PROPOSED EXPLANATORY DOCUMENT

THE PUBLIC SERVICES REFORM (PRISON VISITING COMMITTEES) (SCOTLAND) ORDER 2014

DRAFT ORDER TO IMPROVE THE EFFICIENCY OF PUBLIC FUNCTIONS IN RELATION TO THE INSPECTION AND MONITORING OF PRISONS IN SCOTLAND BY AMENDING, PRIMARILY, THE PRISONS (SCOTLAND) ACT 1989¹ AND THE PRISONS AND YOUNG OFFENDERS INSTITUTIONS (SCOTLAND) RULES 2011².

CHAPTER 1: INTRODUCTION

1-1. This proposed Explanatory Document has been prepared in respect of the proposed draft Public Services Reform (Prison Visiting Committees) (Scotland) Order 2014 ("the Order"), which is to be made in exercise of powers conferred by sections 14 and 15 of the Public Services Reform (Scotland) Act 2010 ("the 2010 Act").

1-2. This document has been prepared for the purposes of section 25(2)(a) (procedure) and section 26(2)(a)(ii) and (b) (consultation).

1-3. A copy of this document must be laid before the Scottish Parliament as part of the consultation process along with a copy of the proposed draft Order.

1-4. The proposed Explanatory Document laid before the Scottish Parliament under section 25(2)(a) must contain the details set out in section 27 of the 2010 Act, with the exception of the details required by section 27(1)(f), which relate to the consultation undertaken under section 26.

1-5. Subsequent to the consultation under section 26, the Explanatory Document and the draft Order must be laid again before the Scottish Parliament (section 25(2)(b)). At that stage, the Explanatory Document will have to include the details required by section 27(1)(f), which relate to the consultation undertaken. This proposed Explanatory Document will accordingly be amended and expanded to give details of any representations received as a result of the consultation and the changes (if any) made to the proposed draft Order as a result of those representations.

1-6. The overarching purpose of the Order is to improve the efficiency of public functions in the inspection and monitoring of prisons in Scotland by—

- modifying the functions of Her Majesty’s Chief Inspector of Prisons for Scotland ("the Chief Inspector");
- abolishing Prison Visiting Committees; and
- creating the roles of prison monitors and lay monitors on which the functions of prison monitoring are being conferred.

¹ 1989 c.45
² S.S.I. 2011/331
1-7. The role of the Chief Inspector derives from section 7 of the Prisons (Scotland) Act 1989 ("the 1989 Act"). In terms of section 7 it is the duty of the Chief Inspector to inspect or arrange the inspection of prisons in Scotland and to inspect the conditions in which prisoners are transported or held in pursuance of prisoner escort arrangements. The Chief Inspector must report to the Scottish Ministers on these inspections and, in particular, on the treatment of prisoners and the conditions in prisons. The Chief Inspector must also prepare an annual report to the Scottish Ministers which must be laid before Parliament.

1-8. Prison Visiting Committees ("PVCs") have been in existence for some considerable time but the current legislative basis for Prison Visiting Committees is found in section 8 of the 1989 Act. Section 8 obliges the Scottish Ministers to provide for the continuation of PVCs in rules made under section 39 of the 1989 Act. The rules must provide, in particular, that PVCs are to be appointed by such community justice authorities or local authorities and in such manner as may be prescribed in the rules. The main functions of PVCs under the 1989 Act are for their members to frequently visit prisons and hear any complaints that may be made by prisoners. PVC members must report matters that may be made by prisoners. PVC members must report matters to the Scottish Ministers as they see appropriate and they must be given free access to prisons and prisoners at any time.

1-9. PVCs also have the functions set out in Part 17 of the Prisons and Young Offenders Institutions (Scotland) Rules 2011 ("the Prison Rules"). Part 17 of the Prison Rules sets out provisions for the constitution of PVCs, the proceedings of PVCs, the functions of PVCs and the duty to provide an annual report to the Scottish Ministers.

1-10. In his Review of Proposals to Improve Arrangements for Independent Monitoring of Prisons, Professor Andrew Coyle recommended that Visiting Committees should be abolished and replaced with a new system of voluntary independent monitors, to be appointed through a transparent process for specified periods and with a clearly defined role.

