

*This draft Order supersedes the one laid in the Scottish Parliament on 7th November 2014. It is being issued free of charge to all known recipients of that draft Order.*

*Draft Order laid before the Scottish Parliament under section 25(2)(c) of the Public Services Reform (Scotland) Act 2010 for approval by resolution of the Scottish Parliament.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2014 No.**

**PUBLIC SERVICES REFORM**

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

*Made* - - - - 2014

*Coming into force* - - 31st August 2015

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

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

The Scottish Ministers have consulted in accordance with section 26 of the Act.

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

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

**Citation and commencement**

**1.** This Order may be cited as the Public Services Reform (Inspection and Monitoring of Prisons) (Scotland) Order 2014 and comes into force on 31st August 2015.

**Amendment of the Prisons (Scotland) Act 1989**

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

(2) After section 6 insert—

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(1) 2010 asp 8.

(2) 1989 c.45.

**“Purpose of inspection and monitoring of prisons**

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

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

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

- (a) to inspect, or arrange for the inspection of, prisons and the treatment of prisoners,
- (b) to inspect the conditions in which prisoners are transported or held in pursuance of prisoner escort arrangements (within the meaning of section 102 (arrangements for the provision of prisoner escorts) of the Criminal Justice and Public Order Act 1994<sup>(3)</sup>),
- (c) to inspect the arrangements operated by prisons for the temporary release of prisoners in accordance with rules made under section 39,
- (d) to investigate specific matters connected with prisons or prisoners which have been referred to the Chief Inspector by the Scottish Ministers,
- (e) to issue instructions to prison monitoring co-ordinators in relation to the exercise of their functions,
- (f) to prepare and publish guidance on the exercise of the functions of prison monitoring co-ordinators and independent prison monitors,
- (g) to evaluate the performance of each prison monitoring co-ordinator, and
- (h) such other functions as are conferred on the Chief Inspector by this or any other enactment.

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

- (a) following an inspection carried out under subsection (2)(a),(b) or (c),
- (b) following an investigation carried out under subsection (2)(d), and
- (c) annually, in relation to—
  - (i) the conditions in prisons and the treatment of prisoners, and
  - (ii) the exercise of the functions of independent prison monitors.

(4) In relation to a report made under subsection (3)(c)—

- (a) the report is to be in such form and made by such date as the Scottish Ministers may direct, and
- (b) different forms and different dates may be directed in relation to reports made under subsection (3)(c)(i) and (ii).

(5) The Chief Inspector must lay before the Scottish Parliament—

- (a) a copy of any report made under subsection (3)(c), and
- (b) a copy of any report made by a prison monitoring co-ordinator under section 7B(6)(b) or (c).

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

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(3) 1994 c.33. Section 102 was amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40), Schedule 4, paragraph 93(3)(a) and (b)(i) and (ii), the Criminal Justice (Scotland) Act 2003 (asp 7), section 76(10), the Police and Fire Reform (Scotland) Act 2012 (asp 8), schedule 7, paragraph 9(2) and S.S.I. 2005/465.

- (a) the conditions in prisons,
  - (b) the treatment of prisoners, or
  - (c) the exercise of the functions of prison monitoring co-ordinators or independent prison monitors.
- (7) For the purpose of exercising any of the Chief Inspector’s functions, the Chief Inspector may, without prior notice—
- (a) visit any prison, and access any part of a prison, in Scotland,
  - (b) speak in private with any prison monitoring co-ordinator, independent prison monitor, prisoner, visitor, prison officer or other person working at the prison, who agrees to speak to the Chief Inspector, or
  - (c) examine any prison records, other than personnel records.
- (8) The Scottish Ministers are to pay the Chief Inspector such salary and allowances, and such other sums in respect of the exercise of the Chief Inspector’s functions, as the Scottish Ministers consider appropriate.
- (9) The Scottish Ministers may provide staff, property or services to the Chief Inspector to assist the Chief Inspector in the exercise of the Chief Inspector’s functions.”.
- (4) After section 7 insert—

