these. One human rights organisation respondent, for example, stated that the independence of the Monitors was central to their effectiveness, and that the OPCAT

clearly provided for independence of NPM members (Art.18[1]). One IMCO commented on the importance, for all of those involved in the process and practice of independent prison monitoring, of the linkages to national and international law being made clear. One individual respondent stated that, as the country had signed up to the protocols of OPCAT and SPT visits, it was right that it was noted within the Order.

3.72 Particular perceived benefits of the inclusions proposed were that these would:

- Ensure that the issues could not be overlooked.
- Place responsibility on the Scottish Ministers to ensure access to Scottish prisons as appropriate.
- Assist in understanding that independent prison monitoring is not a stand-alone function.

3.73 A few respondents qualified their agreement with issues or concerns (and these are considered below).

Issues or concerns

3.74 Among the issues or concerns raised, some of these were general comments or observations. A small number of VCs stated that “words” alone were insufficient, and that the proposals did not meet the “gold standard” which had been identified as the aim.

3.75 There were also concerns about the actual impact of the provisions. For example, one VC respondent stated that there appeared little difference to the current situation, and a few individual respondents stated that the provisions made no difference to the legal position. A few respondents also argued that the inclusion of a reference to OPCAT (which was binding on the Government) created an illusion of commitment to the protection of human rights which was not borne out by the provisions in the revised draft Order.

3.76 Some of the VC respondents and one of the individuals expressed concern that the new system may still not be OPCAT compliant. One human rights organisation respondent, whilst welcoming the express inclusion of the statement that the purpose of independent prison monitoring is in pursuance of the objective of OPCAT, argued that some issues remained to be addressed. They also suggested a number of requirements (discussed below).

3.77 Another respondent raised a specific issue about the wording relating to the visits of the SPT. They stated that they considered the proposed text to be broadly consistent with OPCAT, but that qualifying the authorisation to members of the SPT to do anything considered necessary to enable their visits to “anything which the Scottish Ministers consider necessary” could undermine the independence of the SPT during its visits.

Suggestions or requirements

3.78 Some respondents made additional suggestions or identified perceived requirements relating to the issues covered in Question 8.

3.79 One human rights organisation made reference to their previous consultation response, and reiterated that, while OPCAT did not prescribe the format of the structures monitoring places of detention, the legislation establishing the new structure should encompass the key elements set out by the OPCAT. Their response to the previous consultation provided information and expressed some concerns about the proposals in terms of these. The respondent reiterated these in their current response, making reference to the:

- Mandate and powers (e.g. 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, or dissolve or replace it at will; and the need for functional and financial independence).
- Roles and responsibilities (e.g. the need for clear specification of these; sufficient independent Monitors to carry out their duties; and regular visits).
- Duration of office and appointment for members (e.g. the inclusion of selection procedures; members' independence from state authorities; methods to resolve incompatibility of functions and ensure non-interference from the executive; operational autonomy in appointment of staff; and sufficient security of tenure for Monitors).
- Composition (e.g. specific provisions relating to composition of the body).
- Funding (e.g. independent and sufficient financing to ensure operational autonomy and independent decision making; specification of the source and nature of this; public reporting and audit procedures; independence from executive control; funding at a level to enable Monitors to carry out their statutory role; and reimbursement of Monitors' expenses).
- Immunities and privileges (e.g. provision of these as necessary for the independent exercise of members' functions; and the protection of confidential information collected).

3.80 The respondent also identified, in their current response, the importance of members and staff being independent, knowledgeable and having the relevant professional expertise. The need for the NPM to take a multidisciplinary approach was highlighted, and for it to be representative of wider society.

3.81 The respondent stressed the need for specific attention to the new system's membership, where professional occupations or pre-established relations could lead to potential conflicts of interest or perceived lack of independence. They stressed that the SPT Guidelines on appointment provided that NPM members be selected through an open, transparent and inclusive process, with public criteria for appointment. The respondent also noted that the SPT recommended that NPMs be

provided with sufficient human, material and financial resources to discharge their prevention mandate independently and effectively.

3.82 The desirability of annual reporting on individual prisons (mentioned earlier) was also identified, as was the need for those deprived of liberty to have access to an external and independent mechanism for dealing with complaints.