1-11. Professor Coyle stated that current arrangements for prison monitoring in Scotland do not meet the standards required by the Optional Protocol to the UN Convention Against Torture (OPCAT), but noted that, if his recommendations are implemented, Scotland will in future have a robust system for independent monitoring. The Scottish Government made a commitment to take forward reform of the system for the independent monitoring of prisons which would meet the Government’s obligations under OPCAT and in accordance with the National Preventive Mechanism (NPM).

1-12. The new service will sit under the auspices of the Chief Inspector. The Scottish Government is clear about the distinction between the functions of inspection and monitoring, however, bringing both functions under the leadership of the Chief Inspector provides for integration where appropriate, whilst preserving the distinction between the two. The Chief Inspector will oversee the independent monitoring of prisons but the inspection and monitoring functions will operate separately. The Chief Inspector is also a member of the NPM.
1-13. It is proposed that the 1989 Act is amended to provide greater clarity to the Chief Inspector’s role and to confer the function of overseeing prison monitoring on the Chief Inspector. The proposal is also to create, in the 1989 Act, the role of prison monitors to assist the Chief Inspector and to monitor prison conditions and the treatment of prisoners. The role of lay monitors is to be created in the 1989 Act to assist prison monitors in the monitoring of prisons and to hear and investigate any complaints made to them by prisoners. The functions of PVCs are to be removed from the 1989 Act and the provisions relating to PVCs in the Prison Rules are revoked.

1-14. This proposed Explanatory Document provides a formal assessment of the proposed amendments against the requirements of the 2010 Act, and is arranged as follows:

- Chapter 2 sets out the background and provides an overview of the proposals; and
- Chapter 3 explains how the requirements of sections 16 (preconditions) and 27 (explanatory document) of the 2010 Act are met.

CHAPTER 2: BACKGROUND TO THE DRAFT ORDER

The history of Prison Visiting Committees

2.1 The prison system in Scotland in its current form dates from 1878 when the Prisons (Scotland) Act 1877 came into force and the administration of prisons became the responsibility of central government. A Prison Commission was set up to administer prisons in Scotland on behalf of the Secretary of State and a Visiting Committee, consisting of commissioners of supply, justices of the peace and magistrates, was appointed for each prison. The Secretary of State regulated the number of members on an annual basis. Members of the committees were required to visit the prison frequently and to hear any complaints made to them by prisoners. There was to be no restriction on any committee member from visiting any part of the prison or any prisoner at any time.

2.2 Regular monitoring of conditions in prison and the treatment of prisoners is currently undertaken by Prison Visiting Committees. Members of the PVC are appointed for each prison and undertake this work on a voluntary basis. The statutory arrangements for Visiting Committees have changed little since their enactment other than to take account of local government changes in terms of the appointment of members. Under the current arrangements Local Authorities appoint Visiting Committee members for adult establishments and members for Young Offenders Institutes are appointed by the Cabinet Secretary for Justice.

The current role of Prison Visiting Committees

2-3. The Scottish Ministers are obliged, in terms of section 8 of the 1989 Act, to make provision for the appointment of, and the conferral of functions on, PVCs
in rules made under section 39 of the 1989 Act. By virtue of section 19(3) of the 1989 Act, the Scottish Ministers are obliged to appoint Visiting Committees for remand centres and young offenders institutions and the Ministers may prescribe, in rules under section 39, the minimum number of women who should be members of these Visiting Committees.

2-4. Section 8 of the 1989 Act is as follows:

(1) Rules made under section 39 of this Act shall provide for the constitution, for prisons, of Visiting Committees appointed,
   (a) by such—
      (i) community justice authorities, or
      (ii) councils constituted under section 2 of the Local Government etc. (Scotland) Act 1994,
   (b) at such times,
   (c) in such manner, and
   (d) for such periods,
   as may be prescribed by the rules.

(2) Rules made under section 39 of this Act shall prescribe the functions of Visiting Committees, and shall among other things require the members to pay frequent visits to the prison and hear any complaints which may be made by the prisoners and report to the Secretary of State any matter which they consider it expedient to report; and any member of a visiting committee may at any time enter the prison and shall have free access to every part thereof and to every prisoner.

