

HM Inspectorate of Prisons for Scotland : Memorandum of Understanding with Scottish Government

This Memorandum of Understanding has been drawn up by the Scottish Government (SG) in consultation with HM Inspectorate of Prisons for Scotland (HMIPS). It sets out the broad framework within which HMIPS will operate and defines key roles and responsibilities which underpin the relationship between the HMIPS and the SG. While this document does not confer any legal powers or responsibilities, it forms a key part of the accountability and governance framework and should be reviewed and updated as necessary, and at least every three years. Any proposals to amend the framework document either by the SG or HMIPS will be taken forward in collaboration. Legislative provisions outlined in this document shall take precedence over any part of the document.

Status, aims and function

Status

HMIPS was established on 1 January 1981, following the publication in 1979 of a report by the Committee of Inquiry into the United Kingdom Prison Services (The May Committee).

The role of the HM Chief Inspector of Prisons for Scotland (HMCIPS) was placed on a statutory basis by the [Prisons \(Scotland\) Act 1980](#).

The purpose of HMIPS is to inspect the conditions and treatment of prisoners in prisons, court custody units and under escort, and to report publicly of their findings. Within the SGs public body landscape, HMIPS is classified as an “other significant National body”.¹

HMIPS has responsibility for the distinct but complementary functions of independent inspection and independent monitoring of prisons in Scotland. Both inspection and monitoring are founded on prevention of mistreatment, maintaining standards and also have a focus on identifying and sharing good/best practice.

Independent Prison Monitoring

The Public Services Reform (Inspection and Monitoring of Prisons) (Scotland) Order 2015 came into force on 31 August 2015, and from this date HMCIPS assumed overall responsibility for the monitoring of prisons, which is carried out on a day to day basis by independent prison monitors.

¹ <https://www.gov.scot/publications/national-public-bodies-directory/pages/other-significant-national-bodies/>

International Obligations

HMIPS is one of the organisations that comprise the UK National Preventive Mechanism (NPM). All HMIPS inspections contribute to the UK's response to its international obligations under the [Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment \(OPCAT\)](#). HMCIPS is the Chair of the Scottish NPM Steering Group.

Governance and Accountability

Role of the Scottish Ministers

The Scottish Ministers are responsible for allocating the resources within which HMIPS operates. In line with section 7(2)(b) of the 1989 Act, Scottish Ministers can refer specific matters to HMCIPS for investigation.

Role of HMCIPS

HMCIPS is a Crown appointment approved by Royal Warrant. The appointee heads up HMIPS.

In terms of [section 7](#) of the Prisons (Scotland) Act 1989, HMCIPS:

- is required to inspect the 15 prisons across Scotland in order to establish the treatment of, and the conditions for prisoners;
- is required to inspect the conditions in which prisoners are transported or held in pursuance of prisoner escort arrangements;
- has oversight for the functions of the independent monitoring of prisons;
- must report to Scottish Ministers on the findings of any inspection;
- must report annually to Scottish Ministers in relation to the conditions in prisons; the treatment of prisoners within those prisons; and the exercise of the functions of independent prison monitors.

HMCIPS shall not be subject to direction on how he/she carries out any inspection.

Role of Portfolio Accountable Officer

The Principal Accountable Officer for the Scottish Administration (Permanent Secretary of the Scottish Government) will designate the Director-General for Education and Justice as the Accountable Officer for the SG portfolio budget for HMIPS.

The responsibilities of a Portfolio Accountable Officer are set out in detail in the Scottish Public Finance Manual's (SPFM) [Memorandum to Accountable Officers for Parts of the Scottish Administration](#). They are personally answerable to the Scottish Parliament for ensuring that:

- the financial and other management controls applied by the SG are appropriate and sufficient to safeguard public funds and, more generally that those being

applied by HMIPS conform to the requirements both of propriety and of good financial management

- the key roles and responsibilities which underpin the relationship between the SG and HMIPS are set out in a Memorandum of Understanding - and that this document is regularly reviewed
- effective relationships are in place at Director and Deputy Director level between the SG and HMIPS
- there is effective continuous assessment and appraisal of the performance of HMCIPS.

Role of the Director for Justice

The Director for Justice has responsibility for overseeing and ensuring effective relationships between the SG and HMIPS. They will work closely with HMCIPS and be answerable to the Portfolio Accountable Officer for maintaining and developing positive relationships with HMIPS, characterised by openness, trust, respect and mutual support. They will be supported by Community Justice policy teams in discharging these functions. The Director of Justice shall be responsible for assessing the performance of HMCIPS at least annually.

Role Community Justice Division /Prison Policy Team

The prison policy team in Community Justice Division has the main policy engagement and liaison role within the SGs Justice Directorate. The team, under the direction of the Deputy Director of Community Justice, is the primary source of advice to the Scottish Ministers on the discharge of their responsibilities in respect of HMIPS. The Community Justice Division's Business Support, Finance and Sponsorship Hub will support the Director for Justice in undertaking the responsibility of the Portfolio Accountable Officer on their behalf. In addition HMIPS has a number of key relationships with a range of policy areas in SG due to the cross-cutting nature of HMIPS functions in respect of the treatment and conditions of prisoners. Some of the roles and responsibilities are set out below.

