

Memorandum of Understanding on detention and escort arrangements between the Home Office (Border Force) and HMI Prisons

1. The purpose of this Memorandum of Understanding (MoU) is to set out a framework to support the working relationship between Home Office (Border Force) and Her Majesty's Inspectorate of Prisons (HMI Prisons).
2. HM Inspectorate of Prisons for England and Wales (HMI Prisons) is an independent inspectorate whose Chief Inspector is a Crown appointment. The Chief Inspector reports to the Secretary of State on the treatment of, and conditions for, those in prison, young offender institutions, court custody suites in England and Wales and immigration detention facilities in the United Kingdom. HMI Prisons also inspects police and Border Force customs custody (jointly with Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services) and secure training centres (jointly with Ofsted). By invitation, HMI Prisons inspects some military detention facilities as well as prisons in Northern Ireland and in other jurisdictions with links to the UK such as the Isle of Man. HMI Prisons promotes the concept of "healthy establishments" to improve outcomes for those detained and the wider public.
3. Section 5A(5A) of the Prison Act 1952, as amended by section 152(5) of the Immigration and Asylum Act 1999, requires the Chief Inspector to report on the treatment of and conditions for detained persons in immigration removal centres.
4. Section 46(1) of the Immigration, Asylum and Nationality Act 2006 extended the Chief Inspector's inspection and reporting remit to immigration short term holding facilities and escort arrangements throughout the UK. Paragraph 8 of Schedule 9 to the Immigration Act 2014 similarly extended the Chief Inspector's remit to pre-departure accommodation.
5. HMI Prisons is a designated member of the UK National Preventive Mechanism (NPM). This mechanism was established in response to the UK's obligations as a party to the [Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment \(OPCAT\)](#), an international human rights treaty designed to strengthen the protection of people deprived of their liberty.
6. Border Force is a Law Enforcement arm of the Home Office with primary responsibility for UK Border Security, including counter terrorism, immigration and customs matters. Border Force is responsible for managing the UK border control by enforcing immigration and customs regulations and working with the wider Home Office on organised crime, modern slavery and trafficking.
7. The parties to this Memorandum of Understanding do not intend it to be legally binding or to create a contractual relationship.

Frequency and timing of inspections

8. HMI Prisons conducts national inspections of short-term holding facilities (STHFs), most of which are the primary responsibility of Immigration Enforcement. This MoU relates specifically to the Border Force managed STHFs, which will be inspected at least once every three years. However, inspections are scheduled on a risk-assessed basis and they may take place at any time HMI Prisons considers appropriate.
9. Inspections are announced in advance. The announcement period is four weeks and is to allow time for specified data (Annex A) to be provided to HMI Prisons. The

inspection may then start at any point during an 'inspection window' of another four weeks' duration. The inspection will be completed in a maximum of two weeks. Inspectors will visit every facility at least once during that time.

10. HMI Prisons reserves the right to conduct individual facility inspections and/or unannounced inspections if intelligence is received to indicate significant concerns.
11. Inspections will focus on the conditions of detention and treatment of detained persons. Inspections are carried out against HMI Prisons' published inspection criteria – known as Expectations – for immigration detention, which contain a section on STHFs. Inspections will identify areas of concern and highlight good practice where relevant, based on the evidence available at the time of inspection. Inspections will also assess progress made since the previous inspection.
12. The manner in which inspections are conducted is set out in an inspection framework published on the HMI Prisons website. Revision to Expectations or the inspection framework may be subject to consultation with the Secretary of State and other bodies.

