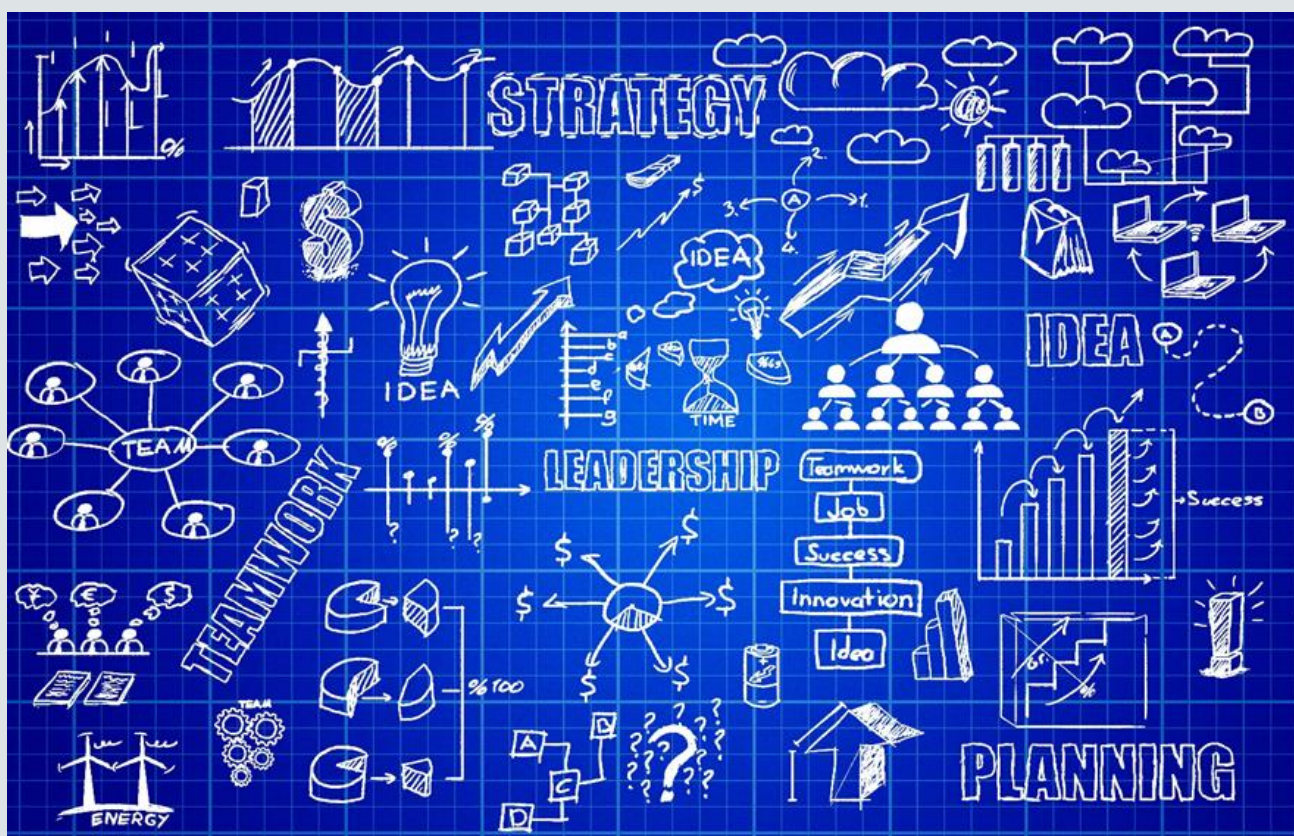


# OFFICE OF THE INSPECTOR OF PRISONS (OIP)

## REVIEW OF OPERATIONAL STRUCTURE AND RESOURCES

Final

5<sup>th</sup> December 2018



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# GLOSSARY

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AGS	An Garda Síochána	OPCAT	Optional Protocol to the Convention against Torture and Punishment
ALB	Arms-length Body	OPW	Office of Public works
CAT	Committee Against Torture	OSG	Operational Support Group
CJINI	Criminal Justice Inspectorate in Northern Ireland	PA	PA Consulting Services Ltd
CMS	Case Management System	POM	Preferred Operating Model
COM	Current Operating Model	PRILA	Prisons: the rule of law, accountability and rights (Research Project)
CPT	Committee for the Prevention of Torture	PSEC	Prison Service Escorts Corps
CSO	Civil Society Organization	SAI	Serious Adverse Incident
DES	Department for Education and Skills	SLA	Service Level Agreement
DiC(s)	Death(s) in Custody	SOP	Standard Operating Procedure
DJE	Department of Justice and Equality	SPT	Subcommittee on Prevention of Torture
ERG	Effectiveness & Renewal Group	TLAC	Top Level Appointments Committee
ETB	Education & Training Board	UN	United Nations
HIQA	Health Information and Quality Authority		
HMIP	Her Majesty's Inspector of Prisons		
HMIPS	Her Majesty's Inspector of Prisons for Scotland		
IAN	Immediate Action Notification		
ICPA	International Corrections & Prisons Association		
ICPR	Institute for Criminal Policy Research		
IHREC	Irish Human Rights and Equality Commission		
IPRT	Irish Penal Reform Trust		
IPS	Irish Prison Service		
IPSC	Irish Prison Service College		
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex		
MHC	Mental Health Commission		
NGO	Non-governmental organization		
NHRI	National Human Rights Institution		
NPM	National Preventive Mechanism		
OHCHR	UN Human Rights – Office of the High Commissioner		
OIP	Office of the Inspector of Prisons		

