

Date: 30<sup>th</sup> November 2017

# Protocol

Between

**The Ministry of Justice**

as the Department

and

**HM Chief Inspector of Prisons**

## **1. Introduction**

- 1.1** This protocol has been drawn up by the Ministry of Justice (MoJ) and Her Majesty's Chief Inspector of Prisons for England and Wales. It sets out at a high level the role of each organisation in relation to the other, and the responsibilities of the principal individuals in running, sponsoring and overseeing the office of HM Chief Inspector of Prisons.
- 1.2** The HM Chief Inspector of Prisons is a statutory Crown appointment. The Chief Inspector is the statutory holder of this office and this protocol aims to refer to the Chief Inspector or HMCIP where ever possible. HMCIP is supported by an Inspectorate and where this protocol refers to the Inspectorate, it is as part of HMCIP's statutory role and function.
- 1.3** This protocol does not confer any legal powers or responsibilities. It is approved by the Permanent Secretary and the Sponsoring Minister and then signed and dated by the MoJ (Permanent Secretary) and HMCIP.
- 1.4** This protocol does not detail the inspection criteria or the inspection framework which governs the inspection process.
- 1.5** This protocol remains in place until a new document has been agreed and replaces it. It must be reviewed at least every three years and, where appropriate, revised by agreement between HMCIP and the MoJ.
- 1.6** This protocol is published on the Inspectorate's website and copies of the document are placed in the Libraries of both Houses of Parliament.

## **2. Purpose and Remit of HM Chief Inspector of Prisons**

- 2.1** The Inspectorate is not a legal or statutory entity. HMCIP is the statutory holder of this office and is supported by an independent inspectorate.
- 2.2** HMCIP's responsibilities are set out in section 5A of, and Schedule A1 to, the Prison Act 1952 (as amended by section 57 of the Criminal Justice Act 1982). They are to:
  - inspect or arrange for the inspection of (and report to the Secretary of State on the results):
    - Prisons and young offender institutions in England and Wales;
    - Immigration detention facilities within the United Kingdom (removal centres, short term holding facilities, pre-departure accommodation and escort arrangements);
    - Court custody facilities and vehicles used to transport prisoners to and from those courts;

- Police custody suites (undertaken jointly with HM Inspectorate of Constabulary);
  - Secure Training Centres (undertaken jointly with OFSTED).
- in particular, report to the Secretary of State on the treatment of persons detained as listed above and the condition of any establishment in which they are detained;
  - report on matters connected with the establishments above and the persons detained as referred to him by the Secretary of State; and
  - submit an annual report to the Secretary of State to be laid before Parliament.

### **2.3 HM Chief Inspector of Prisons:**

- may delegate any of his functions to another public authority;
  - must prepare an inspection programme and inspection framework on which the Secretary of State and other specified bodies must be consulted (this does not prevent the HMCIP from making visits without notice);
  - must ensure inspections by other bodies do not place an unreasonable burden on organisations within his remit by giving notice to the other body not to carry out the inspection;
- 
- may cooperate with other Inspectorates and other public authorities where it is appropriate to do so for the efficient and effective discharge of his functions;
  - may act jointly with other public authorities where it is appropriate to do so for the efficient and effective discharge of his functions;
  - when acting jointly with other criminal justice inspectors, must prepare a joint inspection programme on which the Secretary of State and other specified bodies must be consulted;
  - may provide assistance to any other public authority for the purpose of the exercise by that authority of its functions.

**2.4** The Secretary of State may specify the form the inspection programme or inspection frameworks are to take, and where the Chief Inspector is acting jointly with other criminal justice inspectors, the Secretary of State, the Lord Chancellor and the Attorney General may jointly direct the times at which the joint inspection programme is to be prepared. By invitation, HMCIP also carries out inspection of military detention facilities.

**2.5** HMCIP's geographical remit for all areas other than the immigration estate (where it extends to Scotland and Northern Ireland) covers only England and Wales. By invitation HMCIP also inspects prisons in Northern Ireland, prisons on the Isle of Man and Channel Islands, and some other overseas prisons in jurisdictions with links to the UK.