(3) The Secretary of State may pay—
   (a) to the members of any visiting committee appointed under or in pursuance of this section such allowances in respect of loss of earnings or travelling or subsistence or other expenses necessarily suffered or incurred in the performance of their duties, and
   (b) to the officers of any such committee such remuneration (whether by way of salary or fees) and such allowances in respect of travelling or subsistence expenses, as the Secretary of State may with the consent of the Treasury determine.

2-5. Section 19(3) of the 1989 Act is as follows:

(3) The Secretary of State shall appoint for every remand centre and young offenders institution a visiting committee of which not less than two members shall be justices of the peace and not less than such number of members as may be prescribed by rules under section 39 of this Act shall be women.

2-6. Part 17 of the Prison Rules makes provision for the constitution and functions of PVCs. Rule 146 of the Prison Rules provides for PVCs to be constituted for the prisons specified in Schedule 1 to the Prison Rules with the members of each PVC to be appointed by the local authorities specified in Schedule 1. There is a fixed number of members of each PVC who must not be members of the relevant local authorities. Rule 146(7) provides for the cessation of membership of a PVC – PVC members cease to hold office in the event of their resignation, the termination of their membership by the relevant local authority or, where applicable, the cessation of their membership of the local authority.

2-7. Rule 148 makes provision for the proceedings of PVCs. PVCs must elect a chair and a clerk and the names of the members of the PVC (and any change in those details) must be reported to the Scottish Ministers. PVCs must meet at
least once every three months and they may set up, and delegate specific duties to, sub-committees of its membership.

2-8. The main functions of PVCs are set out in rules 149 to 151. PVCs must cooperate with the Scottish Ministers and the Governor of the relevant prison in promoting the efficiency of the prison. PVCs must also-

- inquire into and report upon any matter at the request of the Scottish Ministers;
- immediately bring to the notice of the Governor any circumstances relating to the administration of the prison or the condition of any prisoner which appear to be expedient to report for the Governor's consideration;
- bring such circumstances to the notice of the Scottish Ministers if it appears to the PVC that the Governor has not remedied any matter which the PVC has notified to the Governor within such period as appears to the committee to be reasonable.
- from time to time, inquire into the state of the prison premises;
- inspect, in particular, the food and drink provided to prisoners; and
- in relation to any such inquiry into the state of the prison premises—
  - record particulars of every visit made, together with any deficiencies found during such visits, in the committee's minute book; and
  - promptly send a copy of such particulars to the Scottish Ministers and to the Governor;
- discharge such other duties as the Scottish Ministers may from time to time assign to it;
- hear and investigate any complaints made to the PVC (or a member of the PVC);
- record particulars of the PVC’s findings in relation to its investigation of a prisoner's complaint in its minute book,
- promptly send a copy of such findings to the Scottish Ministers and to the Governor of the relevant prison and inform the prisoner concerned of its findings.
- Ensure that at least two members of the visiting committee for a prison must visit the prison at least fortnightly so that, in every fortnight, at least—
  - one member visits the prison weekly; or
  - two members visit the prison together in that fortnight.

2-9. Under rule 152, PVCs have the power to inspect prison records other than—

- personnel records;
- prisoners' records; and
- security manuals or other papers which have implications for security.

2-10. PVCs are obliged to report to the Scottish Ministers annually on the state of the relevant prison and its administration in terms of rule 153. PVCs may make suggestions and provide advice to Scottish Ministers in the annual report.

2-11. Rule 154 provides for the constitution of Visiting Committees for legalised police cells and applies the preceding provisions of Part 17 to those Visiting Committees subject to certain modifications.
The need for change

2-12. In his review, Professor Coyle recommended that PVCs be abolished and replaced with a new system of voluntary independent monitors. At the moment arrangements for prison monitoring in Scotland do not meet the standards required by OCPAT and the system must be reformed to address this.

2-13. The Scottish Government is working to make external scrutiny proportionate, risk-based and co-ordinated so that potentially vulnerable service users are protected. Professor Coyle made a number of recommendations for improvements which the Scottish Government have accepted, and will implement.

Consultation

2-14. The Scottish Government opened a consultation on independent monitoring of prisons in January 2011. The purpose of the consultation was to seek views on the system for monitoring the quality and safety of prisons and the treatment of prisoners in Scotland, and, in particular, look at the roles of the Chief Inspector and PVCs. In addition to the formal consultation, the Scottish Government held focus groups with prisoners at a number of prisons.