Access

13. In line with the Government's obligations under OPCAT, Border Force will liaise with port operators to ensure inspectors will be given access to any facilities or areas where people are, or may be, detained and to people who are, or may be, deprived of their liberty. This includes the point of first arrest and detention, and transport to a holding facility. Inspectors have the right to carry out inspections and cannot be refused entry or access that impedes their ability to inspect.
14. In accordance with OPCAT, Border Force will ensure that HMI Prisons is informed of the number and location of all places of immigration detention (which includes any place where persons are, or may be, deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence). Border Force will inform HMI Prisons of any new places of detention before they are operational.
15. Border Force will provide authorised staff from HMI Prisons, including its partners¹, acting on the instructions of Her Majesty's Chief Inspector of Prisons, freedom of access to all sites, documentation and records (including relevant electronic images and the digital records of detained persons), detained persons, centre and escort staff, other contractors and service-providers identified as relevant to the inspection by inspectors. Border Force will ensure that all its staff and contractors are aware of these requirements.
16. HMI Prisons will ensure that all staff, including partners, have appropriate security vetting, personal photographic identification and security training. HMI Prisons will convey items in and out of the facility related to their designated duties. This will include mobile phones and cameras. HMI Prisons and its partners will take in secure laptops/tablet devices with secure internet access and related mobile media devices as part of the inspection process without the need for individual authorisations.

¹ In particular, HMI Prisons may be joined by the Care Quality Commission or their equivalent in Scotland, Wales and Northern Ireland.

17. From time to time, HMI Prisons will be accompanied by visitors who are observing HMI Prisons' work, including from other inspectorates, ministers or officials from government departments, or from third sector organisations. They will be subject to a confidentiality agreement with HMI Prisons, and HMI Prisons will take full responsibility for them. They will be supervised at all times by HMI Prisons staff.

Nature of inspections

18. Inspectors will visit each detention facility on at least one day during the inspection. Length of individual site visits will vary and inspectors may return to the same facility during the inspection window. HMI Prisons will seek in all instances to minimise unnecessary burdens on detention facilities or escort providers.
19. HMI Prisons will appoint a co-ordinator and Border Force will appoint a liaison officer who will act as a single point of contact. The HMI Prisons coordinator will brief the Border Force liaison officer on the nature of the inspection and practical requirements. They will agree a time for an introductory meeting to take place at, or before, the start of the inspection.
20. Inspectors will explain the inspection process to any staff present during inspections. Border Force should ensure that all staff are aware of the possibility of inspection at any time.
21. HMI Prisons will provide a formal verbal debrief to Border Force of the key findings from the inspection. A written note of this debrief will be shared with Border Force within five working days following the inspection. The verbal debrief and written note will be provisional findings and may be subject to change. Border Force will ensure they are not placed in the public domain.
22. The findings of an inspection may be of such immediate concern that an urgent response is required by senior Border Force managers to secure acceptable treatment of detained persons. In such circumstances, the Chief Inspector will escalate the matter to the Director General of Border Force. The Director General will respond in writing within twenty-eight working days outlining what steps have been taken to address the Chief Inspector's findings. The Chief Inspector reserves the right to make public HMIP's concerns and the Director General's response at any stage before or after the report is published.

Report production and publication

23. The content of inspection reports and the decision to publish are matters for HMI Prisons. However, HMI Prisons will send a draft report to Border Force for factual accuracy checks within eight weeks of the end of the inspection and identify a publication date approximately six weeks later. Where specific cases are discussed, HMIP will provide reference numbers to Border Force.
24. Border Force will ensure that factual accuracy checks are completed within three weeks. HMI Prisons will respond to any factual accuracy checks within a further two weeks and finalise the publication date. If Border Force fails to meet the deadline for factual accuracy checks, HMI Prisons reserves the right to move to publication.

25. HMI Prisons may issue a press release in advance of the publication of the report. HMI Prisons will endeavour to circulate the text of the draft press notice five working days before publication.
26. HMI Prisons and BF will independently manage their own media relations.

Action Plans

27. Within three months of publication of an inspection report, Border Force will submit an action plan ('service improvement plan') to HMIP. The action plan should set out the action taken or planned in response to each recommendation or area of concern and the timeline for each action. These plans will be cleared by Ministers.
28. Unless Border Force declines publication, the service improvement plan will be placed by HMI Prisons on the HMI Prisons website alongside the relevant inspection report.

Funding for inspections

29. Costs for the regular programme of inspections of Border Force facilities are covered by core funding received from the Home Office for immigration detention. Any requests for further HMIP services will be subject to additional funding, based on HMIP's Inspection Hour Cost at the time of the request.

