

Proposed draft Order laid before the Scottish Parliament under section 26(2)(a) of the Public Services Reform (Scotland) Act 2010 for the purposes of consultation required by section 26(1) of that Act.

SCOTTISH STATUTORY INSTRUMENTS

2013 No.

PUBLIC SERVICES REFORM

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

| | | |
|--------------------------|---------|------|
| <i>Made</i> | - - - - | 2014 |
| <i>Coming into force</i> | - - | 2014 |

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(a) (“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 sections 25(4) and 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 (Prison Visiting Committees) (Scotland) Order 2014 and comes into force on 2014.

Amendment of the Prisons (Scotland) Act 1989

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

(a) 2010 asp 8.
(b) 1989 c.45.

(2) 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 to—

- (a) inspect, or arrange for the inspection of, prisons and the treatment of prisoners within those prisons,
- (b) 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(a)), and
- (c) investigate specific matters connected with prisons or prisoners which have been referred to the Chief Inspector by the Scottish Ministers.

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

- (a) following an inspection carried out under subsection (2)(a) or (b),
- (b) following an investigation carried out under subsection (2)(c), and
- (c) annually, in such form as the Scottish Ministers may direct, in relation to the conditions in prisons and the treatment of prisoners within those prisons.

(4) The Chief Inspector must lay a copy of the report prepared under subsection (3)(c) before the Scottish Parliament.

(5) The Chief Inspector, in performing any function under subsection (2), may, without prior notice—

- (a) visit and access any prison, and any part of a prison, in Scotland,
- (b) speak with any prisoner, visitor, prison officer or other person working at the prison, and
- (c) inspect all prison records other than personnel records.

(6) The Scottish Ministers may pay such sums as they consider necessary to the Chief Inspector in respect of—

- (a) the Chief Inspector’s salary and allowances, and
- (b) the exercise of the Chief Inspector’s functions under sections 7A(7) and 7B(6).”.

(3) After section 7, insert—

“Prison monitors

7A.—(1) The Chief Inspector must appoint prison monitors and evaluate the performance of each prison monitor.

(2) The Chief Inspector must ensure that at least three prison monitors are appointed at any given time.

(3) Prison monitors may be assigned by the Chief Inspector to—

- (a) prisons within a particular area of Scotland,
- (b) particular prisons within Scotland, or
- (c) all prisons in Scotland.

(4) In relation to each prison to which a prison monitor is assigned, the prison monitor must—

- (a) visit the prison at least once a month or more frequently as instructed by the Chief Inspector,
- (b) monitor the prison conditions and the treatment of prisoners within the prison,

(a) 1994 c.33.

- (c) investigate specific matters which have been referred to the prison monitor by the Chief Inspector,
 - (d) report to the Chief Inspector in relation to an investigation conducted under paragraph (c),
 - (e) notify the Governor and the Chief Inspector of any matters relating to the condition of the prison or treatment of any prisoner or group of prisoners which the prison monitor considers appropriate,
 - (f) where, in the opinion of the prison monitor, a matter notified to the Governor under paragraph (e) has not been remedied within such period as the prison monitor considers reasonable, inform the Governor and the Chief Inspector,
 - (g) maintain a record of the date and time of each visit to the prison and the matters inspected during each visit, and
 - (h) provide such reports to the Chief Inspector as the Chief Inspector may instruct.
- (5) In carrying out the duties imposed under subsection (4), prison monitors must—
- (a) comply with any instructions issued by the Chief Inspector, and
 - (b) take account of any guidance on the monitoring of prisons published by the Chief Inspector.
- (6) In carrying out the duties imposed under subsection (4), prison monitors may, without prior notice—
- (a) visit and access any prison, and any part of a prison, to which the prison monitor is assigned,
 - (b) speak with any prisoner, visitor, prison officer or other person working at the prison, and
 - (c) inspect all prison records other than personnel records.
- (7) The Chief Inspector may, from the monies received from the Scottish Ministers under section 7(6), pay prison monitors such sums in respect of salary and allowances as the Chief Inspector considers appropriate.

Lay monitors

7B.—(1) The Chief Inspector must appoint lay monitors and evaluate the performance of each lay monitor.