2-15. In December 2011 the Scottish Government published an analysis of the responses received to its consultation. Responses had been received from PVC members, local authorities, Community Justice Authorities and other organisations.

2-16. Since publishing its response to Professor Coyle’s review, the Scottish Government has engaged informally with key organisations including the Association of Visiting Committees and HMCIP.

Overview of the Proposals

2-17. The draft Order will modify the functions of the Chief Inspector to provide greater clarity and will confer the additional functions of appointing, overseeing and supporting prison monitors and lay monitors. The powers and duties of the Chief Inspector are set out clearly in a new section 7 of the 1989 Act which will replace the existing section 7.

2-18. New sections 7A and 7B are to be added to the 1989 Act creating the roles of prison monitor and lay monitor. Prison monitors will be required to assist the Chief Inspector and comply with the monitoring duties specified in section 7A(3). Lay monitors will be required to assist the prison monitors and comply with the monitoring duties specified in section 7B(4) and (5). The powers given to prison monitors and lay monitors are to be set out in sections 7A(4) and 7B(3) respectively.

2-19. The provisions of the 1989 Act relating to PVCs are repealed and the provisions relating to PVCs in the Prison Rules are revoked. Consequential amendments are also made to other pieces of criminal justice legislation.
**Timetable**

2-20. It should be noted that all dates other than the formal consultation period are subject to change.

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<thead>
<tr>
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<tr>
<td>Introduction of the draft Order to the Scottish Parliament for consideration</td>
<td>4 October 2013</td>
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<tr>
<td>Formal Consultation</td>
<td>6 November 2013 – 31 January 2014</td>
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<tr>
<td>Consideration of comments/if necessary further circulation of the draft</td>
<td>31 January 2014 – 14 March 2014</td>
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<tr>
<td>Draft Order laid in the Scottish Parliament for approval</td>
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**CHAPTER 3: REQUIREMENTS OF THE 2010 ACT**

3-1. The procedure for making an Order under Part 2 of the 2010 Act is set out in section 25 of that Act. By virtue of section 25(2), an Order under section 14 of the Act cannot be made unless the Scottish Ministers have-

- consulted in accordance with section 26;
- following the consultation, laid before Parliament the draft Order and the explanatory document prepared in accordance with section 27; and
- the draft Order has been approved by Parliament.

3-2. Section 25(3) makes similar provision for Orders made under section 15 of the 2010 Act. The key differences between subsections (2) and (3) are that the consultation exercise must be conducted under section 25(4) and the explanatory document must be prepared in accordance with section 25(5). The section 25(4) obligation is difficult to comply with in the present case as the Order simultaneously creates the roles of Prison Monitors and Lay Monitors and adds both Prison Monitors and Lay Monitors to Schedule 5.

3-3. Section 26(1) of the 2010 Act requires the Ministers, where they propose to make a Section 14 Order, to consult—

(a) such organisations as appear to them to be representative of interests substantially affected by the proposals,
(b) where the proposals relate to the functions of one or more persons, bodies or office-holders, those persons, bodies or office-holders, or
persons appearing to them to be representative of those persons, bodies or office-holders,
(c) in such cases as they consider appropriate, the Scottish Law Commission, and
(d) such other persons as they consider appropriate.

3-4. For the purposes of the section 26(1) consultation the Ministers must—
(a) lay before the Parliament a copy of the proposed draft order, and a copy of the proposed explanatory document referred to in section 25(2)(b)(ii) (excepting the details required by section 27(1)(f)),
(b) send a copy of the proposed draft order and proposed explanatory document to any person to be consulted under section 26(1), and
(c) have regard to any representations about the proposed draft order that are made to them within 60 days of the date after laying before Parliament.

3-5. The provisions dealing with the explanatory document are set out in section 27 of the 2010 Act. The proposed explanatory document laid before Parliament at the start of the 60 day consultation period must, for the purposes of an Order made under section 14 of the Act, include the information required in paragraphs (1) to (4) below. The actual explanatory document, which must be laid in Parliament along with the final version of the section 14 Order following the 60 day consultation period, must include the information required in paragraphs (1) to (5) below.