# EXECUTIVE SUMMARY (WITH RECOMMENDATIONS)

The new Inspector of Prisons Patricia Gilheaney was appointed in May 2018. PA Consulting Services Ltd (“PA”) was commissioned by the new Inspector to provide a view of the future organisation structure and resources moving forward that the Inspectorate would require in order to appropriately fulfil its statutory responsibilities, at the heart of which is the independent inspection of prisons.

Many observers agree that the Office of the Inspector of Prisons (“OIP”), in support of the Inspector’s statutory scrutiny role, has made a considerable positive impact on the Prison System in Ireland. It has published 128 reports including 90 in relation to investigations into Deaths in Custody (“DiCs”) plus a number of Inspection Reports. Its Thematic Report (2015) into the “Culture and Organisation” of the Irish Prison Service (“IPS”) was of particular note.

However, the initial conclusion from PA’s discovery work was that, looking forward, the **current Inspection and Investigation regime** within the existing OIP is **not fit for purpose** (a finding which does not detract from the good work done to date or the dedication of staff):

- ✗ **Only 3 prisons have been subject to a formal inspection (i.e. a report published) in the last 5 years** – the independent publication of a formal Inspection Report is recognised internationally (e.g. in UN guidance) as the core basic “good practice” metric of prison inspection regimes.
- ✗ **Half of the prison estate has not been formally inspected at all since the inception of the OIP 10 years ago** – staff provided assurances that all prisons had been visited multiple times in the course of various inspection, investigation and thematic report activities but the lack of formal Inspection Reports (and ideally an associated action plan published by IPS) means that the necessary openness, transparency and rigor is not properly evidenced.
- ✗ **No structured forward-looking programme of [announced and unannounced] inspections** – there is currently insufficient resource within the Office (and it is noted that the external Expert Panel has lapsed) to take on additional work over and above the investigations of DiCs which understandably have been prioritised
- ✗ **No repeatable processes with many ways of working not aligned to recognised international “good practice”** – there are some documented processes and checklists which, while undoubtedly valuable in themselves, are not sufficiently robust or comprehensive, and do not provide the basis of a repeatable inspection and investigation regime
- ✗ **Legal framework in the Prisons Act (2007) which lacks clarity and comprehensiveness** – the need to formalise the statutory remit, powers and protections of the Inspector of Prisons (and those to whom his/her authority is appropriately delegated) is an imperative and this was recognised by the previous Inspector and Acting Inspector.
- ✗ **Insufficient funding in its approved budget to meet its current staffing and resource expenditure** – this is an on-going issue with the Office and it is acknowledged that the previous [Acting] Inspector of Prisons had previously flagged this matter.

A key principle in organisation design is that “**Form follows Function**” and in developing a future Preferred Operating Model (“POM”) for the Inspectorate it is necessary to define the potential extent of its remit and then exploring options around how it should best be structured and resourced in order to fulfil this future role and responsibilities. In this report “OIP” is used in relation to its current form and “Inspectorate” is used in relation to the proposed future organisation. There were two aspects of the Inspectorate’s potential future role to consider:

## 1. Inspectorate’s role in the scrutiny of the prison system in Ireland

There are four broad complementary roles in the scrutiny of the prison system, over and above the policy and legislative framework set by the Department of Justice and Equality (“DJE”) and the operational governance provided by the Irish Prison Service (“IPS”):

Inspection	Monitoring	Investigations	Complaints
Periodic inspections of individual prisons, thematic issues and IPS functions	Regular unannounced visits to each prison to view conditions and speak to prisoners	Expert investigations into serious adverse incidents within prisons	Resolution of complaints that cannot be resolved within the scope of the internal complaints processes of the IPS

It is proposed that the future **Inspectorate has responsibility for the Inspection and Investigation scrutiny roles**, with investigations to include all Serious Adverse Incidents (“SAIs”) rather than just DiCs. Monitoring to be continued to be delivered independently by Visiting Committees with complaints handling by the Office of the Ombudsman.

## 2. Inspectorate’s potential role in a future National Preventive Mechanism (“NPM”) in Ireland

On ratification of OPCAT, the primary purpose of the introduction of an NPM is to provide inspection coverage for all places of detention. It is assumed that the NPM will be established as a virtual organisation comprising existing inspectorates in justice, health, defence and elsewhere. The Prisons Inspectorate will continue to have the lead role in inspecting those places of detention, across the prison estate, where individuals are most clearly and obviously deprived of their liberty. It is also proposed that the Inspectorate will also fulfil the NPM role with regards to those places of detention which fall under the remit of the DJE, including in addition to the prison estate, court cells, court and prison transports. In addition, it is suggested that DJE consider the remit of the Inspectorate to explore if it is best placed to fulfil the coordination role for the NPM, with the members of the NPM meeting on a regular (perhaps quarterly) basis to discuss shared legislative, policy and operational matters.

