

ABERDEEN CITY COUNCIL

COMMITTEE	Council
DATE	18 December 2013
DIRECTOR	Director of Corporate Governance
TITLE OF REPORT	Consultation on the Draft Public Services Reform (Prison Visiting Committees) (Scotland) Order 2014
REPORT NUMBER	CG/13/135

1. PURPOSE OF REPORT

This report informs Council of the Scottish Government consultation on the draft Public Services Reform (Prison Visiting Committees) (Scotland) Order 2014 which would abolish Prison Visiting Committees, clarify the role of Her Majesty's Chief Inspector of Prisons and create roles of Prison Monitor and Lay Monitor and presents a proposed response to the consultation for consideration.

2. RECOMMENDATION

That Council instructs officers to submit the proposed response to the Scottish Government by the deadline of 31 January 2014.

3. FINANCIAL IMPLICATIONS

There are no financial implications identified as a result of this consultation. In accordance the Prison and Young Offenders Institutions (Scotland) Rules 2011, the Council currently carries out the recruitment and selection process for Members, as well as the administration of this Committee. The consultation proposes the abolition of Prison Visiting Committee and the establishment of prison and lay monitors, however there is no detail as to whether local authorities would have any role in the recruitment and selection of these positions.

4. OTHER IMPLICATIONS

None.

5. REPORT

5.1 **Background**

6.1.1 Many elected members will be familiar with the role of Prison Visiting Committees which, very broadly, currently monitor Scotland's prisons. They are statutory bodies regulated by Section 8 of the Prisons (Scotland) Act 1989 and Part 17 of the Prisons and Young Offenders Institutions (Scotland) Rules 2011. They are required to visit prisons fortnightly (as a minimum) and to hear, in

confidence, complaints and concerns from prisoners. Prison Visiting Committee members may visit at any time of the day or night, during which they have unfettered access to all areas of the prison and to prisoners.

- 6.1.2 Some form of independent oversight of prisons in Scotland has existed for well over a century. The modern context of the Visiting Committee is a sophisticated one which assumes harmony between the Committee and the Governor but, ultimately, provides for the possibility that the Committee might not be satisfied by remedial action taken by the Governor in response to its concerns, and for the referral of difficulties to the First Minister.
- 6.1.3 Ideally, the Governor welcomes the involvement and participation of the Visiting Committee in the strategic planning process but, ultimately, the Committee has no veto on value judgements reached in the course of that process. However, the absence of ultimate managerial responsibility does not entail lack of real influence.
- 6.1.4 Every member of a Visiting Committee has the right to enter the establishment at any time, and to have access to every part of it and to every prisoner. This right must of course be exercised with common sense, and with due regard to the routines of the establishment. A visiting rota is arranged, with a minimum of two members visiting every fortnight. These rota visits are at the heart of the Committee's moral and legal purpose. The full duties required of a member are set out in part 17 of the Prison and Young Offenders Institutions (Scotland) Rules 2011.

6.2 **Review of Visiting Committees - The draft Public Services Reform (Prison Visiting Committees) (Scotland) Order 2014**

- 6.2.1 In 2011 the Scottish Government opened a consultation on independent monitoring of prisons. 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 Prison Visiting Committees. In December 2011, the Scottish Government published an analysis of the responses received to its consultation, as well as its intentions for the future independent monitoring of prison, which included the intention to abolish Visiting Committees. In response to this, the Social Care and Wellbeing Committee of 2 February 2012, approved the following motion by Councillor Kiddie and also agreed that the Convener write to the Justice Secretary on behalf of the Committee to outline the Council's support for the retention of prison visiting committees:-
"Aberdeen City Council notes the recent statement by the Cabinet Secretary for Justice that he intends to abolish prison visiting committees by December 2012.

Council welcomes his statement relating to the development of advocacy services within prisons but agrees to support the efforts of the National Association of Prison Visiting Committees and the local Aberdeen Prison Visiting Committee in campaigning for the retention of independent monitoring arrangements within Scotland in keeping with the rest of the United Kingdom and further afield."

This announcement was followed by a debate in the Scottish Parliament on 2 February 2012, during which it was recognised in the debate that an independent prisoner advocacy service would contribute to better offender

outcomes, however, concerns were raised about the future independent monitoring of prisons. Following the debate the Cabinet Secretary for Justice committed to look again at independent monitoring and ensure that the Scottish Government met its obligations under OPCAT. One of the main issues of concern was that the independence of Visiting Committees did not reach the standard required by OPCAT since budgetary and administrative arrangements were managed by the Scottish Prison Service – the organisation they are required to monitor.

In light of this, the Scottish Government commissioned Professor Coyle to undertake a review of the proposals during which he engaged with key organisations.

Professor Coyle's report on independent monitoring was published on 7 February 2013. The report proposed 21 recommendations, including the recommendation that Prison Visiting Committees should be abolished and replaced with independent prison monitors, made up of lay people.

Thereafter, in April 2013 the Cabinet Secretary responded to Professor Coyle's recommendations and advised that he had taken the decision that HM Chief Inspector of Prisons is best placed to provide oversight and support of independent monitors of prisons and therefore would present a draft Order which proposed that Prison Visiting Committees be abolished and a new system of independent monitoring introduced. The new system would bring independent monitoring under the auspices of HM Chief Inspector of Prisons.

The draft Public Services Reform (Prison Visiting Committees) (Scotland) Order 2014 had now been submitted for consultation. Responses to the consultation were invited by 31 January 2014.