3.83 The respondent also noted the importance of the Monitors being able to access all places of detention, and all facilities within those places at any time. They made reference to Article 14(2) of OPCAT and argued that, if it was intended that limitations would be set on Monitors visiting prisons, these limitations should be set out clearly.

3.84 A few VC respondents argued generally that a demonstrable commitment to the protection of human rights was required.

3.85 Clearly, some of the issues raised above also link to issues or concerns raised at other points in the report, in the responses to other questions.

3.86 In terms of other suggestions made, one VC respondent suggested that there would be additional benefit in co-ordinating visits with the activities, and possibly the support, of the IPMs.

3.87 Two respondents made specific wording suggestions. One professional or representative organisation reiterated a suggestion made in their response to Question 2 about a specific change to the wording of Sections 6A and 7G of the revised draft Order. Additionally, one IMCO suggested the incorporation to Section 6A of specific wording to reflect all three minimum powers of an NPM member envisaged under OPCAT (Art. 19 a-c).

Question 9 Transitional period

3.88 Question 9 asked:

“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? Please give reasons for your answer.”

Overall pattern of views

3.89 Most of the respondents (83%) responded to the quantitative part of Question 9, and 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”. Five respondents did not express a specific “yes” or “no” view.

3.90 By type, all of the VC; local authority; individual; professional or representative; and health and well-being organisation respondents expressed agreement. A small number of criminal justice; inspection, monitoring or complaints; and human rights organisation respondents did not express a specific view, but

those who did expressed agreement. The pattern of quantitative views is summarised in the table below.

Table 10. Support inclusion of 3 month transitional period?

	Number	%
Ticked or stated “yes”	24	83
Ticked or stated “no”	0	0
Did not express a “yes” or “no” view	5	17
Total	29	

3.91 Most respondents made additional comments relating to Question 9. Only five respondents did not address this question in some way.

3.92 The most common theme was the identification of positive comments or benefits relating to the inclusion of a three month transitional period. Some issues or concerns were also highlighted, and a small number of additional suggestions made.

Positive comments or benefits

3.93 Most respondents made some positive comments or identified benefits of the transitional period (or aspects of this). Among these, some expressed general agreement with, or support for this. One criminal justice respondent stated that it reflected good practice, in order to allow the work of the VCs to be concluded, given their good working relationships with prisoners. One of the professional or representative organisations argued that it seemed a practical proposal, while a health and well-being respondent expressed the view that it seemed to be a sensible operational measure to complete existing work.

3.94 A few respondents stressed the importance of a transitional period, and one individual respondent stated that it would be important in allowing monitoring to continue, and to provide time for the new scheme to “find its place”. One of the VC respondents argued that a period of overlap would be required particularly if the IPMs were substantially new recruits. Reference was also made to the requirement for the production of VC annual reports in April 2015.

3.95 Some respondents identified additional perceived benefits of the inclusion of such a three month transitional period, such as to:

- Ensure current work was completed under the previous arrangements.
- Enable a more seamless transition to the implementation of the new system.

3.96 Several VC and individual respondents expressed the view that the time period would be sufficient for VCs to conclude any ongoing matters and ensure that any actions in respect of prisoners’ concerns were concluded (although a small number also raised concerns about the time period, discussed below).

3.97 One local authority respondent stated that it would be likely to be detrimental to the changeover if such a transitional period was not included.

Issues or concerns

3.98 Among the issues or concerns raised, the most common focus for comment (by several VCs and an individual respondent) was annual reporting. They raised the issue that one of the reasons for the suggestion of a three month period was to ensure the completion of annual reports. They argued, however, that this focus on annual reports was not consistent with the lack of inclusion of such a provision in the new system (on the grounds that these were “unnecessary”). Some also expressed the view that the Government had shown little interest in these reports in the past.

3.99 A few other issues or concerns were identified. A small number of VC and individual respondents, for example, expressed doubt about whether the successors to the VCs would be ready within the three month timescale, or whether this would be sufficient time to get the new system up and running effectively.