Therefore, it is proposed that the **Mission Statement** for the future Inspectorate should be:

***Supporting excellence in both delivery and outcomes in Ireland’s prisons  
[and other criminal justice places of detention]  
through an independent programme of inspections and investigations  
[and coordinating the National Preventive Mechanism]***

The **remit of the Inspectorate** should be increased on a phased basis:

Phases	Remit of Prison Inspectorate
<b>Core Responsibilities</b> <i>Focus on Irish Prison Service</i>	<u>Irish Prison Service (IPS)</u> <ul style="list-style-type: none"> <li>Prisons operated by IPS (12 prisons in Ireland)</li> <li>Headquarter and support functions within IPS</li> <li>IPS Training College (IPSC)</li> <li>Transport of prisoners operated by IPS (e.g. PSEC)</li> <li>Delivery of work within the IPS prison estate by partner organisations</li> <li>Community based schemes involving prisoners (e.g. Community Return Scheme and Community Support Scheme)</li> <li>Specific schemes led by IPS that impact on those external to the prison system (e.g. Irish Prison Service Victim Liaison Service)</li> <li>IPS contribution to wider cross-cutting initiatives working with other partner organisations to achieve agreed outcomes</li> <li>Prisoners, Staff, Visitors and other persons/organisations in contact with IPS</li> </ul>
<b>Extended Responsibilities</b> <i>All places of detention within remit of DJE</i>	<u>Courts Service</u> <ul style="list-style-type: none"> <li>Detention facilities within Court Estate</li> </ul> <u>An Garda Síochána (AGS)</u> <ul style="list-style-type: none"> <li>Transport of prisoners in vehicles operated by AGS (e.g. to/from courts and prisons and after arrest into An Garda police custody)</li> </ul>

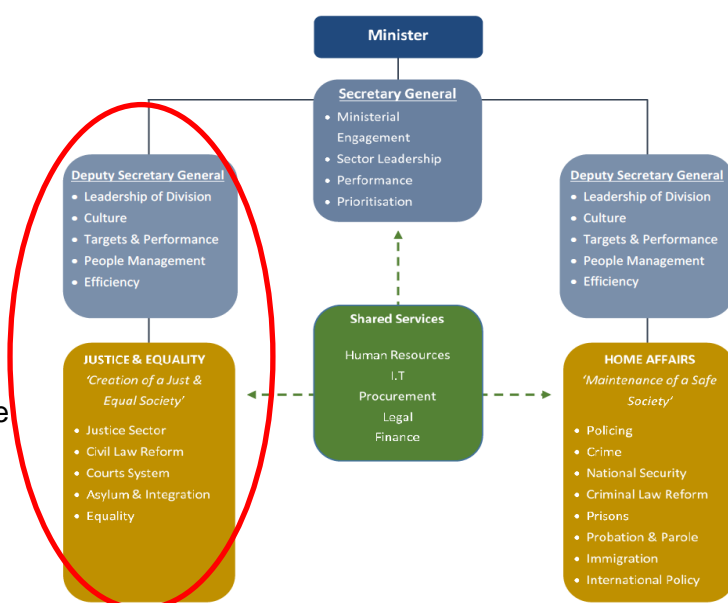


Phases	Remit of Prison Inspectorate
	<ul style="list-style-type: none"> <li>Detention facilities within AGS stations</li> </ul>
<b>National Preventive Mechanism</b> <i>Coordination of NPM delivery</i>	<ul style="list-style-type: none"> <li>Contact point for NPM in Ireland</li> <li>Coordination of NPM activities in Ireland <ul style="list-style-type: none"> <li>→ Internally – advice on standards, identification of good practice, knowledge sharing</li> <li>→ Externally – policy suggestions, awareness and educational activities</li> </ul> </li> </ul>

The Inspectorate should continue as a **discrete unit within the DJE**. The benefits of remaining in the Department outweigh any dis-benefits, including perceived independence issues which can be addressed through enhanced statutory powers and processes.

This unit should initially be called the **“Prisons Inspectorate”** (perhaps evolving to “Places of Detention Inspectorate” as its scope increases).

The Chief Inspector of Prisons should provide an **annual briefing to the Minister, Secretary General and the two Deputy Secretaries General on their work**. The Chief Inspector should also be able to raise any specific matter of concern to this grouping.



The on-going “day-to-day” relationship between the Inspectorate and the DJE should be through the Governance Unit in the Justice & Equality Division. This governance arrangement best reflects the role of the Inspectorate and provides appropriate independence from the Justice Directorate. There should be a nominated point of contact within this Governance Unit who acts as both a facilitator and a point of escalation for the Inspectorate in its dealing with the Department.

The performance review and objective setting for the Chief Inspector of Prisons should be conducted by the Deputy Secretary for Justice & Equality. This performance regime should fully respect the independence of the Chief Inspector’s role in inspecting prisons i.e. it should focus on the overall value for money provided by the OIP rather than the content of its individual reports.