(1) explain under which power(s) in the Act the provision contained in the draft order is made (section 27(1)(a));
(2) introduce and give reasons for the provision (section 27(1)(b));
(3) in the case of an order under section 14—
   (i) explain why the Scottish Ministers consider that the conditions in section 16(2) (where relevant) are satisfied or the condition in section 16(10) is satisfied;
   (ii) explain how the provision made by the order would improve the exercise of public functions; and
   (iii) if the order relates to the functions of the Scottish Ministers, or confers functions on or transfers or delegates functions to, the Scottish Ministers, describe the functions and identify the part of the Scottish Administration through which the functions are, or are to be, exercised (section 27(1)(c));
(4) identify and give reasons for—
   (i) any functions of legislating conferred by the order, and
   (ii) the procedural requirements attaching to the exercise of those functions (section 27(1)(e)); and
(5) give details of—
   (i) any consultation undertaken under section 26,
   (ii) any representations received as a result of the consultation,
   (iii) the changes (if any) made to the proposed draft order as a result of those representations (section 27(1)(f)).

3-6. For the purposes of an Order made under section 15, the Scottish Ministers must also produce an explanatory document under section 25(5) which must be
laid before Parliament along with the final version of the Order (post-consultation). The explanatory document to be prepared under section 25(5) must give details of—

(a) any consultation undertaken under section 25(4) with the persons, bodies or office-holders who are to be added to Schedule 5;
(b) any representations received as a result of the consultation
(c) any changes made to the proposals to add persons, bodies or office-holders to Schedule 5 as a result of those representations.

Section 27(1)(a): The powers under which the provisions are made.

3-7. The Order is made under sections 14 and 15 of the 2010 Act. The Order is designed to improve the exercise of the public functions of inspecting and monitoring prisons in accordance with section 14(1) of the Act. The Order also adds Prison Monitors and Lay Monitors to Schedule 5 to the Act in accordance with section 15(2)(a) of the Act.

3-8. Public functions are the functions of those persons, bodies and office-holders listed in Schedule 5 to the 2010 Act (see section 14(2) of the Act). The function of inspecting prisons is a public function as it is a function of Chief Inspector and, as an office-holder in the Scottish Administration, the Chief Inspector is listed in Schedule 5 to the Act. The function of monitoring prisons is a public function as it is a function of PVCs who are also listed in Schedule 5 to the Act.

3-9. Paragraph 2 of the Order modifies the functions of the Chief Inspector and confers additional functions on the Chief Inspector all in accordance with section 14(3)(a) of the 2010 Act. Paragraph 2 of the Order also creates the roles of Prison Monitors and Lay Monitors and confers functions upon them in accordance with section 14(3)(c) of the Act. Paragraph 9 of the Order contains provision adding Prison Monitors and Lay Monitors to Schedule 5 to the Act in accordance with section 14(6)(a) of the Act.

3-10. Paragraphs 2 to 8 of the Order modify a number of enactments in accordance with section 14(7)(a) and, amongst other things, contain a number of consequential and incidental provisions in accordance with section 14(7)(b).

3-11. Paragraphs 2 and 8 of the Order also amends the 1989 Act and the 2011 Rules so as to abolish PVCs in accordance with section 14(8).

Section 27(1)(b): Introduction to the provisions and reasons for them.

3-12. The draft Order replaces section 7 of the 1989 Act with new sections 7, 7A and 7B. The new section 7 re-states the existing obligations of the Chief Inspector but in greater detail. The Chief Inspector is given two roles and has separate powers and duties in relation to each:
• the existing role of having responsibility for the inspection of prisons in Scotland; and
• a new role of having responsibility for the appointment and oversight of prison monitors and lay monitors in Scotland.
3-13. The Chief Inspector’s duties in relation to the inspection of prisons are set out in subsection (2) of the new section 7. The duties, in the main, relate to the inspection of prisons and the treatment of prisoners and reporting to the Scottish Ministers on those inspections. The Chief Inspector’s duties in relation to the appointment and oversight of prison monitors and lay monitors are set out in subsection (3) the new section 7.

3-14. The Chief Inspector’s powers in relation to the inspection of prisons are set out in subsections (4) and (5) of the new subsection (7). The Chief Inspector also has powers to issue guidance and consult with such persons and organisations as the Chief Inspector deems appropriate. The new section 7 contains provision for salaries to be paid to the Chief Inspector and prison monitors and expenses to be paid to lay monitors.