3.100 A few VC respondents stated that, while the transition period was welcome, it was reliant on the dedication and professionalism of volunteers. It was argued that they would be expected to continue with their duties and to perform them to the same high standard as in the past, and one argued that this was despite what they considered to be inappropriate comments about their work to date. Another VC respondent expressed concern that VC members had already been asked to carry on for several years, during which time attempts to agree a replacement system had not secured change.

3.101 One VC respondent reiterated their general concern about the perceived lack of independence in the Order.

Suggestions or requirements

3.102 A small number of additional suggestions or perceived requirements were identified by a few VCs. One, for example, stated that they hoped the PMC would liaise with the current VC secretary to ensure a smooth handover and avoid gaps in the provision.

3.103 One VC respondent stated that further guidance would need to be developed before and after the date of commencement. They also argued that the knowledge and experience of current VC members should not be lost, and should be included within the development of future guidance.

3.104 Another VC respondent stated that it would not be advisable to rely on support from large numbers of existing VC members if an open-ended commitment was sought, and argued that it would be more sensible to give a firm commitment to a changeover date.

SECTION 4: OTHER ASPECTS OF THE REVISED DRAFT ORDER AND RELATED ISSUES

4.1 This section presents the findings relating to other aspects of the revised draft Order and related issues.

Summary of Section 4

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 the proposed changes included: expressions of support; the perceived need for change; and perceived benefits of the proposed changes.

Issues or concerns 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); and 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).

Question 10 and other comments

4.2 Question 10 asked

“Do you have any further comments on the draft Order or Explanatory Document? Please provide any further comments below.”

Overall pattern of views

4.3 Most respondents provided additional comments at Question 10, and a few made additional comments elsewhere which did not link directly to a specific question. All of these have been included below. In the small number of cases where respondents did not use the response form, most of the issues raised by these respondents have been presented at relevant points in the report, but any additional comments are presented along with other responses to Question 10 below.

4.4 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 or benefits of the proposed changes. In addition to these themes, a number of respondents provided details of their organisation or response, or made general observations.

Positive comments or benefits

4.5 Where additional positive comments were made, these included general expressions of support for the changes made in the revised draft Order. One local authority respondent, for example, stated that they were satisfied that the changes addressed the issues they had raised previously. One IMCO respondent stated that they were encouraged by the changes made, particularly in relation to the title of the Order. A few respondents made additional positive comments about support for particular changes (e.g. the commitment to training; and the clarification of the proposed role of IPMs in complaint-handling) which have been included previously at the relevant points in the report.

4.6 A few comments were also made about the perceived need for reform of the current system, and one respondent suggested that the nature and quality of monitoring by VCs had been variable. Another respondent identified a number of overall benefits of the proposed changes, including: consistency of process; compliance with OPCAT; general effectiveness of the new approach; and the potential for this to drive continuous improvement through co-ordinated prison monitoring, communications, training and data capture.

Issues or concerns

4.7 As noted above, most of the additional comments focused on identifying or reiterating issues or concerns. All of the VC respondents raised some issues or concerns, along with small numbers of respondents drawn from: individuals; criminal justice; IMCO; professional or representative; and human rights organisations.

4.8 The main overall themes for issues or concerns related to: the overall nature of the change process; the nature of the consultation; and the nature of the proposals (both in general terms and in relation to specific aspects of these).

The overall nature of the change process

4.9 In relation to the overall nature of the change process, a few respondents commented specifically on the lack of action to implement the recommendations of the 2007 review of Prison Visiting Committees¹². A few stated that some of the recommendations made by Professor Coyle in 2013¹³ had not been accepted, or that they had been disregarded without clear reasons. One VC argued that frequent changes to the draft Order over several years had confused the situation, without addressing the issues. One of the criminal justice organisation respondents also

¹² Scottish Executive (2007) *Report on the Review of Prison Visiting Committees 2005* Edinburgh: Scottish Executive.

¹³ Coyle, A. (2013) *Review of Proposals to Improve Arrangements for Independent Monitoring of Prisons* Edinburgh: Scottish Government. (*Op cit*).

commented on the timescale for change. It was argued that this had led to uncertainty and to a reduced number of VC members.