- (2) Lay monitors may be assigned by the Chief Inspector to—
- (a) prisons within a particular area of Scotland,
 - (b) particular prisons within Scotland, or
 - (c) all prisons in Scotland.
- (3) In relation to each prison to which a lay monitor is assigned, the lay monitor must—
- (a) assist prison monitors assigned to the prison in carrying out the duties specified in section 7A(4),
 - (b) investigate any complaint which a prisoner makes to them, and
 - (c) report the outcome of such an investigation to the Governor and a prison monitor assigned to the prison.
- (4) In carrying out the duties imposed under subsection (3), lay monitors must—
- (a) comply with any instructions issued by a prison monitor assigned to the prison, and
 - (b) take account of any guidance on the monitoring of prisons published by the Chief Inspector.

(5) In carrying out the duties imposed under subsection (3) lay monitors may, without prior notice—

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

(6) The Chief Inspector may, from the monies received from the Scottish Ministers under section 7(6), pay lay monitors such sums in respect of travel and subsistence expenses as the Chief Inspector considers appropriate.”.

(4) Section 8 (visiting committees) is repealed.

(5) In section 14(8) (legalised police cells), for “sections 8 and” substitute “section”.

(6) In section 15(3) (right of sheriff or justice to visit prison)—

- (a) for “the visiting committee at their next visit” substitute “a prison monitor or a lay monitor”, and
- (b) after “section” insert “at the next time such a monitor visits the prison”.

(7) In section 19 (remand centres and young offenders institution)—

- (a) subsection (3) is repealed,
- (b) in subsection (4)(a), after “3A,” insert “7 to 7B,”,
- (c) in subsection (4)(b), for “7” substitute “6”,
- (d) in subsection (4), for the words from “, to persons” to “section 8(1) of this Act” substitute, “and to persons detained therein”.

(8) In section 34 (notification of an inquiry into death of a prisoner), for “the visiting committee” substitute “a prison monitor or a lay monitor assigned to the prison”.

(9) Section 43(1) (interpretation) is amended as follows—

- (a) after the entry “the 1995 Act”, insert—

““Chief Inspector” means Her Majesty’s Chief Inspector of Prisons for Scotland appointed in accordance with section 7;”
- (b) at the end, insert—

““Lay monitor” means a lay monitor appointed in accordance with section 7B(1),
“Prison monitor” means a prison monitor appointed in accordance with section 7A(1)”.

Public Services Reform (Scotland) Act 2010

3.—(1) The Public Services Reform (Scotland) Act 2010(a) is amended as follows.

(2) In Schedule 5 (listed parties)—

- (a) the entry “Visiting Committees (appointed under section 19(3) of the Prisons (Scotland) Act 1989 (c.45) or constituted by rules made under section 39 (as read with section 8(1)) of that Act” is repealed;
- (b) after the entry “Lands Tribunal for Scotland” insert—

“Lay monitors appointed under section 7B(1) of the Prisons (Scotland) Act 1989”; and

(a) 2010 asp 8.

(c) after the entry “any Private Rented Housing Committee” insert—

“Prison monitors appointed under section 7A(1) of the Prisons (Scotland) Act 1989”.

(3) In Schedule 8 (information on exercise of public functions: listed public bodies), the entry “Visiting Committees (appointed under section 19(3) of the Prisons (Scotland) Act 1989 (c.45) or constituted by rules made under section 39 (as read with section 8(1)) of that Act” is repealed.

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

4.—(1) The Prisons and Young Offenders Institutions (Scotland) Rules 2011(a) are amended as follows.

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

(a) for paragraph (1)(b), substitute “(b) a prison monitor appointed under section 7A(1) of the Act or a lay monitor appointed under section 7B(1) of the Act;”;

(b) for paragraph (3), substitute—

“(3) A prisoner may make a complaint to a lay monitor appointed under section 7B(1) of the Act and for that purpose the Governor must ensure that—

(a) the prisoner is supplied with paper, and

(b) the complaint is posted to an appropriate lay monitor without delay.”.

(3) In rule 123(5)(b) (referral of complaints to the Internal Complaints Committee), delete “, a member of the visiting committee,”.