3-15. The role of prison monitor is introduced in the new section 7A to be added to the 1989 Act. They have two main objectives – to assist the Chief Inspector and to comply with the monitoring duties specified in section 7A(3). The powers given to prison monitors are set out in section 7A(4). Prison monitors must comply with any instructions given by the Chief Inspector and must take into account any guidance issued by the Chief Inspector.

3-16. The role of lay monitor is introduced in the new section 7B to be added to the 1989 Act. They have two main objectives – to assist the prison monitors and to comply with the monitoring duties specified in section 7B(4) and (5). The powers given to prison monitors are set out in section 7A(3). Lay monitors are obliged to hear and investigate prisoner complaints, they must comply with any instructions given by the Chief Inspector and they must take into account any guidance issued by the Chief Inspector.

3-17. The provisions of the 1989 Act relating to PVCs are repealed and the provisions relating to PVCs in the Prison Rules are revoked. Consequential amendments are also made to other pieces of criminal justice legislation.

3-18. Taking into consideration Professor Coyle’s recommendations, the Cabinet Secretary for Justice believes that the Chief Inspector is best placed to oversee future independent monitoring of prisons. Bringing prison monitoring under the auspices of the Chief Inspector provides an opportunity to integrate scrutiny and monitoring effectively, in a way that preserves the distinct functions of both. It will also enhance the impact and profile of monitoring, given the Chief Inspector’s access to Ministers, Parliament and the media.

3-19. Having the Chief Inspector responsible for overseeing and supporting the monitoring regime provides the best potential for impact and ensuring high standards in prisons in Scotland. It introduces oversight and leadership from an individual already working in this field, and adding monitoring to the Chief Inspector’s responsibilities is a natural move which plays to existing strengths.

3-20. The introduction of Prison Monitors will ensure that there is a robust structure in place, with clear lines of reporting between Prison Monitors and the Chief Inspector to increase accountability. The powers given to both Prison Monitors
and Lay Monitors reflect, and in some ways expand on, those currently given to PVC members. The amendments to section 7 of the 1989 Act are necessary to clarify the existing obligations of the Chief Inspector; the addition of sections 7A and 7B introduce the monitoring regime and provide for the Chief Inspector’s role in overseeing prison monitoring.

Section 27(1)(c)(i): Section 16 preconditions.

Section 16(2)(a): The provision is proportionate to the policy objective
3-21. The policy objective is to establish a system of independent prison monitoring for Scotland which is professional, robust and accountable. The effect of the provisions in the Order is to abolish PVCs and introduce prison monitors and lay monitors who will monitor prisons in Scotland under the auspices of the Chief Inspector. This is a significant change to the provision of independent monitoring of prisons in Scotland and the necessity of this change can be assessed by comparing the benefits of the new system compared to the drawbacks of the existing system of independent monitoring.

3-22. There are a number of drawbacks in the current system, for example: it is not OPCAT compliant; there is no uniform approach to monitoring across Scotland; there is no standardised reporting mechanism; the performance of PVC members is not regularly evaluated; and there is a lack of accountability. The introduction of a new monitoring regime will address these issues and the monitoring regime we have proposed is no more than is necessary to achieve that aim. The new system will: be OPCAT compliant; ensure a uniform approach to monitoring across Scotland; introduce standardised reporting; and will ensure that the performance of prison monitors and lay monitors is regularly evaluated. The Scottish Ministers therefore consider that the effect of the provisions in the Order is proportionate to the policy objective as the provision of a new system of independent monitoring is required and this necessitates the abolition of PVCs.

Section 16(2)(b): The provision does not remove any necessary protection
3-23. The provision does not remove any necessary protection. We are adapting functions already conferred on PVC members to provide greater clarity of the role and ensure the system of independent monitoring is more robust. PVC members have a function whereby they can support prisoners through the formal complaints process. This is not replicated in the new system, however, Lay Monitors will have the power to investigate prisoner complaints themselves and make a report to the Governor.