### **3. Independence**

- 3.1** The independence of both HMCIP and the Inspectorate is a prerequisite for the Inspectorate's inclusion as one of the 21 bodies designated to the National Preventative Mechanism (NPM) which fulfils the UK's obligations under the Optional Protocol to the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). OPCAT requires that NPMs are functionally and operationally independent, have the necessary resources to perform their functions, have access to information relevant to the treatment of detainees, access to all places of detention, the liberty to determine where and when to visit, and to maintain contact with the UN Sub-committee on Prevention of Torture (SPT), among others.
- 3.2** As a member of the NPM, the Inspectorate is required to have, at minimum, the ability to regularly examine the treatment of persons deprived of their liberty with a view to strengthening their protection against torture or ill treatment; to make recommendations to the relevant authorities with the aim of improving the treatment and conditions of persons deprived of their liberty; and, to make proposals and observations on existing or draft legislation.
- 3.3** The Inspectorate, at the request of Ministers, is the co-ordinating body for the NPM required by OPCAT. This role includes coordinating an annual report to the United Nations and acting as a direct conduit for information from the relevant UN Sub-committee to other members of the NPM.
- 3.4** As the coordinator of the NPM, the Inspectorate works with its membership to increase OPCAT compliance and coordinate joint working. The NPM has its own website.
- 3.5** The following paragraphs (3.6-3.11) identify those elements of the relationship between the sponsoring department (MoJ) and HMCIP from which the required independence of HMCIP is drawn. Further details on these elements are set out elsewhere in this protocol.

*Corporate Governance*

- 3.6** HMCIP is a Crown appointment. Ministers cannot remove HMCIP except in the limited circumstances set out in the terms of appointment which are not subject to unilateral change.

*Inspection Reports*

- 3.7** HMCIP reports in his own name, with content and timing solely at the discretion of HMCIP. Inspection reports are not cleared with any external person or external body, although drafts are shared with inspected bodies to allow correction of factual inaccuracies.
- 3.8** The content of HMCIP's annual report is also solely at the discretion of HMCIP (subject to accuracy checking). The Secretary of State has a statutory discretion to direct the form of the annual report (Prisons Act 1952 section 5A (5)).

*Other inspection publications*

- 3.9** In determining the inspection programme, HMCIP will use their judgement and expertise in deciding what to inspect, how inspections should be carried out, what the findings should be and whether an inspection is to be announced or unannounced. HMCIP's remit includes thematic inspection of issues cutting across individual establishments.
- 3.10** The annual inspection programme is developed independently of Ministry of Justice. The priorities of the inspection programme balance the chronology of previous inspections and risk assessment. Priorities for thematic reviews are a matter for HMCIP informed by formal and informal consultation and tend to follow important recurring themes and problems.
- 3.11** HMCIP will undertake inspections according to their own inspection framework and published assessment criteria ('Expectations'), which are used to appraise and inspect prisons and custodial establishments. These criteria are based on and referenced against international human rights standards and used to examine every area of life for the detainee, from arrival to release.
- 3.12** HMCIP will carry out consultation in respect of the above inspection documentation (inspection programme, framework and expectations). In determining content, HMCIP should take into account approved funding provision, forecast receipts and take into consideration the department's wider strategic aims and agreed priorities. However, the final judgement remains with the HMCIP.

- 3.13** Most inspections take place in partnership with other Inspectorates and memoranda of understanding and protocols on working arrangements are in place and published on the HMI Prison's website.

#### *Funding*

- 3.14** HMCIP receives funding from the MoJ, the Home Office, and the Youth Justice Board. The majority funder is the MoJ which is responsible for ensuring that the use of any such funds meets the standards of governance, decision-making and financial management, as set out in *Managing Public Money* (see paragraph 5 below). In making decisions on behalf of the Inspectorate, the Principal Accounting Officer will take into account the Inspectorate's operational independence.

#### *Relationship with the Media and the public*

- 3.15** HMCIP issues a press notice to the media in its own name for all published reports. HMCIP's press officer engages with the media at the discretion of HMCIP and will liaise with the MoJ Press Office on issues where appropriate. Any liaison with the MoJ will not be intended to undermine HMCIPs' independence. HMCIP will maintain a separate website from any presence on GOV.UK.