(4) Part 17 (visiting committees) is revoked.

(5) Schedule 2 (constitution of visiting committees) is revoked.

(6) Schedule 3 (constitution of visiting committees for legalised police cells) is revoked.

Consequential modifications

5. Schedule 1 to this Order (which makes consequential amendments) has effect.

A member of the Scottish Government

St Andrew’s House,
Edinburgh

2014

(a) S.S.I. 2011/331 as amended by S.S.I. 2011/356 and S.S.I. 2012/026.

PART 1 – PRIMARY LEGISLATION

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

1.—(1) The Law Reform (Miscellaneous Provisions) (Scotland) Act 1980(a) is amended as follows.

(2) In Part 1 of Schedule 1 (ineligibility for and disqualification and excusal from jury service), in Group B, for sub-paragraph (o), substitute—

“(o) prison monitors appointed under section 7A(1) of the Prisons (Scotland) Act 1989 and lay monitors appointed under section 7B(1) of that Act;”.

The Prisoners and Criminal Proceedings (Scotland) Act 1993

2.—(1) The Prisoners and Criminal Proceedings (Scotland) Act 1993(b) is amended as follows.

(2) In paragraph 6 of Schedule 5 (minor and consequential amendments), sub-paragraph (4) is repealed.

The Criminal Justice and Public Order Act 1994

3.—(1) The Criminal Justice and Public Order Act 1994(c) is amended as follows.

(2) In section 103 (monitoring of prisoner escort arrangements), subsection (2) is repealed.

(3) In section 110(3) (consequential modifications of the Prisons (Scotland) Act 1989), after “services,” insert “7A (prison monitors), 7B (lay monitors),”.

(4) In section 110(4), after “services,” insert “7A (prison monitors), 7B (lay monitors),”.

(5) In section 116 (minor and consequential amendments), subsection (1) is repealed.

(6) In Schedule 10 (consequential amendments), paragraph 64 is repealed.

The Local Government etc. (Scotland) Act 1994

4.—(1) The Local Government etc. (Scotland) Act 1994(d) is amended as follows.

(2) In paragraph 162 of Schedule 13 (minor and consequential amendments), sub-paragraph (2) is repealed.

The Employment Rights Act 1996

5.—(1) The Employment Rights Act 1996(e) is amended as follows.

(2) In section 50 (right to time off for public duties)—

(a) in subsection (2)(d), the words “or a prison visiting committee” are repealed,

(b) in subsection (7), paragraph (b) is repealed.

(a) 1980 c.55.
(b) 1993 c.9.
(c) 1994 c.33.
(d) 1994 c.39.
(e) 1996 c.18.

The Crime and Punishment (Scotland) Act 1997

- 6.**—(1) The Crime and Punishment (Scotland) Act 1997(a) is amended as follows.
- (2) In section 43 (medical services in prisons), subsection (3) is repealed.
- (3) In paragraph 13 of Schedule 1 (minor and consequential amendments), sub-paragraph (2) is repealed.

The Management of Offenders etc. (Scotland) Act 2005

- 7.**—(1) The Management of Offenders etc. (Scotland) Act 2005(b) is amended as follows.
- (2) In section 21 (further amendments and repeal), subsection (6) is repealed.

The Public Records (Scotland) Act 2011

- 8.**—(1) The Public Records (Scotland) Act 2011(c) is amended as follows.
- (2) In paragraph 1 of Schedule 1 (authorities to which Part 1 applies)—
- (a) after the entry for “Lands Tribunal for Scotland”, insert—
- “Lay monitors appointed under section 7(3)(b) of the Prisons (Scotland) Act 1989;”;
- (b) after the entry for “Principal Reporter”, insert—
- “Prison monitors appointed under section 7(3)(a) of the Prisons (Scotland) Act 1989;”;
- (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(d) are revoked.

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

- 10.**—(1) The Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999(e) is amended as follows.
- (2) In paragraph 98 of Part 1 of Schedule 2 (modifications of Acts of Parliament), sub-paragraph (2) is revoked.