Section 16(2)(c): Modified functions consistent with the general objects or purpose of the person concerned
3-24. The general purpose of the Chief Inspector, at present, is to inspect, and report to the Scottish Ministers on, the treatment of prisoners and conditions in prisons. Article 2(2) of the Order modifies the Chief Inspector’s functions to provide greater clarity on the role in general, and to place on a statutory basis some functions which he currently undertakes on a non-statutory basis. The Chief Inspector currently has access to prisons, prisoners, prison staff and prison records, Article 2(2) merely places this on a statutory footing. The
modified functions in new subsections (2) to (7) of the 1989 Act (as inserted by Article 2(2)), clarify and enhance existing functions in relation to the inspection of prisons and prison conditions and this is consistent with the general purpose of the Chief Inspector.

**Section 16(2)(d): Conferred functions consistent with the general objects or purpose of the person concerned**

3-25. Article 2(3) and (4) of the Order confer new powers on the Chief Inspector in relation to the appointment, evaluation and payment of prison monitors and lay monitors. Prisons are inspected against a set of inspection standards which focus on safety; decency; humanity and respect for legal rights. Adding responsibility for independent monitoring to the functions of the Chief Inspector is consistent with these overarching objectives. Inspection and monitoring are clearly linked as both aim to ensure adequate conditions for, and treatment of, prisoners. This new structure will ensure that the findings from monitoring activities feed into inspection outcomes and vice versa, therefore joining up all available information in order to provide a full picture of prison conditions to the Scottish Ministers.

**Section 16(2)(e): Conferred functions consistent with the general objects or purpose of a person whose functions have been abolished**

3-26. The powers and duties conferred on lay monitors and prison monitors by Article 2(3) of the Order replicate and extend the general objects or purpose of Prison Visiting Committees. Article 2(3) sets out these functions in clearer terms and provides more detail on the main operational function, which is to visit and monitor prisons and report the findings of those visits. The functions and operation of PVCs have remained generally unchanged for many years and all of the functions are being replicated for prison monitors and lay monitors (subject to paragraph 3.23 above). This new system will provide a modern, accountable and professional independent monitoring system building on the current functions of PVCs. Accordingly, the functions conferred on prison monitors and lay monitors in the Order are consistent with the general purpose of PVCs, who are in turn being abolished by the Order.

**Section 16(10): Restatement of an enactment**

3-27. The inspection duties in section 7(2)(a) and (b) of the 1989 Act are restated in the new section 7(2)(a) and (b) as inserted by the Order. The reporting duties in section 7(2)(a) and (b) of the 1989 Act are restated in section 7(3)(a) and (b). Section 7(4) of the 1989 Act is partially restated in the new section 7(2)(c) as inserted by the Order. Section 7(4) currently allows Ministers to refer matters to the Inspector and have the Inspector report on them. The new section 7(2)(c) allows Ministers to refer matters to the Inspector and have the Inspector investigate them. Section 7(5) of the 1989 Act is partially restated by the new section 7(3)(c) and (4) as inserted by the Order. Section 7(5) currently obliges the Inspector to submit an annual report to Ministers and obliges Ministers to lay the report before Parliament. The new section 7(3)(c) obliges the Inspector to produce an annual report to Ministers and the new section 7(4) provides for the report to be laid before Parliament but places this obligation on the Inspector.
3-28. The new section 7(2)(a) and (b) as inserted by the Order are expressed as part of a wider subsection which sets out the functions of the Inspector. This is part of the restructuring of section 7 to distinguish the functions of the Inspector, the reporting duties placed on the Inspector and the powers which allow the Inspector to perform the functions. The new section 7(2)(c) as inserted by the Order replicates the ability of Ministers to refer matters to the Inspector but in the context of the Inspector’s function of investigating those matters. This is placed alongside the Inspector’s functions of inspecting prisons and prison conditions as there is a clear correlation between the three functions. Section 7(3) replicates the duty on the Inspector to report following the investigations in section 7(2)(a) and (b) produce an annual report but combines it with the duty to prepare an annual report. The purpose of this is to have all of the reporting duties together in one subsection to clarify the Inspector’s duties to report to Ministers.

3-29. The restatement of these provisions is intended to make section 7 more accessible and easier to understand by giving it a clearer structure and grouping similar functions and duties in subsections. By grouping the restated provisions alongside the further powers being conferred on the Chief Inspector, the restated provisions are given greater context and purpose.