## **GOVERNANCE AND ACCOUNTABILITY**

### **4. Ministerial Responsibility**

- 4.1** The SoS for Justice is accountable to Parliament for 'the policies, decisions and actions of this Department'<sup>[1]</sup> including matters relating to the discharge of functions under the remit of HMCIP.

### **5. The Principal Accounting Officer's specific accountabilities and responsibilities**

- 5.1** The Permanent Secretary of the MoJ is the Principal Accounting Officer (PAO). HMCIP is not a distinct legal entity and therefore does not have its own accounting officer to whom financial responsibility is delegated. HMCIP accounts to the PAO for the appropriate use of resources in accordance with budgetary delegation arrangements. The responsibilities of the PAO are set out in Chapter 3 of *Managing Public Money*.
- 5.2** The PAO is personally responsible for ensuring that the Inspectorate delivers the standards set out in box 3.1 of *Managing Public Money*.

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<sup>[1]</sup> 1.1, MoJ Account Statement, 2017

- 5.3** The PAO is responsible to Parliament for the issue of any funding to HMCIP. The PAO is also responsible for advising the Secretary of State for Justice:
- on an appropriate budget for HMCIP in the light of the MoJ's overall public expenditure priorities; and
  - how well HMCIP is achieving its strategic objectives and whether it is delivering value for money.
- 5.4** The PAO is also responsible for ensuring arrangements (consistent with the overriding principle specified in section 3 on independence) are in place in order to:
- ensure HMCIP is fulfilling his statutory obligations
  - review performance and delivery against the Inspectorate's business plan
  - address significant problems relating to financial probity which may arise in relation to HMCIP, making such interventions as are judged necessary;
  - periodically carry out an assessment of the risks both to the MoJ and the HMCIPs' objectives and activities;
  - inform HMCIP of relevant government policy in a timely manner; and
  - bring concerns about the activities of the Inspectorate to the HMCIP, and, as appropriate to the MoJ departmental board.

## **6. Responsibilities of the MoJ as sponsor**

- 6.1** As the Inspectorate is operationally independent of MoJ but integrated, for example in terms of its accounting and a number of other functions (please see para 14), the department has appointed a sponsor team who applies the principles of sponsorship which are usually reserved for bodies operating completely at arms' length.
- 6.2** The MoJ operates a proportionate risk-based approach to sponsorship which will be considerate of the independence of the Inspectorate as set out in paragraph 3 above and in accordance with the Cabinet Office Code of Good Practice on partnerships between departments and Arm's Length Bodies (<https://www.gov.uk/government/publications/partnerships-with-arms-length-bodies-code-of-good-practice>). HMCIPs' sponsorship team is drawn from the Sponsorship of Independent Scrutiny Bodies Team in the MoJ's Offender Reform and Commissioning Group. The team has a dual policy and assurance sponsorship function with guidance and best practice on assurance provided by the Arms' Length Bodies Division.

**6.3** The MoJ sponsor team's policy sponsorship responsibilities are to act as the policy interface for HMCIP and in particular:

- support the Inspectorate's voice being heard across MoJ and Whitehall, where policy development will have an impact on custody, to include in cases where the views of the Inspectorate may be at variance with current Government policy.
- inform HMCIP of relevant Government policy in a timely manner, determining how ministerial policies in relation to HMCIP can best be delivered in terms of policy and strategy implementation.
- advise and brief Ministers in respect of HMCIPs' remit, when requested by ministers.
- lead the budget negotiation, in tandem with the MoJ finance business partner, for each financial year.

**6.4** The sponsorship team assurance sponsorship responsibilities are to act as a "critical friend" to the Inspectorate and in particular:

- support the development of positive and effective working relationships between the Inspectorate and all parts of the Department, ensuring that the sponsorship relationship is tailored and proportionate to the needs of both organisations where appropriate, act as champion of HMCIP in pursuing agreed issues of concern with the MoJ and, where necessary, other departments.
- review the Inspectorate's performance and delivery against the business plan on a continuing basis, ensuring that risks to both HMCIP and MoJ are assessed periodically and provide assurance to the Department's Executive Management Committee (ExCo) that robust governance arrangements are in place;
- address any significant problems in the governance or management of the Inspectorate by raising them with HMCIP in the first instance, and if necessary draw them to the attention of the PAO;

**6.5** The sponsorship team will work with the secretariat within the inspectorate; both parties will aim to ensure that requests for advice or information are dealt with expeditiously and in the event of delays a revised timetable is mutually agreed.