**“Appointment of prison monitoring co-ordinators**

- 7A.**—(1) There are to be three (or such higher number as the Scottish Ministers determine) prison monitoring co-ordinators.
- (2) It is for the Scottish Ministers to appoint prison monitoring co-ordinators.
  - (3) The Scottish Ministers must consult the Chief Inspector before—
    - (a) making a determination under subsection (1), or
    - (b) making an appointment under subsection (2).
  - (4) The Scottish Ministers may prescribe in regulations the procedures which must be complied with in making appointments under subsection (2).
  - (5) Regulations under subsection (4) may in particular make provision for or in connection with—
    - (a) persons or organisations who must be consulted, in addition to the Chief Inspector, prior to appointments being made,
    - (b) terms and conditions of appointment,
    - (c) periods of appointment, and
    - (d) termination of appointments.
  - (6) The Chief Inspector must assign prison monitoring co-ordinators to prisons so that each prison has an assigned prison monitoring co-ordinator.
  - (7) A prison monitoring co-ordinator may be assigned to—
    - (a) prisons within a particular area,
    - (b) particular prisons, or
    - (c) all prisons.

### **The functions of prison monitoring co-ordinators**

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

(2) In pursuance of that function, a prison monitoring co-ordinator must—

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

(3) The rota prepared by the prison monitoring co-ordinator under subsection (2)(c)—

- (a) must provide for at least one independent prison monitor to visit the prison at least once every week, and
- (b) may provide for independent prison monitors to visit the prison in groups or individually.

(4) In exercising the prison monitoring co-ordinator's functions, the prison monitoring co-ordinator must—

- (a) comply with any instructions issued by the Chief Inspector under section 7(2)(e), and
- (b) have regard to any guidance published by the Chief Inspector under section 7(2)(f).

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

- (a) visit any prison, and access any part of a prison, to which the prison monitoring co-ordinator is assigned,
  - (b) speak in private with any independent prison monitor, prisoner, visitor, prison officer or other person working at the prison, who agrees to speak to the prison monitoring co-ordinator, or
  - (c) examine any prison records, other than—
    - (i) personnel records, or
    - (ii) any documents containing information, the disclosure of which would, in the opinion of the governor of the prison, have implications for the security of the prison.
- (6) A prison monitoring co-ordinator must report to the Chief Inspector—
- (a) in relation to any specific matters investigated by independent prison monitors in pursuance of arrangements made by the prison monitoring co-ordinator under subsection (2)(d),
  - (b) annually in relation to—
    - (i) the monitoring of each prison to which the prison monitoring co-ordinator is assigned, and
    - (ii) the conditions, and the treatment of prisoners, in each prison to which the prison monitoring co-ordinator is assigned, and
  - (c) otherwise in relation to such matters as the Chief Inspector may require.
- (7) In relation to a report made under subsection (6)(b)—
- (a) the report is to be in such form and made by such date as the Chief Inspector may direct, and
  - (b) different forms and different dates may be directed in relation to reports made under subsection (6)(b)(i) and (ii).
- (8) A prison monitoring co-ordinator may notify the governor of a prison to which the prison monitoring co-ordinator is assigned, and the Chief Inspector, of any matter relating to the prison, or prisoners detained in the prison, which the prison monitoring co-ordinator considers appropriate.
- (9) The Scottish Ministers are to pay prison monitoring co-ordinators such salary and allowances as the Scottish Ministers consider appropriate.

### **Appointment of independent prison monitors**

**7C.—**(1) Subject to subsections (2) and (3), independent prison monitors are to be appointed on such terms and conditions as the Chief Inspector may determine.

(2) A person who has been appointed as an independent prison monitor may be re-appointed for further periods.

(3) A person may not be an independent prison monitor for a period (whether or not consecutive) of more than 9 years.