The Inspectorate’s **future Preferred Operating Model (“POM”)** should have the following characteristics:

<b>Services and Statutory Powers</b>	Focus on Inspection and Investigation services – doing a smaller number of things very well
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The Inspectorate should deliver **three core services**:

1. Inspection of the management and operation of those places of detention that fall within its remit
2. Independent investigation of SAIs
3. Independent coordination and support of NPM in Ireland

**Enhanced legislative powers of and protections for the Chief Inspector of Prisons** and authorised persons, should be implemented providing, amongst other things:

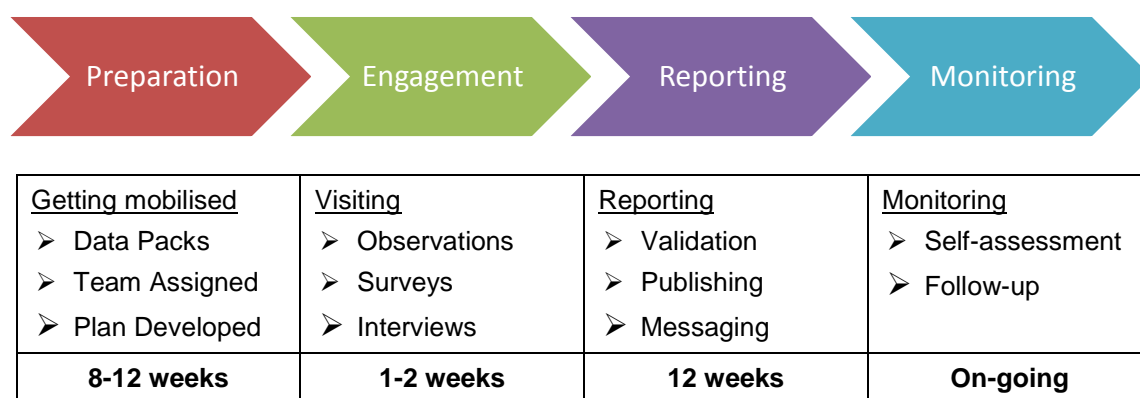
- Unimpeded and timely access to prisons, information, records, intelligence and individuals

- Prisoners, staff, visitors and others should be permitted to speak privately and confidentially to the Inspector of Prisons and nominated persons.
- The conduct of its function and publications of the Inspectorate should be privileged.
- Obstruction of the work of a Prison Inspector should be a criminal offence.
- The Inspectorate should have the statutory power to publish its reports directly i.e. without reference to or approval of any other party, including the Minister.

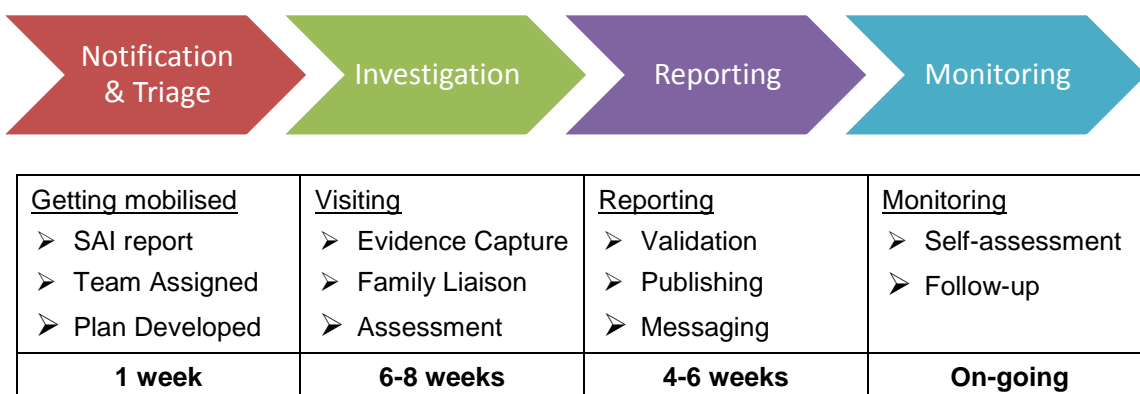
There should be an obligation on the IPS to inform the Inspectorate of the occurrence of an SAI. The Minister for Justice and Equality should also have the ability to request the Inspector of Prisons to investigate any matter in relation to the IPS and the operation of places of detention within its remit.