#### *Accountability and Sponsorship Meetings*



- 6.6** The responsible Deputy Director (and members of the sponsorship team) will meet the HM Deputy Chief Inspector of Prisons (and members of the Secretariat) for quarterly sponsorship meetings to consider: issues, risks and progress against business planning documents. The MoJ sponsorship team will also maintain regular contact with the secretariat within the Inspectorate to ensure there is ongoing dialogue. The HMCIP will meet the sponsoring MoJ policy Director and Director General to consider strategic issues arising from the quarterly sponsorship meetings, and any other pertinent issues. These strategic meetings will be held at least twice a year but may be called at any mutually agreed time.

### *Escalation of issues*

- 6.7** Any potential conflict between MoJ and HMCIP should be attempted to be resolved through ongoing dialogue and/or at the quarterly sponsorship meetings. There may, however, be a need for intervention outside of this monitoring framework, in circumstances where:
- either party considers that the other does not comply with this protocol or that there is a real risk to the operational independence of the Inspectorate;
  - there are early indications that a risk of material failure may occur in the operation of HMCIP and the judgement of HMCIP or MoJ is that additional input is needed to prevent the risk materialising;
  - the financial performance of HMCIP is deteriorating and there are significant concerns within MoJ Corporate Finance over financial control;
  - broadly, an adverse situation arises which the National Audit Office, on behalf of Parliament, may in the public interest be asked to investigate. This could include a situation beyond poor financial control, poor performance or issues relating to regularity or propriety.
- 6.8** In such circumstances, the issue should be raised with the sponsoring Director General and HMCIP and, if necessary, escalated further as either party sees fit.

## **7. Responsibilities of HM Chief Inspector of Prisons**

### *General*

- 7.1** The Principal Accounting Officer must assure himself that the HMCIP has systems in place adequate to meet the standards in Box 3.1 of Managing Public Money (in line with his responsibilities in MPM paragraph 3.3.1). In

fulfilling his statutory duties (set out in 2.2-2.5 above), HMCIP is responsible for assisting the Principal Accounting Officer in fulfilling these responsibilities by:

- accounting to the PAO for the appropriate use of resources in accordance with budgetary delegation arrangements;
- ensuring that effective procedures for handling complaints about HMCIP are established and made widely known within the Inspectorate;
- acting in accordance with the terms of this document, *Managing Public Money* and other instructions and guidance (insofar as they concern matters of financial probity, procurement and HR) issued from time to time by the Department, the Treasury and the Cabinet Office;
- giving evidence on HMCIPs' stewardship of public funds, normally with the PAO, when requested by the Public Accounts Committee (PAC);
- being subject to the scrutiny of the Justice Committee and giving evidence when called to give evidence;
- providing assurance to the MoJ in preparing its Governance Statement to Parliament covering corporate governance, risk management and oversight of any local responsibilities, for inclusion in the MoJ annual report and accounts.

### *Responsibilities to the MoJ*

**7.2** HMCIP's particular responsibilities to the Department include (in addition to statutory duties including the production of the essential publications set out in paragraphs 7.4-7.89 below):

- developing, consulting on and publishing HMCIP's corporate and business plans. These are developed independently of Ministry of Justice but take into consideration the department's wider strategic aims and agreed priorities.
- ensuring that timely forecasts and monitoring information on performance and finance are provided to the department; that the department is notified promptly if over and under spends are likely and that corrective action is taken; and that any significant problems whether financial or otherwise (including legal challenge), and whether detected by internal audit or other means, are notified to the department in a timely fashion;

- ensuring that financial considerations are taken fully into account by HMCIP at all stages in reaching and executing their decisions and that financial appraisal techniques are followed.