### **The functions of independent prison monitors**

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

- (a) visit the prison in accordance with arrangements made under section 7B(2)(c),
- (b) monitor the conditions in the prison and the treatment of prisoners,

- (c) monitor the arrangements operated by the prison for the temporary release of prisoners in accordance with rules made under section 39,
- (d) investigate specific matters which have been referred to the independent prison monitor by the prison monitoring co-ordinator,
- (e) notify the governor of the prison and the prison monitoring co-ordinator of any matters relating to the conditions in the prison or the treatment of prisoners which the independent prison monitor considers appropriate,
- (f) where, in the opinion of the independent prison monitor, a matter notified to the governor of the prison under paragraph (e) has not been remedied to the satisfaction of the independent prison monitor, inform the governor and the prison monitoring co-ordinator, and
- (g) maintain a record of the date and time of each visit to the prison and the matters considered during each visit.

(2) Without prejudice to the duty in subsection (1)(a), an independent prison monitor may also visit the prison without prior notice at such times as the independent prison monitor considers necessary.

(3) An independent prison monitor may investigate any matter referred to the independent prison monitor by a prisoner.

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

(5) In exercising the independent prison monitor's functions, an independent prison monitor must—

- (a) comply with any instructions issued by the prison monitoring co-ordinator,
- (b) attend all training arranged by the prison monitoring co-ordinator under section 7B(2)(f), and
- (c) have regard to any guidance on the monitoring of prisons published by the Chief Inspector under section 7(2)(f).

(6) For the purpose of exercising any of the independent prison monitor's functions, an independent prison monitor may, without prior notice—

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

(7) An independent prison monitor must report to the prison monitoring co-ordinator—

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

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

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

### **Duty of the governor to assist with inspection and monitoring**

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

### **Prison monitoring advisory group**

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

(2) The group is to comprise—

- (a) the Chief Inspector,
- (b) each of the prison monitoring co-ordinators,
- (c) at least three independent prison monitors, and
- (d) such other persons as the Chief Inspector considers appropriate.

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

(4) The functions of the prison monitoring advisory group are to—

- (a) keep the effectiveness of prison monitoring under review,
- (b) contribute to the preparation of the guidance published by the Chief Inspector under section 7(2)(f),
- (c) keep the guidance published by the Chief Inspector under review,
- (d) keep the training arrangements for independent prison monitors under review, and
- (e) make recommendations for improvement in respect of any of the matters referred to in paragraphs (a) to (d).

### **SPT visits**

**7G.**—(1) The Scottish Ministers must make arrangements to ensure that members of the SPT may—

- (a) visit prisoners,
- (b) access information relevant to the treatment of prisoners and the conditions in which they are detained,
- (c) monitor the conditions in prisons and the treatment of prisoners, and
- (d) monitor the arrangements operated by prisons for the temporary release of prisoners in accordance with rules made under section 39.

(2) The arrangements may, in particular, authorise members of the SPT to—

- (a) access, without prior notice, any prison (accompanied by such experts as the members think fit),
- (b) examine prison records relating to the detention of prisoners,
- (c) meet any prisoners in private to discuss their treatment while detained and the conditions in which they are detained,