The draft Order, as well as the proposed response are appended to the report.

6. IMPACT

None.

7. MANAGEMENT OF RISK

None.

8. BACKGROUND PAPERS

Section 8 of the Prisons (Scotland) Act 1989 and Part 17 of the Prisons and Young Offenders Institutions (Scotland) Rules 2011

Professor Coyle's Review of Proposals to Improve Arrangements for Independent Monitoring of Prisons – January 2013

The Scottish Government Response to the Review of Proposals to Improve Arrangements for Independent Monitoring of Prisons – April 2013

The draft Public Services Reform (Prison Visiting Committees) (Scotland) Order 2014

9. REPORT AUTHOR DETAILS

Allison Swanson
Committee Officer
Democratic Services
aswanson@aberdeencity.gov.uk
01224 522822

The draft Public Services Reform (Prison Visiting Committees) (Scotland) Order 2014 – Consultation Response from Aberdeen City Council

1. Aberdeen City Council's Role – Recruitment and Appointment of Members

In accordance with Section 8 of the Prisons (Scotland) Act 1989 and Part 17 of the Prisons and Young Offenders Institutions (Scotland) Rules 2011, Aberdeen City Council has undertaken the recruitment and appointment of members for both HMP Aberdeen and HMP Peterhead Visiting Committees. This process has been undertaken successfully, in a timely manner, and has seen the appointment of independent, committed and long standing members who carry out their duties fully in line with that detailed in part 17 of the Prison and Young Offenders Institutions (Scotland) Rules 2011.

The Council has experienced no issues to date regarding the recruitment process, however do acknowledge that more robust arrangements could be implemented to ensure that a wide audience was reached and the best candidates selected. The extensive introductory and ongoing training provided by the Association of Visiting Committees and the SPS to ensure members could fulfil their duties was commended and it was recommended that such arrangements were provided to the prison and lay monitors. Council also agrees that the current system of lay monitors appointed by the relevant local authorities is completely independent with a clear structure for monitoring and reporting and from the experience in HMP Aberdeen and HMP Peterhead works very well.

The Council notes that in the draft Public Services Reform (Prison Visiting Committees) (Scotland) Order 2014, it states that the Chief Inspector must appoint prison monitors and lay monitors. Also, in the Cabinet Secretary for Justice's response to Professor Coyle's review, he advises that HM Chief Inspector of Prisons (HMCIP) will be supported by an Advisory Group which would be made up of key stakeholders from the Justice sector. This Group would provide guidance on monitoring, appointments and training. It is therefore assumed that the Council will have no role in this process, however confirmation of this is welcome. It was also noted that there was no reference to an Advisory Group within the draft Order and again, therefore, Council would welcome clarity regarding the establishment and role of this Group.

2. Proposed Changes

Aberdeen City Council welcomes the Cabinet Secretary's confirmation that independent monitoring of prisons would continue, albeit in a different form and in this regard acknowledges the need for change with regards future monitoring.

The Council recognises that one of the main issues of concern with the current system was that the independence of Visiting Committees did not reach the standard required by Optional Protocol to the UN Convention Against Torture (OPCAT) since budgetary and administrative arrangements were managed by the Scottish Prison Service – the organisation they are required to monitor and therefore welcomed the introduction of changes which would ensure that the Scottish Government met its obligations under Optional Protocol to the UN Convention Against Torture (OPCAT). However, the Council still feel that changes to the oversight and administration of Visiting Committees would also enable these obligations to be met.

With regards meeting these obligations, the Council agrees that one of the most important questions is deciding which body should oversee and support those carrying out the monitoring. In this regard, Council notes the proposal to move independent monitoring

under the auspices of HMCIP and further notes that this change would meet the OPCAT obligations.

The Council is of the view that the *monitoring* role of visiting committees is quite different from the role of HM Inspectorate of Prisons, and that the two functions should complement each other and their structures should sit separately. Therefore, Council was of the view that integration of monitoring and inspection functions is not the best option for the future monitoring of prisons.

The statement to confirm that the Scottish Government is clear about the distinction in functions of inspection and monitoring and that these functions will operate separately was welcome and it was hoped that this would be the case should the draft order be approved. However, it was noted that if the proposal is implemented, both the monitoring and inspection roles, which are very distinct, will sit under the Chief Inspector and therefore the proposal does not reflect the 'layered' approach to National Preventative Measures recommended by OPCAT. The importance of prisoners being clear of the separation between both functions under HMIP and of prisoners continuing to have faith in the independence of the monitoring system was also highlighted.

It is also noted with concern that the proposed new monitoring system will be substantially more cost prohibitive in that it is estimated that it will cost £255,000, whilst the annual total cost of the current system was £50,000.

3. Role of the Prison Monitors and Lay Monitors

The draft Order proposes a structure of 3-4 paid monitors, as well as an unspecified number of lay monitors. Professor Coyle stated that if his recommendations were implemented, there would be no need for the paid monitors. Council concurs with this view and feel that the paid monitors will make the new system very expensive and on the basis of the draft Order are unclear as to the added value they will bring. Therefore, Council would welcome clarity and greater detail on the role of paid and lay monitors. It is also felt that it would be difficult for lay monitors to truly be independent when they are being instructed by paid monitors, who due to their payment will be viewed as public servants. This again may diminish prisoners' faith in the independence of the new monitoring system.