<b>Business Processes</b>	Implement enhanced operational processes in line with recognised “good practice” and international guidance
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A new **Inspection process** should be adopted i.e. fully documented and implemented:

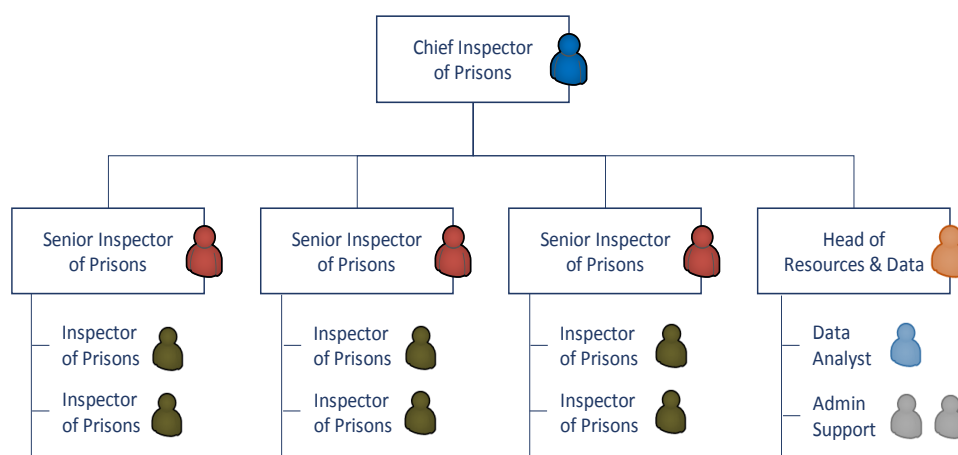


A new **Investigation process** should be adopted i.e. fully documented and implemented:



<b>People &amp; Skills</b>	Build the necessary internal capabilities and capacity, implement a new organisation structure
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The Inspectorate should be led by the “**Chief Inspector of Prisons**” (statutory role) who can delegate authority to “Senior Prison Inspectors” and “Prison Inspectors”.



In steady state there should be a **total of 14 staff within the Inspectorate, including 3 Senior inspectors at specialist Principal Officer grade** – one of the Senior Inspectors is already in post. These senior specialist posts should be recruited externally.

This proposed staffing complement and structure is designed to cover **the full future remit of the Inspectorate** (i.e. its core focus on the prison system, its [likely] future extended focus on those other places of criminal justice detention and its [potential] future role coordinating the NPM. Given the lack of information available on which to project future workloads, **these initial proposals must be kept under review and refined as necessary moving forward.**

The Inspectorate's internal staff should be augmented by an external Expert Panel of suitably qualified individuals who can support inspections and investigations in specific specialist subject matter areas. For example, an individual inspection of a prison is likely to involve an appropriate mix of Inspectorate staff, members of the Expert Panel and resources from Delivery Partner organisations (see below) and, potentially, resources from peer organisations in other jurisdictions.

#### Relationship with IPS and other partnerships

Develop collaborative relationships with both IPS and those organisations who can support service delivery

The Inspectorate should develop an ecosystem of partners and advisors:

Irish Prison Service (IPS)	Delivery Partners	Interested Parties	Peers in other jurisdictions	Academic and Advocacy
Obligations Education Validation of draft findings	e.g. HIQA, MHC Specialist inputs to inspections	e.g. Visiting Committees, Office of the Ombudsman Intelligence sharing	e.g. HMIP, HMIPS Resources Materials Insights	e.g. IPRT, PRILA Good practice insights Intelligence

The Chief Inspector of Prisons should also **develop and maintain international networks**, through which for good practice can be shared, such as the ICPA Expert Network on External Prison Oversight and Human Rights.

#### Technology and Data

Implement new technology solutions to support the effective planning and delivery of services

The Inspectorate should, subject to an approved business case, commission the development of:

- **Case Management System (CMS)** – to manage, access and report on information in relation to Inspections, Investigations and individual prisons



- **Intranet** – to share knowledge / intelligence and to provide access to tools, templates and reference materials and reference materials used by Inspectors
- **Internet** – to provide an external platform to both provide an overview of the Inspectorate's work, as well as access to Inspection processes and standards and published reports.

<b>Estate and Facilities</b>	Source appropriate secure accommodation in the Greater Dublin area that supports the work of the Inspectorate
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Prison Inspectorate should have an appropriate office in **Greater Dublin** area.

This future office space should:

Be secure and separate from other bodies (i.e. information should not be accessible by, or jointly stored with data from, other organisations)

Support the Inspectorate's ways of working, for example inspections, investigations and potentially private meetings with families (including those whose relatives died in custody)