- (d) inspect the conditions in which prisoners are detained (including cell accommodation, washing and toilet facilities and facilities for the provision of food), and
  - (e) meet such other persons as the members think may have information relevant to the treatment of prisoners and the conditions in which they are detained.
- (3) The Scottish Ministers must keep the arrangements under review and revise them as they think fit.”
- (5) Section 8 (visiting committees) is repealed.
- (6) In section 14(8) (legalised police cells) for “sections 8 and” substitute “section”.
- (7) In section 15(3) (right of sheriff or justice to visit prison)—
- (a) for “the visiting committee at their next visit” substitute “an independent prison monitor”, and
  - (b) after “section” insert “at the next time such a monitor visits the prison”.
- (8) In section 19 (remand centres and young offenders institutions)—
- (a) subsection (3) is repealed, and
  - (b) for subsection (4) substitute—
    - “(4) Subject to any exception or modification in any provision of this Act and unless the context otherwise requires, this Act applies to remand centres, young offenders institutions and to persons detained in such centres or institutions in the same manner as it applies to prisons and prisoners.
    - (5) Section 11(4) and (5) does not apply to young offenders institutions.
    - (6) Sections 1 to 3, 4 to 6, 9, 10, 11(1), 13 to 17, 33A to 37 and 41 to 41D apply to remand centres, young offenders institutions and to persons detained there in the same manner as those provisions apply to prisons and prisoners subject to such adaptations and modifications as may be made by rules made under section 39.”.
- (9) In section 34 (notification of and inquiry into death of a prisoner) for “the visiting committee” substitute “an independent prison monitor appointed in relation to the prison”.
- (10) In section 42(2) (exercise of power to make rules, etc.), after “containing” insert “regulations made under section 7A(4),”.
- (11) In section 43(1) (interpretation)—
- (a) after the definition of “the 1995 Act” insert—
    - ““Chief Inspector” means the Chief Inspector of Prisons for Scotland;”;
  - (b) after the definition of “criminal prisoner” insert—
    - ““independent prison monitor” means an independent prison monitor appointed under section 7B(2)(a);
    - “OPCAT” means the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted on 18th December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199;”;
  - (c) after the definition of “prison” insert—
    - ““prison monitoring co-ordinator” means a prison monitoring co-ordinator appointed under section 7A(2);”;
  - (d) after the definition of “prisoner” insert—

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

### **Amendment of the Public Services Reform (Scotland) Act 2010**

**3.—**(1) The Public Services Reform (Scotland) Act 2010<sup>(4)</sup> is amended as follows.

(2) In schedule 5 (improvement of public functions: listed bodies)—

(a) the entry for “Visiting Committees” is repealed;

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

“any independent prison monitor appointed under section 7B(2)(a) of the Prisons (Scotland) Act 1989”; and

(c) after “Police Investigations and Review Commissioner”<sup>(5)</sup> insert—

“the prison monitoring advisory group established under section 7F of the Prisons (Scotland) Act 1989

any prison monitoring co-ordinator appointed under section 7A(2) of the Prisons (Scotland) Act 1989”.

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

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

**4.—**(1) The Prisons and Young Offenders Institutions (Scotland) Rules 2011<sup>(6)</sup> are amended as follows.

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

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

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

(a) for paragraph (1)(b) substitute—

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

(b) for paragraph (3) substitute—

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

(a) the prisoner is supplied with paper; and

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

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

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

(b) after paragraph (2) insert—

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

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(4) [2010 asp 8](#).

(5) That entry was substituted by the Police and Fire Reform (Scotland) Act 2012 ([asp 8](#)), Schedule 7, paragraph 40(4).

(6) [S.S.I. 2011/331](#) as amended by [S.S.I. 2011/356](#) and [S.S.I. 2012/026](#).

- (5) In rule 123 (referral of complaints to the Internal Complaints Committee)—
- (a) after paragraph (2) insert—
 

“(2A) Where a prisoner makes a request to an independent prison monitor for assistance in making a written referral to the ICC under paragraph (1), the independent prison monitor may provide such assistance to the prisoner as the independent prison monitor considers appropriate.”; and
  - (b) in paragraph (5)(b)(i), for “a member of the visiting committee” substitute “an independent prison monitor”.
- (6) In rule 124 (complaints to the Governor in relation to confidential matters), after paragraph (2) insert—
- “(2A) Where a prisoner makes a request to an independent prison monitor for assistance in making a complaint to the Governor under paragraph (2), the independent prison monitor may provide such assistance to the prisoner as the independent prison monitor considers appropriate.”.
- (7) Part 17 (visiting committees) is revoked.
- (8) Schedule 2 (constitution of visiting committees) is revoked.
- (9) Schedule 3 (constitution of visiting committees for legalised police cells) is revoked.

