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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 39**

**The Public Services Reform (Inspection and Monitoring of Prisons) (Scotland) Order 2015**

**Amendment of the Prisons (Scotland) Act 1989**

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

(2) After section 6 insert—

**“Purpose of inspection and monitoring of prisons**

**6A.** The provisions of sections 7 to 7G are in pursuance of the objective of OPCAT, that is, the objective of establishing a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.”.

(3) 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—

- (a) to inspect, or arrange for the inspection of, prisons and the treatment of prisoners,
- (b) to 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(2)),
- (c) to inspect the arrangements operated by prisons for the temporary release of prisoners in accordance with rules made under section 39,
- (d) to investigate specific matters connected with prisons or prisoners which have been referred to the Chief Inspector by the Scottish Ministers,
- (e) to issue instructions to prison monitoring co-ordinators in relation to the exercise of their functions,
- (f) to prepare and publish guidance on the exercise of the functions of prison monitoring co-ordinators and independent prison monitors,
- (g) to evaluate the performance of each prison monitoring co-ordinator, and
- (h) such other functions as are conferred on the Chief Inspector by this or any other enactment.

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

- (a) following an inspection carried out under subsection (2)(a),(b) or (c),
- (b) following an investigation carried out under subsection (2)(d), and

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(1) 1989 c.45.

(2) 1994 c.33. Section 102 was amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40), Schedule 4, paragraph 93(3)(a) and (b)(i) and (ii), the Criminal Justice (Scotland) Act 2003 (asp 7), section 76(10), the Police and Fire Reform (Scotland) Act 2012 (asp 8), schedule 7, paragraph 9(2) and S.S.I. 2005/465.

- (c) annually, in relation to—
  - (i) the conditions in prisons and the treatment of prisoners, and
  - (ii) the exercise of the functions of independent prison monitors.
- (4) In relation to a report made under subsection (3)(c)—
  - (a) the report is to be in such form and made by such date as the Scottish Ministers may direct, and
  - (b) different forms and different dates may be directed in relation to reports made under subsection (3)(c)(i) and (ii).
- (5) The Chief Inspector must lay before the Scottish Parliament—
  - (a) a copy of any report made under subsection (3)(c), and
  - (b) a copy of any report made by a prison monitoring co-ordinator under section 7B(6)(b) or (c).
- (6) The Chief Inspector may report to the Scottish Ministers in such manner as the Chief Inspector considers appropriate on any matter relating to—
  - (a) the conditions in prisons,
  - (b) the treatment of prisoners, or
  - (c) the exercise of the functions of prison monitoring co-ordinators or independent prison monitors.
- (7) For the purpose of exercising any of the Chief Inspector’s functions, the Chief Inspector may, without prior notice—
  - (a) visit any prison, and access any part of a prison, in Scotland,
  - (b) speak in private with any prison monitoring co-ordinator, independent prison monitor, prisoner, visitor, prison officer or other person working at the prison, who agrees to speak to the Chief Inspector, or
  - (c) examine any prison records, other than personnel records.
- (8) The Scottish Ministers are to pay the Chief Inspector such salary and allowances, and such other sums in respect of the exercise of the Chief Inspector’s functions, as the Scottish Ministers consider appropriate.
- (9) The Scottish Ministers may provide staff, property or services to the Chief Inspector to assist the Chief Inspector in the exercise of the Chief Inspector’s functions.”.
- (4) After section 7 insert—

**“Appointment of prison monitoring co-ordinators**

- 7A.—**(1) There are to be three (or such higher number as the Scottish Ministers determine) prison monitoring co-ordinators.
- (2) It is for the Scottish Ministers to appoint prison monitoring co-ordinators.
- (3) The Scottish Ministers must consult the Chief Inspector before—
  - (a) making a determination under subsection (1), or
  - (b) making an appointment under subsection (2).
- (4) The Scottish Ministers may prescribe in regulations the procedures which must be complied with in making appointments under subsection (2).
- (5) Regulations under subsection (4) may in particular make provision for or in connection with—

- (a) persons or organisations who must be consulted, in addition to the Chief Inspector, prior to appointments being made,
  - (b) terms and conditions of appointment,
  - (c) periods of appointment, and
  - (d) termination of appointments.
- (6) The Chief Inspector must assign prison monitoring co-ordinators to prisons so that each prison has an assigned prison monitoring co-ordinator.
- (7) A prison monitoring co-ordinator may be assigned to—
- (a) prisons within a particular area,
  - (b) particular prisons, or
  - (c) all prisons.