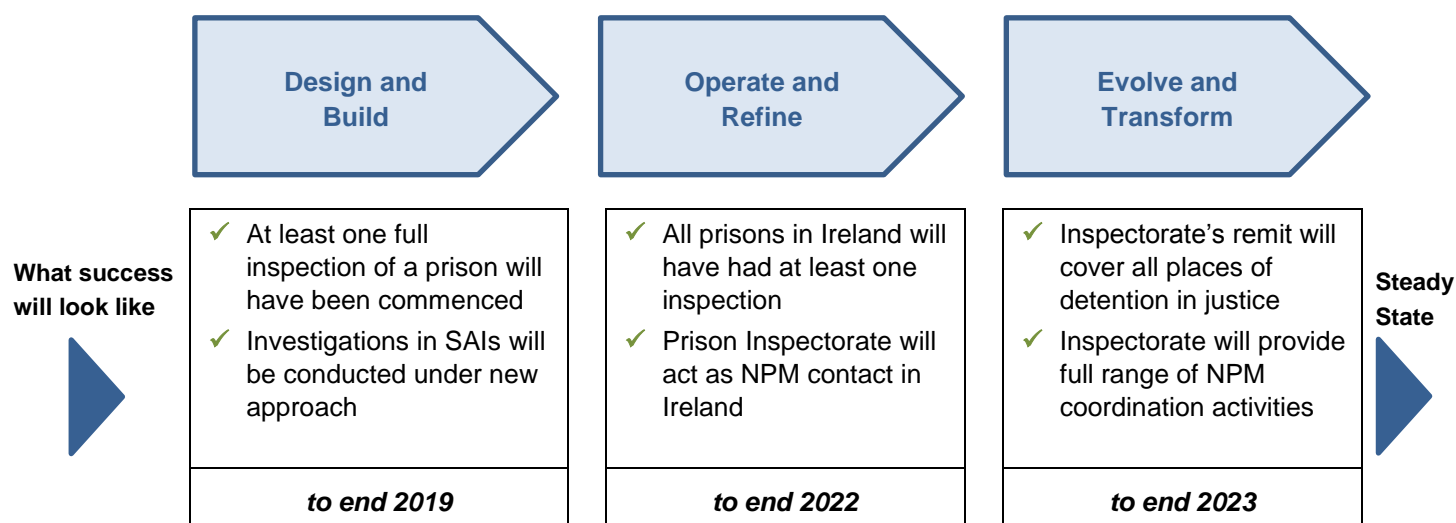
<b>Indicative Budget Implications</b>	Request increased budget for the future Inspectorate both through transformational and operational phases
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Sufficient budget should be allocated to enable the proposed transformation and operation of the renewed Inspectorate. It is envisaged that the significant areas of cost impact include:

Transformation Costs (up front)		Operation Costs (steady state)	
New technology systems	€1,000k	Staff (full complement)	€1,100k
Transformation Support	€250k	Expert Panel	€320k

These costs are indicative and not intended to be comprehensive, detailed estimates for the new Inspectorate (2019) have been developed separately. The capital investment costs are subject to approval of a detailed business case.

The **implementation of the renewed Inspectorate should be phased** i.e. there is no requirement to move directly and immediately to the full proposed "steady-state" POM. The proposed phasing is as follows:



Full resourcing of Inspectorate to be complete by end of 2021 (i.e. over next 3 years).

There is a significant amount of work to complete in Year 1 (2019) if a first full inspection of a prison under the new inspection regime is to be properly resourced and conducted by December 2019 [with the first inspection report of this new era completed in early 2020].

This first full inspection will be announced and conducted in a manner that supports collaborative learning with the IPS i.e. after this initial inspection all other prisons should be fully aware of how the new inspection regime will operate. This first inspection, which will hopefully commence in late 2019, **will be critical in setting both a new quality standard and a new tone** in the work of the renewed Prisons Inspectorate.

## Recommendations

The recommendations set out in this review are set out below.

Ref	Recommendation
<b>Role of the Inspectorate</b> <span style="float: right;"><i>See Section 2</i></span>	
1	<p><b>The future core role of the Inspectorate should be:</b></p> <ul style="list-style-type: none"> <li>• <b>Provision of a regime of independent inspections of prisons</b> operated by IPS, plus community-based schemes and support functions including Irish prison Service College (IPSC), Prison Service Escorts Corps (PSEC) and Operational Support Group (OSG)</li> <li>• <b>Conduct of investigations into SAIs in the prison system</b> (as defined in consultation with key stakeholders)</li> </ul> <p>The Monitoring function, delivered by local Visiting Committees, should remain separate from the Inspectorate although protocols around information sharing and coordination of activities should be agreed.</p> <p>Complaints by prisoners, staff, visitors and other persons coming into contact with IPS that cannot be resolved within the prison system should be adjudicated on by the Office of the Ombudsman. The Ombudsman should also have oversight of the operation of the complaints processes within the prison system.</p> <p>Rule 44 of the Irish Prison Rules should be amended to allow a Prisoner to communicate with the Office of the Ombudsman rather than the Inspectorate.</p>
2	<p><b>The DJE should consider extending the remit of the Inspectorate to include places of detention within the jurisdiction of both Courts Service and An Garda Síochána</b>, once (and only if) it has established a comprehensive and robust inspection regime in the prison system operated by IPS. The achievement of this “steady state” is likely to require a minimum of 2 years from the date of publication of this report and the initiation of the transformation that a renewed Inspectorate requires.</p> <p>This future extension of the Inspectorate’s remit may lead to the Inspectorate being renamed as the “Places of Detention Inspectorate” to reflect its broader scope.</p>
3	<p><b>The DJE should consider the Inspectorate filling the coordination role for the NPM in Ireland</b> (which it is assumed will be formed as a virtual organisation comprising the existing inspectorate bodies in justice, health, defence and elsewhere).</p> <p>This coordination role will involve working with other NPM members on, amongst other things:</p> <ul style="list-style-type: none"> <li>• Communication - Acting as a contact point for the SPT, CPT and OPCAT monitoring bodies, and communications with NPMs in other jurisdictions (there is already an active network of NPMs sharing information, insights and good practice learnings). It is envisaged that the NPM in Ireland will maintain regular contact with the SPT. This role will also involve disseminating NPM communications from external bodies to the Inspection bodies in Ireland’s NPM.</li> </ul>