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

- 11.**—(1) The Police Act 1997 (Criminal Records) (Scotland) Regulations 2010(f) are amended as follows.

(a) 1997 c.48.
(b) 2005 asp 14.
(c) 2011 asp 12.
(d) S.I. 1981/1388.
(e) S.I. 1999/1820.
(f) S.S.I. 2010/168.

(2) In paragraph 3 of regulation 9 (enhanced criminal record certificates: prescribed purpose), for sub-paragraph (c), insert—

“(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 monitor under section 7(3)(a) of the Prisons (Scotland) Act 1989; or
- (iii) as a lay monitor under section 7(3)(b) of the Prisons (Scotland) Act 1989.”.

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

12.—(1) The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013(a) is amended as follows.

(2) For paragraph 7 of Part 2 of Schedule 4 (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 and prison monitors appointed under section 7(3)(a) of the Prisons (Scotland) Act 1989 and lay monitors appointed under section 7(3)(b) of that Act.”.

(a) S.S.I. 2013/50.

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”) using the powers in section 14 of the Public Services Reform (Scotland) Act 2010 (“the 2010 Act”). The Order creates the roles of prison monitor and lay monitor in accordance with section 14(3)(c) of the 2010 Act. The Order transfers the functions of prison visiting committees to prison monitors and lay monitors and confers further functions on them in accordance with section 14(3)(a), (3)(c) and (5) of the 2010 Act. The Order also abolishes prison visiting committees in accordance with section 14(8) of the 2010 Act; the functions of prison visiting committees having been transferred to prison monitors and lay monitors.

Paragraph 2 of this Order amends the 1989 Act so as to clarify the role of the Chief Inspector of Prisons, to create the roles of prison monitor and lay monitor and to abolish prison visiting committees.

Paragraph 2(2) amends section 7 of the 1989 Act so as to continue the role of the Chief Inspector of Prisons and clarify the powers and duties imposed on him. Paragraph 2(3) adds sections 7A and 7B to the 1989 Act creating the roles of prison monitor and lay monitor. Section 7A specifies the powers and duties imposed on prison monitors and section 7B specifies the powers and duties imposed on lay monitors.

Paragraph 2(4) repeals section 8 of the 1989 Act which obliges the Scottish Ministers to make provision in rules made under section 39 of that Act for the constitution of visiting committees for prisons and young offenders institutions. Paragraph 2(5) amends section 14 of the 1989 Act so as to remove a cross-reference to section 8.

Paragraph 2(6) amends the obligation on the Governor in section 15 of the 1989 Act, to draw to the attention of the visiting committee any entry in the visitors book made by a sheriff or justice of the peace, by substituting prison monitors and lay monitors in place of the visiting committee. Paragraph 2(7) amends section 19 of the 1989 Act so as to ensure that sections 7, 7A and 7B of the 1989 Act cannot be modified in their application to remand centres and young offenders institutions via rules made under section 39 of the 1989 Act.

Paragraph 2(8) amends the obligation on the Governor in section 34 of the 1989 Act to ensure that prison monitors or lay monitors are informed on the death of a prisoner in place of visiting committees. Paragraph 2(9) inserts definitions of “Chief Inspector”, “lay monitor” and “prison monitor” into section 43 of the 1989 Act.

Paragraph 3 introduces Schedule 1 which makes consequential amendments to primary and secondary legislation.

Paragraph 4 amends the 2011 Rules so as to remove all references to visiting committees and the powers and duties bestowed upon them. Paragraph 4(2) amends rule 120 of the 2011 Rules so that prisoners can make a request to speak to a prison monitor or lay monitor and so that prisoners may make a written complaint to a lay monitor. Paragraph 4(3) amends rule 123(5)(b) so as to remove visiting committees from the role of assisting prisoners at complaints hearings.

Paragraph 4(4), (5) and (6) amends the 2011 Rules so as to revoke 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).

Paragraph 5 removes the entry for visiting committees from Schedule 5 to the 2010 Act and adds entries for lay monitors and prison monitors in accordance with sections 15(2)(b) and 14(6)(a) and of the 2010 Act respectively. Paragraph 5 also removes the entry for visiting committees from Schedule 8 to the 2010 Act.