Data sharing, protection and retention periods

30. Further guidance on data sharing, data protection and retention periods can be found in a separate agreement at Annex B.

Conduct, complaints and correspondence

31. The conduct of inspectors, including from partner inspectorates, will be the responsibility of the inspection team leader. Any complaints about inspection staff should be referred to the inspection team leader and will be dealt with in accordance with HMI Prisons' complaints process. Any formal complaints by inspectors will be made to Border Force managers.
32. Feedback by relevant managers following STHF or escort inspections is welcomed. HMI Prisons will conduct an annual stakeholder survey to inform performance improvement.
33. Correspondence received by HMIP that raises issues or matters of concern about a detained person's safety will be managed in line with HMI Prisons safeguarding policies and protocols.

Safeguarding and sanctions

34. HMIP will follow HMIP safeguarding policies and protocols, which set out procedures to be followed should information come to the attention of any member of staff indicating that a child or vulnerable adult has suffered, is suffering or is at risk of suffering harm during their period in detention. If any such information comes to the

attention of inspectors during an inspection, they will report it immediately to the HMIP team leader or inspection coordinator, who will then follow HMI Prisons' safeguarding protocols². Any general undertaking of confidentiality or anonymity during the inspection must have the caveat that this cannot be maintained where information suggests that a child or a vulnerable adult has been harmed in any way.

35. If inspectors become aware of any detained person alleging that they have been subject to sanction or other prejudice arising from their, or someone acting on their behalf's, communication with HMIP inspectors, or representatives of the Independent Monitoring Board (IMB) or Prisons and Probation Ombudsman (PPO), they will alert the HMIP lead inspector immediately, who will then follow the joint HMIP-IMB-PPO protocol on sanctions.³

Reviewing the MOU

36. The MOU will be reviewed every two years, or sooner if considered appropriate, by HM Chief Inspector of Prisons and the Director General of Border Force.



HM Chief Inspector of Prisons
Date: 24 June 2022



Director, Border Force National Operations
Date: 10 June 2022

² <https://www.justiceinspectorates.gov.uk/hmiprison/about-our-inspections/>)

³ <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjn--Co-ftAhUhShUIHVJEBTsQFjAAegQIBBAC&url=https%3A%2F%2Fwww.justiceinspectorates.gov.uk%2Fhmiprison%2Fwp-content%2Fuploads%2Fsites%2F4%2F2020%2F11%2FSanctions-protocol-2020-web.pdf&usg=AOvVaw0kq4BUOpavOV-6u0eBHOiG>

Annex A

HMI Prisons inspection data request for short term holding facilities⁴

Data is to be provided for the last full 12 months unless specified. Where plans or forms are requested, please provide copies of all completed in the last 12 months, or the last 20, whichever is lower.

Home Office

- The number of CIO age assessments of detained persons who said they were children; and the number who were assessed to be (i) adults (ii) children.
- The number of Children's Services age assessments; and the number of detained persons who were assessed to be (i) adults (ii) children.
- The number of child safeguarding referrals made to social services.
- The number of adult safeguarding referrals made to social services.
- The number of NRM referrals made.
- The number of detained persons determined to be adults at risk, at each of the three levels.
- Copies of all complaints.

Contractor (if not directly managed by Home Office)

- Logs for previous six months, and any collation of those logs, showing for each detained person:
 - Time of detention
 - Time of release
 - Age
 - Sex
 - Whether an accompanied child or unaccompanied child⁵.
- The number of times telephone interpretation has been used.
- Copies of incident reports, including the management reviews and comments.
- Copies of use of force reports completed, including line manager / assessor comments.
- Copies of suicide and self-harm warning forms opened.
- Copies of children's care plans completed.
- Copies of disability care plans completed.
- Copies of vulnerable adult care plans opened.
- Adult safeguarding policy.
- The number of modern slavery concerns raised with the Home Office.

⁴ While this list is intended to be reasonably comprehensive, additional data may be requested in some circumstances, e.g. if inspectors require information about a case that falls outside of the 12-month window. This list was up-to-date on 9 March 2021.

⁵ Wherever possible this information should be provided electronically.