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

**Written submission from the Howard League for Penal Reform in Scotland**

1. We welcome the opportunity to comment upon the Public Services Reform (Prison Visiting Committees) (Scotland) Order 2014.
2. Howard League Scotland welcomes the Scottish Government’s renewed commitment to the continuation of independent monitoring of penal establishments in Scotland.
3. The monitoring of prisons is a vital function that provides real time, regular scrutiny of our prisons and constitutes an essential element of our obligations as signatories to the UN Optional Protocol to the Convention Against Torture (OPCAT).
4. It seems likely that the new arrangements will meet the minimum requirements of OPCAT. However, we believe it should be possible to improve upon the proposed arrangements as set out in the parliamentary order. We hope that the Scottish Government will take heed of the Justice Committee’s recent report on the draft parliamentary order.
5. Howard League Scotland was not an advocate of according oversight of the monitoring function to Her Majesty’s Inspectorate of Prisons in Scotland (HMIPS). Our main objections to this oversight option were two-fold. Firstly, we were concerned about the blurring of the distinction between the inspection and monitoring functions. Secondly, we were concerned that this arrangement did not adhere to the ideal of ‘layered monitoring’ recommended by the National Preventative Mechanism (NPM).
6. However, we accept that there are potential benefits to according oversight to HMIPS in terms of consistency of approach and the ability of the inspection and monitoring functions to inform each other.
7. There is no question that HMIPS must be provided with extra resource to carry out this oversight function. **However, we consider that it may well be confusing and unhelpful if this function were to be carried out as proposed.** We see no need for the three ‘paid monitors’. Indeed, the creation of two types of independent monitor (referred to as ‘paid monitors’ and ‘lay monitors’ in the order) did not form part of Professor Coyle’s recommendations. Indeed, in his review (paragraph 74), he stated that if his recommended model were accepted *“there would be no need for the four salaried monitors”*.
8. The vision for independent monitoring as conceived in the parliamentary order is one of a more hierarchical structure than exists at present. This is evident in the language used regarding the relationship between the ‘paid monitors’ and ‘lay monitors’. For example, the order states that the ‘lay monitors’ must *“assist”* the ‘paid monitors’ and *“comply with any instructions”* issued by the ‘paid monitor’.
9. The benefits of this extra layer of bureaucracy are far from clear and are also likely to be confusing for prisoners, given that the duties of the two types of monitor differ as set out in the order. For instance, the order states that only ‘lay monitors’ can investigate a prisoner’s complaint.
10. **Howard League Scotland therefore proposes that the extra resource accorded to HMIPS would be better utilised to employ one or two members of staff to coordinate and support the work of the lay monitors, rather than direct them in their monitoring duties.**
11. This proposal would seem to be in keeping with a recent response by the Cabinet Secretary for Justice to a parliamentary question from Malcolm Chisholm MSP, in which the Cabinet Secretary advised Parliament that the paid monitors *“will perform a secretariat function”*:

*“The paid monitors will perform a secretariat function, which will ensure that the system of independent monitoring is robust, accountable and consistent throughout Scotland…I believe that our proposals will ensure that lay monitors will be enhanced by a professional secretariat under the auspices of HM inspector of prisons.”*

(S4O-02708, 12 December 2013)

1. We suggest that the mechanism recently put in place to oversee the work of independent custody visitors could provide a useful model. Based within the Scottish Police Authority, one national and three regional coordinators oversee and provide administrative support to around 150 independent custody visitors across Scotland. Full details of the scheme can be found here: <http://www.spa.police.uk/assets/126884/135005/item-05-custody-visiting>
2. There must, of course, be sufficient numbers of ‘lay monitors’ to be able to carry out their monitoring duties. No minimum number of ‘lay monitors’ is specified within the order, nor is there any reference to the expected frequency of their visits. Professor Coyle referred to this matter directly in his review (paragraph 55). The Independent Monitoring Implementation Group is currently considering how best to calculate an appropriate number of ‘lay monitors’ and Howard League Scotland will continue to contribute to that discussion.
3. On a related note, whilst we understand the need to seek the views of the Scottish Prison Service on this matter, it is not appropriate for the SPS – as the scrutinised state party – to have a role in determining the level of scrutiny it is subjected to by the independent prison monitors.
4. Howard League Scotland will continue to argue in favour of the four recommendations in the Coyle review that the Scottish Government referred for consideration to the Independent Monitoring Implementation Group:
	* *Recommendation 7 - Monitors should be appointed under an open public appointments system for specified periods.*
	* *Recommendation 13 - The monitors for each prison should elect a chairperson and to meet as a group in the prison at least every two months.*
	* *Recommendation 14 - Arrangements should be made for appointing a paid clerk to take the minutes of each meeting of the independent prison monitors and to assist in administrative matters including preparing the annual report and any other reports as necessary. Monitors should have appropriate accommodation and other facilities.*
	* *Recommendation 15 - Provision should be made for a Council of Independent Prison Monitors to include one monitor from each prison. The Council should agree protocols for, among other matters, recruitment, appointment and training of independent monitors as well as a format for annual reports.*
5. We consider that these recommendations should be dealt with in the Order.

Howard League Scotland

30 January 2014