4.10 A few VC and individual respondents expressed the view that there was a heavy reliance on the role of the Implementation Group in developing guidance to supplement and replace legislative provisions. They stated that Government representatives were in the majority on the Group, with views expressed by other members given little weight. They also expressed the view that it was inappropriate for the work to be led by a Deputy Prison Governor seconded to the Inspectorate.

4.11 Some VC and individual respondents raised questions about some aspects of the basis of change. For example, it was argued that the aspect of the system which was not OPCAT compliant was the arrangement whereby the SPS held the budget for prison monitoring, which, it was suggested, could have been changed. A few respondents also argued that there was no evidence to support the assertion that prisoners would have confidence in the new system. As noted previously issues were also raised about the justification for changes relating to prisoner complaints.

The nature of the consultation

4.12 Several VCs and one of the individual respondents raised issues or concerns relating to the nature of the consultation.

4.13 Some focused on concerns about the questions posed, with issues raised including views that these: were narrowly focused; did not ask the right questions; and were worded to support the Order and avoid reopening particular issues. A small number of VC respondents also argued that the consultation did not make clear what the main changes were from the current arrangements.

4.14 Concerns were also expressed that the views expressed would be disregarded, or that comments would not be taken into account. Some VC respondents, for example, suggested that criticisms or reservations expressed about previous proposals had not been taken into account fully, or had been dismissed. A few respondents stated that the consultation period was too short.

4.15 Comments were also made by some VC and individual respondents about the actual consultation document and the Government report of September 2014 detailing their response to the previous consultation and the proposed changes¹⁴. For example, it was suggested that the justifications for change were founded on the responses to the previous consultation (concluded in January 2014) but that the Government report on this had not been published until September 2014 and was misleading. Specific concerns were expressed about the presentation of: the balance of views; the Justice Committee views; and the recommendations of the Coyle report. There was also criticism of a perceived lack of information about the Government's reasons for a lack of inclusion of particular issues.

4.16 Some VC respondents raised concerns about some particular statements in the consultation document relating to the current role and work of the VCs.

¹⁴ Scottish Government (2014) *Consultation Report on Draft Public Services Reform (Prison Visiting Committees) (Scotland) Order 2014* Edinburgh: Scottish Government (*Op cit*).

The nature of the proposals

4.17 Some issues or concerns were also raised or reiterated with the nature of the proposals in the revised draft Order, both in general and in relation to specific aspects. For example, one human rights organisation respondent stated that they considered that there were still a number of outstanding issues which required to be addressed. A few VC respondents argued that the current proposals would not enable the development of the best possible independent prison monitoring system, or the “gold standard” for Scotland.

4.18 Specific issues or concerns relating to the nature of the proposals overall included views that:

- The general focus of the revised draft Order was on inspection and not independent monitoring.
- There was too much emphasis on guidance (which could be changed without recourse to Parliament) rather than protection through legislation.
- The revised draft Order did not meet some of the pre-conditions required by the legislative process.

4.19 Comments were also made about the perceived impact of the changes overall, including views that:

- There would be a loss of independence (or the Order did not go far enough to ensure the independence of PMCs and IPMs).
- The proposed system would make it harder for prisoners to exercise their rights.
- There would be a potential lack of trust in, and credibility of the new system.

4.20 Some respondents expressed concerns about the cost of the proposed changes (e.g. that this would be more expensive than the current system) and / or expressed concerns about whether this would represent better value for money. A few respondents stated that the Government had not provided information on how much they expected the proposals to cost.

4.21 Some issues or concerns were also identified or reiterated relating to specific aspects of the proposals (most of which have been discussed elsewhere in this report and will not be repeated in detail here). These included:

- The management and structure, and the role of HMCIPS.
- Aspects of the roles of the PMCs and IPMs.
- A lack of specification, or lack of inclusion in the Order of:
 - Frequency of monitoring.
 - The number of IPMs.
 - Recruitment and selection of IPMs.
 - A requirement to hear and investigate prisoner complaints.
 - Meetings of Monitors and meetings with the Governor.
 - A requirement for annual reports on individual prisons.
 - A national forum.

Suggestions or requirements

4.22 As at previous questions, some additional suggestions or requirements were identified (although clearly some are also implicit in the issues or concerns raised).