*Essential Publications by HMCIP - Annual report*

- 7.3** HMCIP presents his annual report to the Secretary of State for Justice after the end of each financial year. The report also fulfils the duty to present such a report to the Home Secretary in relation to immigration removal centres.
- 7.4** A draft of the report should be submitted to the MoJ Sponsor at least four weeks before the publication date (set by HMCIP).
- 7.5** The annual report is laid before Parliament and must:
- cover the Inspectorate's programme of work, outlining its main activities and performance during the previous financial year.

*Essential Publication by HMCIP - Inspection Programme*

- 7.6** HMCIP will prepare an inspection programme (please see paragraph 3.9 above) setting out the inspections he proposes in all areas within his remit. Unless otherwise specified (by order from the Secretary of State) the finalised programme will be published by April each year. HMCIP will aim to publish the draft by December, and conclude statutory consultation with relevant Secretaries of State and specified scrutiny bodies in January. The schedule of announced inspections will be shared with key stakeholders by the end of January to minimise the burden on inspected bodies.

*Essential Publications by HMCIP - Inspection Framework*

- 7.7** HMCIP will prepare and publish an "inspection framework" - a document setting out the manner in which he proposes to carry out his functions of inspection. The framework will be supplemented by detailed guidance for inspectors and "expectations", both of which will be published at times and in a manner with content set by HMCIP.

*Consultation with and advice to Ministers*

- 7.8** In exercising his statutory functions, HMCIP has access to Ministers. HMCIP will meet Ministers at any mutually agreed time. Written submissions carrying out the statutory functions set out in paragraph 2 above will be made directly to Ministers. The Sponsorship team will be informed of the submission and copied into the content.

### *Urgent Notification*

**7.9** During the inspection of prisons, young offender institutions and secure training centres (the latter with the agreement of Ofsted<sup>1</sup>), HMCIP may identify significant concerns with regard to the treatment and conditions of those detained. In this eventuality HMCIP will write to the SOS within seven calendar days of the end of the inspection, providing notification of the significant concerns and the reasons for those concerns. The notification will summarise the judgements and identify issues that require improvement. As part of the inspection process the Governor of the institution will have been briefed concerning our intent.

**7.10** HMCIP will publish an urgent notification letter to the SOS, and will place this information in the public domain.

**7.11** Any decision to give urgent notification to the SOS of significant concerns will be determined by the judgement of HMCIP. The judgement will be informed by relevant factors evidenced during the inspection and may include:

- Poor healthy prison test assessments (HMIP's inspection methodology is outlined in the HMIP Inspection Framework)
- The pattern of the healthy prison test judgements
- Repeated poor assessments
- The type of prison and the risks presented
- The vulnerability of those detained
- The failure to achieve recommendations
- The Inspectorate's confidence in the prison's capacity for change and improvement.

**7.12** Having received such a notification, the SOS commits to publicly respond to the concerns raised within 28 calendar days. The response will explain how outcomes for prisoners in the institution will be improved in both the immediate and longer term.

**7.13** HMIP will re-inspect the institution in due course at a date determined by its risk-based scheduling process. The inspection will report on progress made since the previous inspection.

## **8 Corporate Governance**

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<sup>1</sup> Ofsted has statutory responsibility for the inspection of secure training centres and conducts them in partnership with HMI Prisons. Any decision to notify the Secretary of State of significant concerns would be made jointly with the Chief Inspector of Ofsted.

*Appointment and appraisal of HMCIP*

- 8.1** HMCIP is a statutory Crown appointment. The appointment is by open competition and is for an initial period of three years. Appointments will comply with the Commissioner for Public Appointments Code of Practice. HMCIP will be subject to an annual appraisal of the performance of the Inspectorate conducted by the Permanent Secretary.
- 8.2** The preferred candidate for the post of HMCIP is subject to scrutiny by Parliamentary select committee prior to appointment. Such pre-appointment hearings will be non-binding but the Government will consider the committee's conclusions and recommendations before deciding whether to proceed with the appointment.

*Responsibilities of the Inspectorate's Management Board*

- 8.3** HMCIP has established a mechanism for collective decision making called the Management Board. HMCIP will have sole responsibility for deciding its membership, remit and terms of reference. However, the Board has neither statutory existence nor statutory authority.
- 8.4** The Management Board should ensure that effective arrangements are in place to provide assurance on issues relating to financial probity. The Management Board is expected to assure itself of the effectiveness of the internal control and risk management systems.

