
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.