### **Incidental, transitional and saving provisions**

- 5.—(1) Notwithstanding the amendments made by articles 2 and 4—
- (a) all visiting committees continue to exist until the relevant date for the purposes of paragraphs (2) to (8) of this article;
  - (b) all visiting committees and their members may, until the relevant date, continue to exercise the powers contained in Part 17 of the Prison Rules in order to comply with paragraphs (2) to (8) of this article;
  - (c) each of the members of those visiting committees appointed in accordance with rule 146 or 155 remains in office until the relevant date unless, prior to the relevant date, he or she ceases to hold office in accordance with rule 146(7); and
  - (d) the appointment of the chairman and the deputy chairman of, and the clerk to, each of those visiting committees continues until the relevant date unless he or she ceases to hold office in accordance with rule 146(7).
- (2) Where, before the discontinuance date, the Scottish Ministers have requested any visiting committee to inquire into and report upon any matter under rule 149(1) but the visiting committee has not—
- (a) concluded that inquiry; or
  - (b) reported to the Scottish Ministers in relation to that inquiry,
- the visiting committee must conclude that inquiry and report to the Scottish Ministers in relation to that inquiry by the relevant date.
- (3) Where, before the discontinuance date, any visiting committee has, in accordance with rule 149(2)(a) notified—
- (a) the governor of a prison of any circumstances relating to the administration of the prison or the condition of any prisoner detained in the prison; or
  - (b) the constable who is in charge of a legalised police cell of any circumstances relating to the administration of the legalised police cell or the condition of any prisoner detained in the legalised police cell,

and that matter has not been remedied by the governor or the constable before the discontinuance date, the visiting committee must bring those circumstances to the attention of the Scottish Ministers before the relevant date.

(4) Where, before the discontinuance date, any visiting committee has undertaken an inquiry or inspection in terms of rule 149(3) but has not—

- (a) concluded that inquiry or inspection; or
- (b) reported to the Scottish Ministers in relation to that inquiry or inspection,

the visiting committee must conclude that inquiry or inspection and report to the Scottish Ministers in relation to that inquiry or inspection by the relevant date.

(5) Where, before the discontinuance date, any visiting committee or member of a visiting committee has received a complaint from a prisoner but has not—

- (a) concluded a hearing and investigation of the complaint in accordance with rule 150(1); or
- (b) complied with the requirements of rule 150(3),

the visiting committee or the member of the visiting committee must comply with rule 150(1) and (3) by the relevant date.

(6) The Chairman of each visiting committee constituted under rule 146 must ensure that the minute book and any other documents held by or on behalf of the visiting committee are delivered to HM Chief Inspector of Prisons for Scotland before the relevant date.

(7) The Chairman of each visiting committee constituted under rule 155 must ensure that the minute book and any other documents held by or on behalf of the visiting committee are delivered to an independent custody visitor appointed under arrangements made under section 94 of the Police and Fire Reform (Scotland) Act 2012(7).

(8) Before the relevant date, each visiting committee must, where they have not done so by the discontinuance date, finalise their annual report in respect of the period of 12 months ending on 31st March 2015 and deliver that report to the Scottish Ministers.

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

(10) In this article—

- “the discontinuance date” means 31st August 2015;
- “the Prison Rules” means the Prisons and Young Offenders Institutions (Scotland) Rules 2011;
- “the relevant date” means 30th November 2015;
- “visiting committees” means the visiting committees constituted for prisons or young offenders institutions in accordance with—

- (a) sections 8, 14(8) and 19(3) of the Prisons (Scotland) Act 1989(8); and
- (b) rules 146 and 155 of, and Schedules 2 and 3 to, the Prison Rules.

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

### **Consequential modifications**

6. The Schedule (which makes consequential modifications) has effect.

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(7) 2012 asp 8.

(8) 1989 c.45.

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**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: *The Public Services Reform (Inspection and Monitoring of Prisons) (Scotland) Order 2015 No. 39*

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St Andrew's House,  
Edinburgh  
Date

*Name*  
A member of the Scottish Government

## SCHEDULE

Article 6

### PART 1 – PRIMARY LEGISLATION

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

1. In Group B of Part 1 of Schedule 1 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980<sup>(9)</sup> (ineligibility for and disqualification and excusal from jury service)—

- (a) in sub-paragraph (o), repeal “, and members of visiting committees for;” and
- (b) after that sub-paragraph insert—

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

#### **The Prisoners and Criminal Proceedings (Scotland) Act 1993**

2. Paragraph 6(4) of Schedule 5 to the Prisoners and Criminal Proceedings (Scotland) Act 1993<sup>(10)</sup> (minor and consequential amendments) is repealed.