Ref	Recommendation
	<ul style="list-style-type: none"> <li>• Reporting - Collecting and aggregating returns on visits (against NPM standards) from the inspection bodies that comprise the NPM in Ireland and submitting these returns to SPT.</li> <li>• Supporting - Working collectively to support any members of the NPM that require improvements to their inspection regime and processes, and/or addressing any short-term capacity issues.</li> <li>• Advising - Providing opinions, recommendations and proposals to the Government of Ireland on future legislative and policy changes in relation to places of detention</li> <li>• Educating - Conducting a programme of awareness and education events to both key stakeholders and the general public on the role of the NPM</li> </ul> <p>It is suggested that in this coordination role the Inspectorate will also lead the members of the NPM in the:</p> <ul style="list-style-type: none"> <li>• Conduct of quarterly meetings to discuss related matters (e.g. cross sectoral issues) and agree joint approaches on, for example, draft legislation. It is envisaged that the Inspectorate (in the form of the statutory role of the Chief Inspector) will chair the NPM.</li> <li>• Production of an Annual Report setting out the role and activities of the NPM in Ireland, setting out key findings and recommendations across all sectors</li> <li>• Contribution to related multi-jurisdictional reports compiled on/by NPMs globally.</li> </ul>
4	<p><b>In establishing the Inspectorate due consideration should be given to the UN stipulated standards and expectations of a future NPM in Ireland.</b> Even if such an NPM is not eventually established in Ireland (i.e. OPCAT is not ratified) these standards and expectations reflect internationally recognised good-practice for “places of detention” inspectorate bodies.</p>
5	<p><b>Delivering the full remit of the Inspectorate should be phased over the next three years.</b></p> <ul style="list-style-type: none"> <li>• Initial focus of the Inspectorate must be on the prison system in Ireland. There is a pressing need to build and maintain a robust regime of inspection and investigation on the 12 prisons and associated temporary release and community schemes operated by IPS. The Inspectorate should then focus on thematic and functional inspections of, for example, Headquarters and support functions and programmes, across the Irish Prison System.</li> </ul> <p>Only once this core function is appropriately addressed should the Inspectorate look to increase the scope of its inspection and investigation services.</p> <ul style="list-style-type: none"> <li>• The Inspectorate should aim to formally take on responsibility for all other places of detention within the jurisdiction of the DJE within the next 3 years. This will include detention facilities within court houses and An Garda police stations, as well as transport operated by the Courts Service and An Garda Síochána.</li> <li>• OIP should immediately take on the role of the contact point for the establishment and operation of the NPM in Ireland. The Inspectorate should only take on its proposed role coordinating the NPM once its core responsibilities of delivering inspection and investigatory services on the prison system in Ireland are properly established.</li> </ul> <p>All phases in this increasing remit are predicated on covering legislation and appropriate resourcing.</p>
6	<p><b>The stated values of the Inspectorate must be reflected in:</b></p> <ul style="list-style-type: none"> <li>• <b>Statutory powers</b> and how it applies these powers</li> </ul>

Ref	Recommendation
	<ul style="list-style-type: none"> <li>• <b>Processes</b> and ways of working</li> <li>• <b>Behaviours</b> of its staff (and delivery partners)</li> </ul>
<b>Services and Statutory Powers</b> <span style="float: right;"><i>See Section 3</i></span>	
7	<p><b>Inspectorate should develop a Services Catalogue</b> which sets out, amongst other things:</p> <ul style="list-style-type: none"> <li>• The services it will provide, and the purpose of these services</li> <li>• Nature of these services and the outputs that will be produced</li> <li>• The quality and timeliness standards it sets itself for the delivery of these services</li> </ul>
8	<p><b>Inspectorate should establish itself as an internationally recognised Centre of Excellence</b> for the inspection of places of detention. In this role it should offer insights and support to other organisations. It may apply a charge for these services.</p>
9	<p><b>The DJE should consider amending or replacing the 2007 Act with legislative provisions setting out more clearly the powers of the Inspector of Prisons</b> and persons authorised by the Inspector to carry out these functions on his or her behalf.</p> <p>These powers should include:</p> <ul style="list-style-type: none"> <li>• unimpeded access at any time to all prisons and offices of the IPS</li> <li>• access to all records, documents and data connected with the management and operation of a prison (or prisons, or the overall IPS) which the Inspector considers relevant</li> <li>• access to personal records, including medical records, with consent of prisoners or legal guardian/representative</li> <li>• in cases of DiC or on temporary release, access to personal and medical records without consent of any other party</li> <li>• the ability to interview privately those detained (prisoners) and those working within the prison (IPS staff, contractors and delivery partners)</li> </ul> <p>No enactment or rule of law prohibiting or restricting the disclosure, sharing or communication of information shall preclude a person from providing the Inspectorate any information or record that is deemed by it to be required for the purpose of carrying out its functions.</p>
10	<p><b>There should be an obligation on the IPS (and other authorities responsible for places of detention within the remit of the Inspectorate) to:</b></p> <ul style="list-style-type: none"> <li>• <b>inform the Inspectorate of the occurrence of an SAI</b> <ul style="list-style-type: none"> <li>→ this notification must be made for all SAI identified by the Inspectorate (as soon as is reasonably possible with a maximum of 24 hours)</li> <li>→ this notification must be made to the Inspectorate in a timely manner</li> <li>→ this notification must be in the format required by the Inspectorate</li> </ul> </li> <li>• <b>support the Inspectorate in the investigation of this SAI</b> <ul style="list-style-type: none"> <li>→ identification, gathering, provision and sharing of evidence in a timely, structured and professional manner</li> <li>→ ready access to prisoners, staff and managers involved in the SAI.</li> </ul> </li> </ul> <p>It is envisaged that the IPS will be asked to lead on a number (potentially the majority) of these investigations reporting their findings and recommendations back to the Inspectorate. The Inspectorate will review these findings and recommendations and may</p>