### **The functions of prison monitoring co-ordinators**

**7B.**—(1) The function of a prison monitoring co-ordinator is to ensure the effective monitoring of each prison to which the prison monitoring co-ordinator is assigned.

- (2) In pursuance of that function, a prison monitoring co-ordinator must—
- (a) appoint independent prison monitors in such numbers as the Chief Inspector considers appropriate,
  - (b) assign each independent prison monitor to a prison to which the prison monitoring co-ordinator is assigned,
  - (c) arrange for each independent prison monitor to visit the prison—
    - (i) in accordance with a rota of visits prepared by the prison monitoring co-ordinator and agreed between the prison monitoring co-ordinator, the independent prison monitors assigned to the prison and the governor of the prison, and
    - (ii) at such other times, without appointment with the governor of the prison, as may be agreed between the prison monitoring co-ordinator and the independent prison monitor,
  - (d) arrange for specific matters in relation to a prison, which have been referred to the prison monitoring co-ordinator by the Chief Inspector, to be investigated by one or more independent prison monitors assigned to the prison,
  - (e) provide such support to independent prison monitors appointed by the prison monitoring co-ordinator as the prison monitoring co-ordinator considers appropriate to assist those independent prison monitors in carrying out their duties under section 7D,
  - (f) arrange such training for independent prison monitors appointed by the prison monitoring co-ordinator as the prison monitoring co-ordinator considers appropriate,
  - (g) arrange a meeting with independent prison monitors assigned to a prison at least once every six months at which no fewer than two thirds of all independent prison monitors assigned to that prison must be in attendance,
  - (h) evaluate the performance of each independent prison monitor appointed by the prison monitoring co-ordinator,
  - (i) visit each prison to which the prison monitoring co-ordinator is assigned as instructed by the Chief Inspector, and

- (j) maintain a record of the date and time of each visit to a prison in accordance with paragraph (i) and the matters considered during each visit.
- (3) The rota prepared by the prison monitoring co-ordinator under subsection (2)(c)—
  - (a) must provide for at least one independent prison monitor to visit the prison at least once every week, and
  - (b) may provide for independent prison monitors to visit the prison in groups or individually.
- (4) In exercising the prison monitoring co-ordinator's functions, the prison monitoring co-ordinator must—
  - (a) comply with any instructions issued by the Chief Inspector under section 7(2)(e), and
  - (b) have regard to any guidance published by the Chief Inspector under section 7(2)(f).
- (5) For the purpose of exercising any of the prison monitoring co-ordinator's functions, a prison monitoring co-ordinator may, without prior notice—
  - (a) visit any prison, and access any part of a prison, to which the prison monitoring co-ordinator is assigned,
  - (b) speak in private with any independent prison monitor, prisoner, visitor, prison officer or other person working at the prison, who agrees to speak to the prison monitoring co-ordinator, or
  - (c) examine any prison records, other than—
    - (i) personnel records, or
    - (ii) any documents containing information, the disclosure of which would, in the opinion of the governor of the prison, have implications for the security of the prison.
- (6) A prison monitoring co-ordinator must report to the Chief Inspector—
  - (a) in relation to any specific matters investigated by independent prison monitors in pursuance of arrangements made by the prison monitoring co-ordinator under subsection (2)(d),
  - (b) annually in relation to—
    - (i) the monitoring of each prison to which the prison monitoring co-ordinator is assigned, and
    - (ii) the conditions, and the treatment of prisoners, in each prison to which the prison monitoring co-ordinator is assigned, and
  - (c) otherwise in relation to such matters as the Chief Inspector may require.
- (7) In relation to a report made under subsection (6)(b)—
  - (a) the report is to be in such form and made by such date as the Chief Inspector may direct, and
  - (b) different forms and different dates may be directed in relation to reports made under subsection (6)(b)(i) and (ii).
- (8) A prison monitoring co-ordinator may notify the governor of a prison to which the prison monitoring co-ordinator is assigned, and the Chief Inspector, of any matter relating to the prison, or prisoners detained in the prison, which the prison monitoring co-ordinator considers appropriate.
- (9) The Scottish Ministers are to pay prison monitoring co-ordinators such salary and allowances as the Scottish Ministers consider appropriate.