#### **The Criminal Justice and Public Order Act 1994**

3.—(1) The Criminal Justice and Public Order Act 1994<sup>(11)</sup> is amended as follows.

(2) Section 103(2) (monitoring of prisoner escort arrangements) is repealed.

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

- (a) in subsection (3)<sup>(12)</sup>, after “services,” insert “7B (functions of prison monitoring co-ordinators), 7D (functions of independent prison monitors), 7E (duty of the governor to assist with inspection and monitoring), 7G (SPT visits);” and
- (b) in subsection (4)<sup>(13)</sup>, after “services,” insert “7 (Her Majesty’s Chief Inspector of Prisons), 7B (functions of prison monitoring co-ordinators), 7D (functions of independent prison monitors), 7G (SPT visits);”.

(4) Section 116(1) (minor and consequential amendments) is repealed.

(5) Paragraph 64 of Schedule 10 (consequential amendments) is repealed.

#### **The Local Government etc. (Scotland) Act 1994**

4. Paragraph 162(2) of Schedule 13 to the Local Government etc. (Scotland) Act 1994<sup>(14)</sup> (minor and consequential amendments) is repealed.

#### **The Employment Rights Act 1996**

5. In section 50 of the Employment Rights Act 1996<sup>(15)</sup> (right to time off for public duties)—

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<sup>(9)</sup> 1980 c.55.

<sup>(10)</sup> 1993 c.9.

<sup>(11)</sup> 1994 c.33.

<sup>(12)</sup> Section 110(3) was amended by the Crime and Punishment (Scotland) Act 1997 (c.48) (“the 1997 Act”), section 43(5)(a) and Schedule 1, paragraph 15(a) and the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) (“the 2010 Act”), section 110(4)(a).

<sup>(13)</sup> Section 110(4) was amended by the 1997 Act, section 43(5)(b) and Schedule 1, paragraph 15(b) and by the 2010 Act, section 110(4)(a).

<sup>(14)</sup> 1994 c.39.

<sup>(15)</sup> 1996 c.18.

- (a) in subsection (2)(d), the words “or a prison visiting committee” are repealed; and
- (b) subsection (7)(b) is repealed.

#### **The Crime and Punishment (Scotland) Act 1997**

- 6. In the Crime and Punishment (Scotland) Act 1997(16)—
  - (a) section 43(3) (medical services in prisons) is repealed; and
  - (b) paragraph 13(2) of Schedule 1 (minor and consequential amendments) is repealed.

#### **The Management of Offenders etc. (Scotland) Act 2005**

- 7. Section 21(6) of the Management of Offenders etc. (Scotland) Act 2005(17) (further amendments and repeal) is repealed.

#### **The Public Records (Scotland) Act 2011**

- 8. In paragraph 1 of the schedule to the Public Records (Scotland) Act 2011(18) (authorities to which Part 1 applies)—
  - (a) after “Highlands and Islands Enterprise” insert—

“Independent prison monitors appointed under section 7B(2)(a) of the Prisons (Scotland) Act 1989”;
  - (b) after “Principal Reporter” insert—

“Prison monitoring co-ordinators appointed under section 7A(2) of the Prisons (Scotland) Act 1989”; and
  - (c) the entry for “Visiting committees” is repealed.

## **PART 2 - SECONDARY LEGISLATION**

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

- 9. The Local Government (Allowances to Members) (Prescribed Bodies) (Scotland) Regulations 1981(19) are revoked.

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

- 10. Paragraph 98(2) of Part 1 of Schedule 2 to the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999(20) (modifications of Acts of Parliament) is revoked.

