In this document, the AVC submits its comments on the revised Explanatory Memorandum as a supplement to the evidence already submitted on the draft Order.

1-6 This paragraph states that “The purpose of the Order is to Improve Efficiency”. There is no evidence to suggest that this will be the case, indeed the model proposed is cumbersome, complicated and hierarchical with no clearly defined role for lay monitors.

1-10 This paragraph suggests that Professor Coyle was the author of the proposal to abolish VCs, which is not the case. Professor Coyle was asked to review the Cabinet Secretary’s decision to abolish VCs.

1-11 This paragraph states that the existing system is not OPCAT compliant. It omits to say that the reason is entirely due to the fact that the Cabinet Secretary for Justice did not change the system of SPS paying VC expenses, a recommendation of the 2007 review which the Minister accepted but never implemented.

2-14 to 2-16 These paragraphs refer to the 2011 consultation but ignore completely the outcome: 98% of respondents declared that they were in favour of the retention of VCs and 96% that they should not be integrated with HMCIP.

3-19 The reasons given for integrating inspection and monitoring include that it “is a natural move which plays to existing strengths”. This is not a view shared by other jurisdictions in the UK where monitoring and inspection are seen as complementary but separate.

3-20 This paragraph claims that the paid monitors are necessary to have a robust structure. However there is already a robust model established recently by the Government for Independent Custody Visitors for Police Cells (ICVs). ICVs are supported by three area Co-ordinators who are responsible for training, administration and co-ordination. There are direct parallels in that ICVs are volunteers drawn from the community. There is no reason why the ICVs system could not be adopted for lay prison monitors rather than the bureaucratic and restrictive model of paid monitors that is proposed.

Pre-conditions
The Public Services Reform Act requires a number of preconditions to be met before existing bodies can be abolished. We are doubtful that the following pre-conditions have been met:

(a) The provision is proportionate to the policy objective
This section justifies the legislation on the grounds that the present system is not OPCAT compliant with no uniform approach to monitoring, no standardised reporting mechanism, the performance of members is not being regularly evaluated and there is no accountability. All of these issues were considered during the 2005 Review of Visiting Committees and were the subject of many recommendations in the 2007 Report. *All of the changes could have been made at any point over the last 6 years and do not require legislation.*

(b) The provision does not remove any necessary protection

This paragraph is very misleading. In fact, many of the functions of PVCs are omitted from the Order thus resulting in the removal of necessary protection. This paragraph also suggests that lay monitors are to be given the power to investigate complaints but that power is not new – it already exists. *We believe that necessary protection is being removed*

(e) Conferred functions are consistent with the general objects of a person or body which is abolished

This paragraph states that all of the functions of PVCs are being replicated. This is not the case as a number of key functions and duties are removed. For example, there is no longer any requirement to establish a monitoring committee for each prison, to specify the number of monitors per prison, to specify the frequency of lay monitoring or to publish an annual report.

The Public Services Reform Act also requires the Government to state how the proposed legislation would improve the exercise of public functions.

This paragraph asserts that the legislation will bring improvements in relation to efficiency, effectiveness and economy. However, the new system will not be more efficient given its complex and hierarchical design and the scope for confusion between differing roles, It is unlikely to be more effective than the current system would be if it was appropriately resourced and supported by Government and finally, it will cost at least four times more than at present so is certainly not more economical. *Accordingly, we do not believe that the proposals in the Order will improve the exercise of public functions.*

This paragraph asserts that the current system does not permit assessment of performance and that not all aspects of prisons are monitored on a regular basis. Both of these statements are incorrect. In relation to performance, the issue here is that successive Ministers have ignored Annual Reports and taken no interest at all in prison visiting committees or in supporting them to carry out their role. In relation to systematic monitoring, PVCs have a system for ensuring that all aspects of the prison are monitored on a regular basis.

3.33 refers to “organisational boundaries” but it is not clear what these are. PVCs and HMCIP already exchange information, particularly in the context of prison inspections and were already discussing an information sharing protocol.
3.35 states “The current system does not comply with OPCAT due to the lack of separation of functions between Scottish Ministers and PVC”. This is misleading as the lack of separation is between SPS -who the Government decided should hold the budget- and PVCs. **Legislation is not needed to make this change as it could be effected administratively.**

3.36 The benefits claimed for the new system are largely ones which could be achieved without legislation and an expensive hierarchy. PVCs welcome and have sought the greater rigour in independent monitoring that the Government now seeks. It is regrettable however that the proposed system will be less independent and more expensive than that currently in operation.

3.37 This paragraph makes two claims. First, that the new system will be “better value for money”. No evidence is put forward to support this, despite the four-fold increase in costs. Saying it doesn’t make it so. Second, it is alleged that the new system will reduce the risk of Ministers finding themselves paying out compensation for breaches of the human rights of prisoners. However, the reason for past compensation payments has been either that Ministers ignored warnings, whether from VCs or others, or they did not receive or follow sound legal advice. It is fatuous to suggest, for example, that VCs are in some way to blame for the compensation that had to be paid over slopping out. Ministers were aware of the risk but chose to ignore it. 

*In conclusion, we believe that it is at the least questionable whether Ministers have met the necessary tests required before this legislation can proceed*

Andrew Nisbet  
Secretary  
12 December 2013