### **Appointment of independent prison monitors**

**7C.**—(1) Subject to subsections (2) and (3), independent prison monitors are to be appointed on such terms and conditions as the Chief Inspector may determine.

(2) A person who has been appointed as an independent prison monitor may be re-appointed for further periods.

(3) A person may not be an independent prison monitor for a period (whether or not consecutive) of more than 9 years.

### **The functions of independent prison monitors**

**7D.**—(1) An independent prison monitor must, in relation to the prison to which the independent prison monitor is assigned—

- (a) visit the prison in accordance with arrangements made under section 7B(2)(c),
- (b) monitor the conditions in the prison and the treatment of prisoners,
- (c) monitor the arrangements operated by the prison for the temporary release of prisoners in accordance with rules made under section 39,
- (d) investigate specific matters which have been referred to the independent prison monitor by the prison monitoring co-ordinator,
- (e) notify the governor of the prison and the prison monitoring co-ordinator of any matters relating to the conditions in the prison or the treatment of prisoners which the independent prison monitor considers appropriate,
- (f) where, in the opinion of the independent prison monitor, a matter notified to the governor of the prison under paragraph (e) has not been remedied to the satisfaction of the independent prison monitor, inform the governor and the prison monitoring co-ordinator, and
- (g) maintain a record of the date and time of each visit to the prison and the matters considered during each visit.

(2) Without prejudice to the duty in subsection (1)(a), an independent prison monitor may also visit the prison without prior notice at such times as the independent prison monitor considers necessary.

(3) An independent prison monitor may investigate any matter referred to the independent prison monitor by a prisoner.

(4) Rules made under section 39 may make provision for assistance to be provided by independent prison monitors to prisoners in any complaints process provided for under those rules.

(5) In exercising the independent prison monitor's functions, an independent prison monitor must—

- (a) comply with any instructions issued by the prison monitoring co-ordinator,
- (b) attend all training arranged by the prison monitoring co-ordinator under section 7B(2)(f), and
- (c) have regard to any guidance on the monitoring of prisons published by the Chief Inspector under section 7(2)(f).

(6) For the purpose of exercising any of the independent prison monitor's functions, an independent prison monitor may, without prior notice—

- (a) visit any prison, and access any part of a prison, to which the independent prison monitor is assigned,

- (b) speak in private with any prisoner, visitor, prison officer or other person working at the prison, who agrees to speak to the independent prison monitor, or
- (c) examine any prison records other than—
  - (i) personnel records, or
  - (ii) any documents containing information, the disclosure of which would, in the opinion of the governor of the prison, have implications for the security of the prison.
- (7) An independent prison monitor must report to the prison monitoring co-ordinator—
  - (a) in relation to any specific matters investigated by the independent prison monitor under subsection (1)(d), and
  - (b) otherwise in relation to such matters, and in such form and manner, as the prison monitoring co-ordinator may instruct.
- (8) The Scottish Ministers may pay each independent prison monitor such sums in respect of travel and subsistence expenses as the Scottish Ministers consider appropriate.
- (9) References in this section to “the prison monitoring co-ordinator” are references to the prison monitoring co-ordinator assigned to the prison in question.

#### **Duty of the governor to assist with inspection and monitoring**

**7E.** The governor of a prison must ensure that the Chief Inspector, prison monitoring co-ordinators and independent prison monitors are provided with such assistance as is necessary to allow them to exercise their functions under this Act in relation to the prison.