Specific engagement and communication includes:

- Regular engagement meetings with HMCIPS, DD Community Justice and prison policy team and escalation/awareness of key risks from inspection and monitoring.
- Quarterly meetings with the Deputy Chief Inspector of Prisons for Scotland, HMIPS team, and Community Justice Division's Prison Policy team and the Business Support, Finance and Sponsorship Hub team.
- Budgetary proposals, including unfunded pressures and newly emerging business proposals should be directed through the prison policy team and business support, finance and sponsorship team.
- The routine sharing by HMIPS of inspection, HMIPS annual reports, thematic review reports and related press releases for matters of factual (MoF) accuracy testing in advance of publication with prison policy team. Prison policy team will liaise with other relevant policy areas (such as prisoner healthcare and prisoner release policy) for MoF due diligence as required.
- Policy engagement on the role of monitoring functions.

- Policy engagement on inspection functions.
- Prison policy team will support Ministerial meetings with HMCIPS.
- Prison policy team will facilitate engagement and liaison between HMIPS and other relevant policy areas in SG as required.
- SG's Justice Analytical Service Division (JAS) will facilitate the regular information sharing of key data and evidence with HMIPS as required.

Resource planning and management

Financial provision

The expenditure of HMIPS is met from Justice Directorate or relevant section of Scottish Government budget, approved by the Scottish Parliament.

Financial delegation

The financial delegations to HMCIPS are set out as follows:

- Following written notification of the budget for HMIPS, the Inspectorate may incur planned expenditure subject to any restrictions imposed by this Memorandum, written delegated authorities and compliance with relevant guidance in the Scottish Public Finance Manual (SPFM). The relevant SG Finance Business Partner should be consulted where there is any doubt over whether guidance in the SPFM is applicable. However, as a general rule of thumb, if there is no obvious reason why the guidance should not apply then it should be reasonably safe to assume that it does.
- HMIPS must notify the Director, Justice and Community Justice Division's prison policy team and Business Support, Finance and Sponsorship Hub immediately of any new/emerging budget pressures identified within the financial year, at the earliest opportunity. This also includes any potential underspends, identified from budget forecasts. Where possible every effort should be made to engage with Community Justice Division teams prior to formal notification of budget process with Director of Justice. This is important for planning purposes, up to and including the annual spending review and publication of the SG draft budget.
- Regular quarterly reporting on funding, including actual and planned expenditure should be provided in advance of quarterly policy, sponsorship and finance meetings.
- Monthly monitoring is the primary means of in-year budget control across the Scottish Government. As such, public bodies must comply with the format and timing of the monitoring together with any requests for further information commissioned by SG Finance.

Expenditure not proposed in the budget

HMIPS shall not, without the prior approval of the Director for Justice, enter into any undertaking to incur any expenditure not provided for in the approved budget.

Purchasing and tendering

HMIPS is required to comply with the SG and EU rules on procurement – set out in guidance within the SPFM.

Novel, contentious or repercussive proposals

HMIPS must obtain formal prior approval of the Director for Justice before incurring any expenditure for any purpose which is or might be considered novel or contentious, or which has or could have significant future cost implications.

HMCIPS will be responsible for ensuring that relevant financial procedures are followed and may delegate functions in writing in accordance with the SG Scheme of Delegation.

Annual Report

HMCIPS is required to report their findings to Scottish Ministers and to lay an Annual Report before the Scottish Parliament as provided by section 7 of the Prisons (Scotland) Act 1989.

The Annual Report will set out the main objectives, tasks and priorities of the HMIPS over a year period. It will assess the external factors which influence its strategy and put forward its planned strategy, output and resource requirements for the period.

Risk Management

HMCIPS will ensure that a formal assessment of business risks is undertaken and is periodically reviewed in accordance with the SGs approach to risk management. HMCIPS will keep the Director for Justice and prison policy team informed of any significant risks.

Personnel

Staffing

HMCIPS will ensure that HMIPS staff work within flexible management structure and have the skills necessary to meet the functions of the Inspectorate.

Status of staff and conditions of service

HMCIPS and HMIPS staff are Civil Servants within the SG and are employed on the same terms and conditions of service as other staff of the core SG. They are also covered by the Principal Civil Service Pension Scheme unless they decide otherwise.

Within the arrangements approved by the Scottish Ministers, HMCIPS, with the support of the SG Directorate for People, will have responsibility for the recruitment, retention, and motivation of the HMIPS staff. To that end, HMCIPS and Directorate for People shall ensure that:

- the recruitment of HMIPS staff is based on fair and open competition and equal opportunities
- the level and structure of HMIPS staffing, including grading and numbers of staff, are appropriate to its functions and the requirements of efficiency, effectiveness and economy
- the performance of HMIPS staff at all levels is managed effectively and efficiently, through satisfactory appraisal and promotion systems that are reviewed from time to time
- HMIPS staff are encouraged to acquire the appropriate professional, management and other expertise necessary to achieve the HMIPS's objectives
- proper consultation with staff takes place on key issues affecting them
- adequate grievance procedures consistent with the Public Interest Disclosure Act 1998 are in place

Signed on behalf of Scottish Ministers



Date: 01/09/2022

Name: Neil Rennick, Director of Justice, Scottish Government

Signed on behalf of HMIPS



Date : 05/09/2022

Name: Wendy Sinclair-Gieben, Her Majesty's Chief Inspector of Prisons, Scotland