

## **Memorandum of Understanding between the Independent Chief Inspector of Borders and Immigration and His Majesty's Chief Inspector of Prisons**

1. The purpose of this Memorandum of Understanding (MoU) is to set out a framework for the Independent Chief Inspector of Borders and Immigration (ICIBI) and His Majesty's Chief Inspector of Prisons (HMIP) to work together to perform their independent roles and separate functions as set out in the UK Borders Act 2007 and the Prison Act 1952 and the Immigration, Asylum and Nationality Act 2006.
2. The aim of this agreement is to put in place clear arrangements and practices that will foster an effective and co-operative working relationship between the ICIBI and HMIP.
3. The ICIBI and HMIP wish to operate in accordance with good practice and are therefore committed to cooperating and sharing knowledge and expertise to benefit their work inspecting and reporting in the immigration detention and prison estates, on interdependent areas and matters of common concern.

### **Responsibilities and remits of the ICIBI and HMIP**

4. 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 Border Force customs custody 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.
5. 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.
6. 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.
7. HMI Prisons is a designated member of, and coordinates, 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 | OHCHR](#), an international human rights treaty designed to strengthen the protection of people deprived of their liberty.
8. The Independent Chief Inspector of Borders and Immigration monitors and reports on the efficiency and effectiveness of the immigration, asylum, nationality and customs functions carried out by the Home Secretary and by officials and others on her behalf.

The Chief Inspector is a public appointee and independent from government, his reports are laid before Parliament.

9. The role of the Independent Chief Inspector of Borders and Immigration was established in section 48 of the UK Borders Act 2007. The Chief Inspector does not investigate individual cases but may consider or draw conclusions about an individual case for the purpose of, or in the context of, considering a general issue. Section 52(2) of the UK Borders Act 2007 enables the Chief Inspector to act jointly with prescribed persons where the Chief Inspector thinks it in the interests of the efficient and effective performance of the functions under section 48.
10. Section 48 (2A) of the UK Borders Act 2007 refers to immigration detention. It states that, unless directed to by the Secretary of State, the ICIBI shall not monitor or report on the exercise of 'functions at removal centres and short term holding facilities (and in pre-departure accommodation), and under escort arrangements, in so far as His Majesty's Chief Inspector of Prisons has functions under section 5A of the Prison Act 1952 in relation to such functions'.

### **Scope and purpose of the Memorandum of Understanding**

11. While the statutory responsibilities and remits of the ICIBI and HMIP are distinct, there are overlapping areas of interest and opportunities for the two inspectorates to co-operate, collaborate and communicate. This Memorandum of Understanding (MoU) sets out how the ICIBI and HMIP will manage this.
12. This MoU does not place any additional legal obligations on either party, nor does it imply any transfer of responsibility from one to the other or sharing of statutory functions. The ICIBI and HMIP will, at all times, work within their respective statutory frameworks.
13. This MoU is not exhaustive, and it will be supplemented by working protocols that will be drafted for specific joint inspections.

### **Principles**

14. The ICIBI and HMIP will ensure effective, efficient and legally compliant co-operation, collaboration and communication by:
  - Respecting each other's independent status and statutory obligations and boundaries
  - Keeping one another informed of plans and issues that may interest or affect the other inspectorate
  - Giving proper protection to any documents, information or data that is shared (by adhering to relevant statute(s), protective security policies and working practices). Both organisations will meet all legal and government requirements such as GDPR<sup>1</sup> for the protection of personal information, records and images accessed on inspection. Personal data shared between the two organisations will be kept for retention periods defined by the originating organisation and

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<sup>1</sup> [Data Protection Act 2018 \(legislation.gov.uk\)](https://legislation.gov.uk)

then destroyed in accordance with standard policy as defined by the organisations' Records Retention & Disposition Schedules.

#### **Areas for co-operation, collaboration and communications**

15. ICIBI and HMIP may co-operate, collaborate and communicate in relation to any matters, but the areas where this is most likely to be beneficial are in relation to inspection programmes, actual inspections where there is an identified shared or overlapping interest, and inspection practices.

#### Inspection programme

16. Annually, or more often if appropriate, ICIBI and HMIP will share their plans for future inspection activity, in so far as they are likely to be relevant to the other, with the aim of identifying opportunities for co-operation and collaboration. This will be done on an 'ICIBI/HMIP Eyes Only' basis, and nothing will be shared with the Home Office unless expressly agreed with the relevant Chief Inspector.
17. Communication may also be undertaken at a working level during inspections and at a more formal level during regular meetings between the Chief Inspectors.

#### Inspections

18. While ICIBI and HMIP may agree to co-operate and collaborate on any topic falling within their respective remits, the most likely area for this relates to immigration detention, where:
  - a. The ICIBI's focus is on the quality and consistency of Home Office decision-making, its handling of any immigration or asylum related applications or claims from or on behalf of a detainee, its provision of information, compliance with UK law about discrimination, and handling of complaints related to any of these matters; while,
  - b. HMIP's focus is on the treatment and conditions of detainees within places of immigration detention or under escort to which prison inspections may apply independently set expectations mapped against international human rights standards, which may differ from and may exceed Home Office requirements.
19. Where the inspectorates have agreed in principle to co-operate and/or collaborate on an inspection(s), the precise scope and form of this co-operation and/or collaboration will be subject to detailed planning, covering *inter alia* areas of foreseeable difficulty or conflict, and agreement on how these will be handled. If agreement is not possible at the planning stage, either inspectorate may decide not to proceed, but this will not prevent the other inspectorate from proceeding alone.
20. Written agreements to co-operate and/or collaborate on an inspection(s) will be jointly produced and will be signed off by the ICIBI and HMIP and will set out expectations and objectives, with particular reference to the methodology and publication schedules.
21. Due to the different statutory remits and arrangements for publication, it is not envisaged that the ICIBI and HMIP will produce joint inspection reports. The options for reporting are:

- a. A single report from one or other Chief Inspector that makes reference to the findings of the other inspectorate; or
  - b. Parallel/complementary reports from each Chief Inspector.
22. The ICIBI and HMIP will each retain full ownership of any report(s) published in their own name. For an ICIBI-owned report, findings cannot be shared publicly before the report is laid in Parliament by the Home Office. Where quoting directly the findings of the other inspectorate, the text will be cleared in draft with the relevant Chief Inspector. HMI Prisons and ICIBI will independently manage their own media relations but will ensure that media messages are joined up on occasions when both parties consider it advisable.

Inspection practices

23. The two inspectorates will seek opportunities to support one another in relation to inspection 'best practice', including sharing information about their methodologies, offering 'shadowing' opportunities, and short or longer-term secondments (subject to the relevant human resources processes), and undertaking joint training where appropriate.

**Review**

24. This MoU will be reviewed by the ICIBI and HMIP every two years, or at any time if requested by either party.



SIGNED

Chief Inspector of Borders and Immigration

DATE 2 November 2022



SIGNED

HM Chief Inspector of Prisons

DATE 24 October 2022