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

- 11. For regulation 9(3)(c) of the Police Act 1997 (Criminal Records) (Scotland) Regulations 2010(21) (enhanced criminal record certificates: prescribed purpose) substitute—

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(16) 1997 c.48.  
(17) 2005 asp 14.  
(18) 2011 asp 12.  
(19) S.I. 1981/1388.  
(20) S.I. 1999/1820.  
(21) S.S.I. 2010/168.

- “(c) an individual appointed or seeking appointment—
- (i) to any office, employment or work which is concerned with the administration of, or is otherwise normally carried out wholly or partly within the precincts of, a prison, remand centre, young offenders institution, detention centre or removal centre;
  - (ii) as a prison monitoring co-ordinator under section 7A(2) of the Prisons (Scotland) Act 1989; or
  - (iii) as an independent prison monitor under section 7B(2)(a) of the Prisons (Scotland) Act 1989.”.

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

12. For paragraph 7 of Part 2 of Schedule 4 to the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013(22) (excepted professions, offices, employments and occupations) substitute—

“7. Any office, employment or work which is concerned with the administration of, or is otherwise normally carried out wholly or partly within the precincts of, a prison, remand centre, young offenders institution, detention centre or removal centre, prison monitoring co-ordinators appointed under section 7A(2) of the Prisons (Scotland) Act 1989 and independent prison monitors appointed under section 7B(2)(a) of that Act.”.

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### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends the Prisons (Scotland) Act 1989 (“the 1989 Act”) and the Prisons and Young Offenders Institutions (Scotland) Rules 2011 (“the 2011 Rules”). The Order clarifies the functions of Her Majesty’s Chief Inspector of Prisons (“the Chief Inspector”) and confers further functions on that office. The Order creates the roles of prison monitoring co-ordinator and independent prison monitor, transfers the functions of prison visiting committees to those roles and confers further functions on them. The Order abolishes prison visiting committees; the functions of prison visiting committees having been transferred to prison monitoring co-ordinators and independent prison monitors. The Order also abolishes visiting committees for legalised police cells as their functions are now exercised by independent custody visitors under section 94 of the Police and Fire Reform (Scotland) Act 2012.

Article 2 amends the 1989 Act to clarify the role of the Chief Inspector, to make provision for a system of prison monitoring and to abolish visiting committees. Article 2(2) inserts section 6A which states that sections 7 to 7G of the 1989 Act are designed to ensure compliance with the Optional Protocol to the Convention against Torture adopted by the UN in December 2002 (“OPCAT”). Article 2(3) amends section 7 of the 1989 Act so as to clarify the role of the Chief Inspector and add to the powers and duties imposed on that role.

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

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

Section 7E places obligations on the governors of prisons in Scotland to provide assistance to the Chief Inspector, prison monitoring co-ordinators and independent prison monitors in carrying out their duties. Section 7F places an obligation on the Chief Inspector to establish a prison monitoring advisory group which is tasked, amongst other things, with keeping the effectiveness of prison monitoring under review. Section 7G obliges the Scottish Ministers to make arrangements for prison visits by the Subcommittee on Prevention of Torture established under Article 2 of OPCAT.

Article 2(5) to (10) makes a number of modifications to the 1989 Act, which abolish visiting committees and are in consequence of the introduction of the new regime of independent prison monitoring.

Article 3 removes the entry for visiting committees from Schedule 5 to the Public Services Reform (Scotland) Act 2010 (“the 2010 Act”) and adds entries for independent prison monitors, prison monitoring co-ordinators and the prison monitoring advisory group. Article 3 also removes the entry for visiting committees from Schedule 8 to the 2010 Act.

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

Article 4(7), (8) and (9) revokes Part 17 (which makes provision for the constitution and functions of visiting committees), Schedule 2 (which makes provision for the constitution of visiting committees for prison) and Schedule 3 (which makes provision for the constitution of visiting committees for legalised police cells).

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

Article 6 introduces the Schedule to the Order which makes consequential amendments to primary and secondary legislation.