4.23 Some suggestions related to the overall approach. For example, one of the VC respondents expressed the view that a “rethink” was required. Another suggested that prisoners should be asked for their views of the new system. The same respondent argued that the current system generally worked, with no need to sweep this away. A few respondents stressed a perceived need for general consideration of prisoner confidence in the system. The need for OPCAT compliance was also highlighted.

4.24 Suggestions were also made about the inclusion of particular details, and the need for specification of particular issues (such as those identified at para 4.21 above and elsewhere in the report). Comments were also made on a perceived need for independent Monitors to have unfettered access to the prison at any time. It was also argued that the Governor should not have a role in arranging the rota visits or the locations to be visited. One VC respondent stated that the Government should be looking to raise the profile of annual reports to raise public awareness of prisons, rather than to abolish these. One VC respondent stated that the proposed process of appointing IPMs must be in accordance with the Nolan principles¹⁵.

4.25 One criminal justice organisation respondent suggested that the Scottish Government should list those of Professor Coyle’s recommendations that it accepted. They also argued that it should state whether it favoured the adoption of those recommendations which were referred for consideration to the Independent Monitoring Implementation Group. The respondent argued that, if these were to be rejected, the reasons must be made clear, and if they were to be adopted, they should be included in the Order.

4.26 One professional or representative organisation stated that ensuring the independence of PMCs and IPMs should take priority in the guidance.

4.27 One individual respondent reiterated a suggestion they made at other points in the report that the fine details of the system could be put in place once the new scheme was up and running. They also expressed the view that the scheme would evolve over time, and that there would be a monitoring scheme that Scotland would be proud of.

4.28 One respondent organisation stated that the provisions of the revised draft Order would not impede their own current arrangements, and suggested ways in which they could continue to be involved under the new system.

Organisations and observations

4.29 A number of respondents provided details of their organisation or the nature of their response. For example, some provided information about the nature and aims of their organisation, or their role and work (relating particularly to their relevant

¹⁵ The seven principles of public life, defined by the Committee for Standards in Public Life.

expertise or involvement with the issues in the consultation). Comments were also made about the nature of responses, and a few respondents made reference to their involvement (or otherwise) in the previous consultation, or their response to that consultation. A few respondents provided comments about whose views were represented by the material.

4.30 A small number of respondents stated specifically that they welcomed the opportunity to respond to the consultation, and a few made general comments on the importance of independent monitoring of prisons.

ANNEX 1 THE RESPONDENTS

Aberdeen City Council
Aberdeenshire Council
Anne Freebairn
Association of Visiting Committees (AVC)
COSLA
Daniel Reilly
Her Majesty's Chief Inspector of Prisons for Scotland
HMP and YOI Cornton Vale Under 21s Visiting Committee
HMP and YOI Cornton Vale Over 21s Visiting Committee
HMP Barlinnie Visiting Committee
HMP Edinburgh Visiting Committee
HMP Glenochil Visiting Committee
HMP Kilmarnock Visiting Committee
HMP Open Estate Visiting Committee
HMP Perth Visiting Committee
HMP Shotts Visiting Committee
HMYOI Polmont Visiting Committee
Howard League Scotland
Mental Welfare Commission
North Lanarkshire Council
Paul Laidlaw
Robert Freebairn
SACRO
Scottish Consortium on Crime and Criminal Justice
Scottish Public Services Ombudsman
South Lanarkshire Council
The Law Society of Scotland
The Scottish Human Rights Commission
UK NPM and HM Chief Inspector of Prisons (England and Wales)

As noted in the report, a response was also received from HMP Dumfries Visiting Committee which was too late for inclusion in the analysis.

ANNEX 2 THE CONSULTATION QUESTIONS

This Annex presents the consultation questions, along with the brief explanations given by the Scottish Government in the consultation paper for the relevant changes.

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)? Please give reasons for your answer.

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? Please give reasons for your answer.

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? Please give reasons for your answer.

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? Please give reasons for your answer.

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? Please give reasons for your answer.

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? Please give reasons for your answer.

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? Please give reasons for your answer.

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? Please give reasons for your answer.

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? Please give reasons for your answer.

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? Please provide any further comments below.

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.

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