Section 27(1)(c)(ii): Improving the exercise of public functions

3-30. The provisions will improve the exercise of public functions having regard to efficiency, effectiveness and economy.

Efficiency
3-31. The current system of independent monitoring is not as efficient as it could be. There is no national approach to monitoring and the service is inconsistent throughout the country. The current structure does not allow for assessing the performance of PVCs or individual PVC members. Due to the lack of formal structure and accountability, it is not possible to ensure that all aspects of prisons are monitored on a regular basis.

3-32. Under the new system there will be a consistent approach to independent monitoring across Scotland and a centralisation of support, guidance and management through the Chief Inspector. Monitors will be recruited against a set of skills and competencies and their performance will be regularly evaluated. This formal structure will ensure that all aspects of prison conditions and prison life can be monitored regularly. The new system will raise the profile of independent monitoring amongst prisoners and ensure increased engagement with them. There will also be improved standardised reporting with the creation of duties to report to the Chief Inspector.

3-33. Situating the independent monitoring service under another public body would be inefficient and uneconomical as an entire new system would require to be designed. In this case, whilst the Scottish Government recognises the distinction between inspection and monitoring, bringing these two functions together under the auspices of the Chief Inspector allows for integration into an
existing system. This structure allows for an efficient system of information flow between inspectors and monitors without the need to cross organisational boundaries. The integration of guidance and standards in relation to monitoring and inspection also provides for an efficient use of resources. The Scottish Ministers therefore consider that the provisions in the Order will make the exercise of the function of prison monitoring more efficient.

Effectiveness
3-34. The current system is not as effective as it could be. Article 17 of OPCAT requires that each State Party shall maintain, designate or establish one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Under Article 18, State Parties must guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.

3-35. The current system does not comply with OPCAT due to the lack of separation of functions between the Scottish Ministers and PVCs. The new independent monitoring system will address this by situating independent monitoring under the Chief Inspector who is appointed by Royal Warrant and therefore operates independently of the Scottish Prison Service and the Scottish Ministers in general. Compliance with OPCAT will allow the Scottish system of independent monitoring to form part of the UK National Preventive Mechanism which currently is not the case for PVCs. The Chief Inspector is a member of the UK National Preventive Mechanism and is best placed to support and oversee prison monitoring and to bring to light any instance where standards fall short of what would be expected in a modern prison service.

3-36. The new system of prison monitoring will be more effective than the monitoring provided by PVCs as it will ensure; OPCAT compliance; a higher profile amongst prisoners; increased accountability; standardised reporting; evaluation and appraisal of prison monitors. The link to inspection will also be a considerable benefit of the new system as, when necessary, the Chief Inspector can ensure that identified problem areas within specific prisons are regularly monitored. The effectiveness of the new system will also be evidenced through the ability to provide a fuller picture to Scottish Ministers through the reporting of prison monitors and lay monitors to the Chief Inspector and onward reporting of the Chief Inspector to the Scottish Ministers. The Scottish Ministers therefore consider that the provisions in the Order will make the exercise of the function of prison monitoring more effective.

Economy
3-37. Although the new system is more expensive, it will better safeguard the rights of prisoners thus providing better value for money than the existing regime of independent monitoring. The new regime will cost more but it will produce better results and, accordingly, will prove more economical overall. The mistreatment of prisoners, or breaches of the Human Rights of prisoners has, historically, resulted in the Scottish Ministers paying compensation. A robust system of independent monitoring will ensure that any issues are identified at an earlier stage, reducing the likelihood of future compensation claims. The
Scottish Ministers therefore consider that the provisions in the Order will make the exercise of the function of prison monitoring more economical.

**Section 27(1)(c)(iii): Transfer of functions to the Scottish Ministers**

3-38. No functions are being transferred to the Scottish Ministers by this Order. The Chief Inspector is, however, an office holder in the Scottish Administration and Prison Monitors and Lay Monitors will be appointed by him.

**Section 27(1)(e): Functions of legislating**

3-39. There are no functions of legislating conferred by the Order.

**Section 27(1)(f): Details of the section 26 consultation**

3-40. These details will be added following the 60 day consultation period and the Scottish Ministers consideration of the response received during that consultation.