## FINANCIAL RESPONSIBILITIES

### 9 Managing Public Money and other government-wide corporate guidance and instructions

- 9.1 Unless agreed by the MoJ and, as necessary, HM Treasury, HMCIP shall follow the principles, rules, guidance and advice in *Managing Public Money*, referring any difficulties or potential bids for exceptions to the Sponsorship of Independent Scrutiny Bodies Team in the MoJ in the first instance. A list of guidance and instructions with which HMCIP should comply is at Appendix A.
- 9.2 Once the budget has been approved by the MoJ, HMCIP shall have authority to incur expenditure approved in the budget without further reference to the MoJ, on the following conditions:
- HMCIP shall comply with the delegations set out in the Appendix. These delegations shall not be altered without the prior agreement of the MoJ;
  - HMCIP shall comply with *Managing Public Money* regarding novel, contentious or repercussive proposals;
  - Inclusion of any planned and approved expenditure in the budget shall not remove the need to seek formal departmental approval where any proposed expenditure is outside the delegated limits or is for new schemes not previously agreed.
- 9.3 HMCIP shall provide the MoJ with such information about its operations, performance, individual projects or other expenditure as the MoJ may reasonably require.

### 10 Risk Management

- 10.1 HMCIP shall ensure that the risks it faces are dealt with in an appropriate manner, in accordance with relevant aspects of best practice in corporate governance. HMCIP shall also develop a risk management strategy, in accordance with the Treasury guidance *Management of Risk: Principles and Concepts* (<https://www.gov.uk/government/publications/orange-book>).
- 10.2 HMCIP should adopt and implement policies and practices to safeguard itself against fraud and theft, in line with HM Treasury's guidance on tackling fraud: ([http://webarchive.nationalarchives.gov.uk/20130129110402/http://www.hm-treasury.gov.uk/d/managing\\_the\\_risk\\_fraud\\_guide\\_for\\_managers.pdf](http://webarchive.nationalarchives.gov.uk/20130129110402/http://www.hm-treasury.gov.uk/d/managing_the_risk_fraud_guide_for_managers.pdf)).

HMCIP should also be responsible for its management of health and safety risks.

- 10.3** Risks should be subject to regular review at the sponsorship meetings, and where the risk is capable of impacting on the MoJ itself, escalated to the appropriate MoJ business group or departmental risk register as appropriate.

## **11 Corporate and business plans**

- 11.1** HMCIP will set the content of the corporate and business plans at his own discretion but will take account of their funding provision and consideration of the department's wider strategic aims and priorities. HMCIP will aim to publish the plans, on their website, by the beginning of the financial year. The plan should reflect HMCIP's statutory and other duties and budgetary allocations.
- 11.2** HMCIP contributes to the Joint Inspection Business Plan produced for Ministers by the four Criminal Justice Inspectorates.

## **12 Budgeting procedures**

- 12.1** Each year, in light of decisions by the MoJ on the updated draft corporate plan, the MoJ will send to HMCIP as close to the end of the financial year as possible:
- a formal statement of the annual budgetary provision allocated by the department in the light of competing priorities across the department and of any forecast income approved by the department, including funding from other departments; and
  - a statement of any planned change in policies affecting HMCIP.
- 12.2** HMCIP annual inspection programme and business plan will take account both of approved funding provision and any forecast receipts, and will include a profile of expected expenditure and of draw-down of any departmental funding and/or other income over the year.
- 12.3** HMCIP shall operate relevant systems that enable timely and effective reviews (at least quarterly) of financial and non-financial performance against the budgets and targets set out in the corporate and business plans. A mid-year review of the current year's business plan will aim to be completed in

October and inform the identification of priorities for the following financial year. Reporting information to MoJ will be proportionate to HMCIPs' activities and risks posed to the MoJ. As a minimum, HMCIP shall provide the MoJ with information monthly that will enable the department satisfactorily to monitor:

- HMCIPs' cash management and headcount information;
- forecast outturn by resource headings with variance analysis; and
- other data required for the Treasury's Online System for Central Accounting and Reporting (OSCAR).