#### **Prison monitoring advisory group**

- 7F.**—(1) The Chief Inspector must establish a prison monitoring advisory group.
- (2) The group is to comprise—
    - (a) the Chief Inspector,
    - (b) each of the prison monitoring co-ordinators,
    - (c) at least three independent prison monitors, and
    - (d) such other persons as the Chief Inspector considers appropriate.
  - (3) Persons appointed to the prison monitoring advisory group under subsection (2)(c) or (d) are to be appointed for such period as the Chief Inspector considers appropriate (and may be re-appointed).
  - (4) The functions of the prison monitoring advisory group are to—
    - (a) keep the effectiveness of prison monitoring under review,
    - (b) contribute to the preparation of the guidance published by the Chief Inspector under section 7(2)(f),
    - (c) keep the guidance published by the Chief Inspector under review,
    - (d) keep the training arrangements for independent prison monitors under review, and
    - (e) make recommendations for improvement in respect of any of the matters referred to in paragraphs (a) to (d).

#### **SPT visits**

**7G.**—(1) The Scottish Ministers must make arrangements to ensure that members of the SPT may—

- (a) visit prisoners,
  - (b) access information relevant to the treatment of prisoners and the conditions in which they are detained,
  - (c) monitor the conditions in prisons and the treatment of prisoners, and
  - (d) monitor the arrangements operated by prisons for the temporary release of prisoners in accordance with rules made under section 39.
- (2) The arrangements may, in particular, authorise members of the SPT to—
- (a) access, without prior notice, any prison (accompanied by such experts as the members think fit),
  - (b) examine prison records relating to the detention of prisoners,
  - (c) meet any prisoners in private to discuss their treatment while detained and the conditions in which they are detained,
  - (d) inspect the conditions in which prisoners are detained (including cell accommodation, washing and toilet facilities and facilities for the provision of food), and
  - (e) meet such other persons as the members think may have information relevant to the treatment of prisoners and the conditions in which they are detained.
- (3) The Scottish Ministers must keep the arrangements under review and revise them as they think fit.”
- (5) Section 8 (visiting committees) is repealed.
- (6) In section 14(8) (legalised police cells) for “sections 8 and” substitute “section”.
- (7) In section 15(3) (right of sheriff or justice to visit prison)—
- (a) for “the visiting committee at their next visit” substitute “an independent prison monitor”, and
  - (b) after “section” insert “at the next time such a monitor visits the prison”.
- (8) In section 19 (remand centres and young offenders institutions)—
- (a) subsection (3) is repealed, and
  - (b) for subsection (4) substitute—
- “(4) Subject to any exception or modification in any provision of this Act and unless the context otherwise requires, this Act applies to remand centres, young offenders institutions and to persons detained in such centres or institutions in the same manner as it applies to prisons and prisoners.
- (5) Section 11(4) and (5) does not apply to young offenders institutions.
- (6) Sections 1 to 3, 4 to 6, 9, 10, 11(1), 13 to 17, 33A to 37 and 41 to 41D apply to remand centres, young offenders institutions and to persons detained there in the same manner as those provisions apply to prisons and prisoners subject to such adaptations and modifications as may be made by rules made under section 39.”
- (9) In section 34 (notification of and inquiry into death of a prisoner) for “the visiting committee” substitute “an independent prison monitor appointed in relation to the prison”.
- (10) In section 42(2) (exercise of power to make rules, etc.), after “containing” insert “regulations made under section 7A(4),”.
- (11) In section 43(1) (interpretation)—
- (a) after the definition of “the 1995 Act” insert—
- ““Chief Inspector” means the Chief Inspector of Prisons for Scotland;”;

- (b) after the definition of “criminal prisoner” insert—
  - ““independent prison monitor” means an independent prison monitor appointed under section 7B(2)(a);
  - “OPCAT” means the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted on 18th December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199;”;
- (c) after the definition of “prison” insert—
  - ““prison monitoring co-ordinator” means a prison monitoring co-ordinator appointed under section 7A(2);” and
- (d) after the definition of “prisoner” insert—
  - ““SPT” means the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment established under Article 2 of OPCAT.”.