### *Delegated authorities*

- 12.4** HMCIPs' delegated authorities are set out in [appendix – *to be inserted on completion*]. HMCIP shall obtain the MoJ's prior written approval before:
- entering into any undertaking to incur any expenditure that falls outside the delegations or which is not provided for in HMCIPs' annual budget as approved by the department;
  - incurring expenditure for any purpose that is or might be considered to be novel or contentious, or which has or could have significant future cost implications;
  - making any significant change in the scale of operation or funding of any initiative or particular scheme previously approved by the MoJ;
  - making any change of policy or practice which has wider financial implications that might prove repercussive or which might significantly affect the future level of resources required; or
  - carrying out policies that go against the principle, rules, guidance and advice in *Managing Public Money*.

- 12.5** From time to time the MoJ may need to impose department wide spending controls on the Inspectorate that may require additional instances of written approval. In considering applications under any such spend controls MoJ must take due and proper regard to HMCIP's role as an independent scrutiny body and the requirement under OPCAT for NPM bodies to have the necessary resources to perform their functions. In respect of recruitment of staff, spending control applications should be applied in light of any specific agreement to further delegate the authority to recruit to HMCIP.

### *Cash holding*

- 12.6** HMCIP will use the services of the Government Banking Service (GBS).

### *Audit*



**12.7** HMCIP will remain within MoJ arrangements for internal and external audit.

## **ORGANISATION MANAGEMENT**

### **13. Staff**

**13.1** HMCIP is a Crown appointment but staff appointed by HMCIP are civil servants, employed by the MoJ and are subject to MoJ pay and conditions (including issues relating to pensions, redundancy and compensation) and policies in relation to the management of staff.

#### *Staff recruitment*

**13.2** HMCIP has delegated authority to:

- recruit civil servants through the normal process abiding by MoJ and Civil Service rules on recruitment and subject to any spending control restrictions. This also applies to civil servants recruited on loan or secondment from other departments.
- identify and recruit associates from outside the MoJ recruitment process. All new staff will have security clearance and pre-employment checks. 'Associates' are fee paid staff with particular expertise and can be utilised by HMCIP to undertake work as necessary and used for flexibility and efficiency purposes. All new staff, including associates, will have security clearance and pre-employment checks.
- recruit staff on loan or secondment for an agreed term from an organisation outside of the MoJ. Such staff will have contracts agreed with their parent organisation, and will be subject to the terms and conditions of their parent organisation.

#### *Staff Costs*

**13.3** Subject to its delegated authorities, HMCIP shall ensure that the creation of any additional posts does not incur forward commitments that will exceed the inspectorate's ability to pay for them.

### **14. Corporate service provision**

**14.1** A number of support functions will be provided to the HMCIP by the MoJ. Such functions will include:

- Information and Communications Technology
- Human Resources

- Finance
- Facilities
- Procurement
- Communications
- Legal services
- Digital Services
- Estates
- Information Assurance
- Data incident handling (for significant incidents involving personal data)

**14.2** Some of these support functions, for example, facilities, estates and ICT, will include the management of aspects of risk on behalf of HMCIP, notably elements of health and safety, fire safety and security risk management.

## **15. Complaints and litigation**

**15.1** Where complaints are received about HMCIP or matters within HMCIP's remit, the MoJ will refer these to the Inspectorate to deal with. Complaints about the personal conduct of HMCIP or those relating to the sponsorship or mandate of the MoJ will be considered by the responsible Minister. If the responsible Minister decides the complaint should be investigated, he will appoint an independent person to investigate the issues and make recommendations to him about the complaint resolution.

**15.2** HMCIP will manage any litigation arising from its operational activities, involving MoJ lawyers and other officials at the earliest appropriate stage. Where HMCIP chooses to seek legal advice independent of MoJ, this will normally be sought from the Government Legal Department.

### *Access*

**15.3** The MoJ will have a right of access to all the HMCIPs' records and personnel as required to discharge the obligations of the MoJ and the PAO.

## **16. Sustainable Development**

**16.1** HMCIP will comply with policies and guidance issued by MoJ, the Treasury or other relevant bodies in relation to sustainable development, contributing to the Government's vision for Mainstreaming Sustainable Development.

## **17. Occupational Health and Safety**

**17.1** HMCIP should determine and operate its own Occupational Health and Safety (OHS) policies and documentation, ensuring the proportionate management of OHS risks across the Inspectorate.

## **18. Freedom of Information and Data Protection**

**18.1** HMCIP will carry out their obligations under the Freedom of Information (FOI) Act 2000, the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004, including ensuring requests are answered in a timely way, are compliant with the relevant legislation and, where applicable, are provided in line with agreed MoJ internal processes for request handling.

## **19. Welsh Language Scheme**

**19.1** HMCIP is committed to the principle of treating the English and Welsh languages on a basis of equality when conducting public business in Wales. HMCIP follows the principles of the MoJ Welsh Language Scheme that complies with the Welsh Language Act 1993.

## **HM CHIEF INSPECTOR OF PRISONS' RELATIONSHIPS**

### **20. Relationship with Parliament**

#### *Parliamentary Questions*

**20.1** Parliamentary Questions relating to the Inspectorate will be sent by Parliamentary Branch to the MoJ Sponsorship Team who will inform the Inspectorate and agree whether the PQ is about Government policy on inspection or about the work or operation of the Inspectorate. In the case of the former, the Sponsorship Team will produce the draft reply and submit to Parliamentary Branch, but will first seek any immediate comments from the Inspectorate. In the case of the latter, the Inspectorate will produce the draft reply and send to the Sponsorship Team who will send on to Parliamentary Branch, making it clear the reply is provided by the Inspectorate. The general expectation is that the Sponsorship Team would not amend the Inspectorate's draft.

#### *Ministerial Correspondence*

**20.2** Members of Parliament shall be encouraged to write directly to HMCIP about specific activities and the administration of the Inspectorate. When Ministers

receive correspondence from Members of Parliament on these matters, they shall normally ask HMCIP to reply (sending a copy of the reply to the relevant sponsorship team). Where a Minister decides to reply personally, for example, where the correspondence involves wider policy considerations, advice will be sought from HMCIP or a member of the Inspectorate.

## **21. Arm's length bodies**

- 21.1** HMCIP currently works in partnership with other Inspectorates and scrutiny bodies including Ofsted, Criminal Justice Inspection (Northern Ireland), Care Quality Commission, Healthcare Inspectorate Wales, the General Pharmaceutical Council, Independent Monitoring Boards and the Prisons and Probation Ombudsman. This work is covered by memoranda of understanding which are published on the HMCIP website.
- 21.2** Joint inspections with other criminal justice inspectorates (HMI Probation, HMI Constabulary and HM Crown Prosecution Service Inspectorate) are co-ordinated by the CJ Inspectorates Chief Inspectors' Group. The legislation requires HMCIP, when preparing a joint inspection programme, to prepare it jointly with the other inspectorates. The joint inspection programme will subject to consultation. A joint business plan is published annually.

## **22. Other government departments**

- 22.1** Memoranda of understanding regarding inspections are in place with a number of government departments, including the Home Office (Immigration Enforcement) and the Ministry of Defence. Where appropriate, HMCIP will report to relevant Ministers and make contact with officials in sponsoring departments, as well as the Welsh Assembly Government.

## **23. Private and Third Sector bodies**


- 23.1** HMCIP inspects privately managed prisons and immigration detention removal centres and escorts. These, and relevant Third Sector bodies, receive copies of reports and are included in the Inspectorate's annual stakeholder consultation exercise.

## **24. Relationship with International bodies**

- 24.1** The Inspectorate is, at the request of Ministers, the co-ordinating body for the National Preventive Mechanism, NPM, required by OPCAT. This role includes coordinating an annual report to the United Nations and acting as a

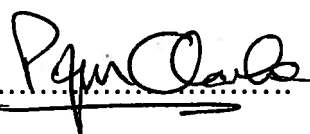
direct conduit for information from the relevant UN Sub-Committee to other members of the NPM.

**24.2** HMCIP maintains contact with other international bodies concerned with the inspection of places of detention.

Signed  .....

Date 24 Nov 2017 .....

(Permanent Secretary on behalf of MoJ)

Signed  .....

Date 27th November 2017 .....

(HM Chief Inspector of Prisons)