Ref	Recommendation
	<p>direct that further work is undertaken and/or the recommendations are refined. No recommendations arising from an Investigation into an SAI by the IPS (acting with delegated authority from the Inspectorate) may be progressed without the authoritative approval of the Inspectorate.</p> <p>The Inspectorate can take on the investigation of an SAI at any stage (even if it initially requested the IPS to progress this investigation).</p> <p>The Minister for Justice and Equality should also have the ability to request the Inspector of Prisons to investigate any matter in relation to the IPS and the operation of places of detention within its remit.</p> <p>The IPS may voluntarily refer a specific matter (not covered by the definition of SAIs) to the Minister with a recommendation that he requests the Inspectorate to conduct an independent investigation.</p>
11	<p><b>Obstruction of or undue influence on the Inspector of Prisons in the exercising of any of these powers should be a criminal offence.</b> Obstruction includes a failure to cooperate with the Inspectorate and attempting to unduly influence the work of the Inspector.</p> <p>Upon conviction this offence should be punishable by a custodial sentence and/or fine.</p> <p>In addition, for prison officers and other staff members of the IPS, it should be a disciplinary offence to obstruct the work of the Inspectorate.</p>
12	<p><b>The Inspectorate should have the statutory power to publish its reports directly</b> i.e. without reference to or approval of any other party, including the Minister.</p> <p>The Minister and senior Departmental officials should be provided with an indication of the likely publication date of a report from the Inspectorate. The Minister and DJE (plus other key stakeholders) in the sector should receive an embargoed copy of the report for information purposes at least one working week prior to publication.</p> <p>The Inspectorate will share draft inspection and investigation reports with the IPS as appropriate and in advance of publication in accordance with best practice. The sharing of such draft reports is to allow the IPS to both provide a factual accuracy check and to develop an action plan against the recommendations contained within that report. Ideally this action plan should be published at the same time (or shortly after) the relevant Inspectorate Report.</p> <p>The action plan (in response to the recommendations in an inspection or investigation report) should be published by the IPS, which “owns” the action plan in that it is responsible for the implementation of the [agreed] identified actions. It is envisaged that the Inspectorate’s web site would provide a link to the action plan (on the IPS website) along with the link to a particular inspection or investigation report, and vice versa.</p>
13	<p><b>There should be statutory protection for the integrity and confidentiality of the work of the Inspectorate</b> and for its ability to conduct its work including the publication of reports without negative consequential impact or legal action.</p> <p>The work in relation to inspections and investigations of the Inspectorate should not be subject to Freedom of Information.</p> <p>The conduct of its function and publications of the Inspectorate should be privileged. Specifically, the Chief Inspector of Prisons and designated inspection staff should have immunity, in respect of words spoken or written, or acts done, in the course of the performance of their statutory duties, set out in statute from:</p> <ul style="list-style-type: none"> <li>• personal arrest and detention</li> <li>• seizure of personal baggage</li> </ul>



Ref	Recommendation
	<ul style="list-style-type: none"> <li>• seizure or surveillance of papers and documents</li> <li>• legal action</li> </ul> <p>There should be a legally-enforced absence of interference with communication from/to the Chief Inspector and designated inspection staff (including those in partner organisations) during and after the exercise of their mandates.</p>
14	<p><b>Prisoners, staff, visitors and others should be permitted to speak privately and confidentially to the Chief Inspector of Prisons and nominated persons.</b></p> <p>There should be a statutory prohibition on ordering, applying, permitting or tolerating any sanctions against any persons or organisations for having communicated with the Inspectorate any information, whether true or false, and no such persons or organisations shall be otherwise prejudiced in any way.</p>
Capabilities – Programme of Inspections	
	See Section 4.2
15	<p><b>The Inspectorate should develop and maintain a future Inspection Programme.</b></p> <p>The annual Inspection Programme should provide at least six “full” General, Thematic and Functional inspection slots and four shorter-form “follow-up” inspection slots.</p> <p>At the core of this Inspection Programme should be a priority focus on the General Inspections of individual prisons.</p> <p>If particularly egregious problems have been identified in particular prisons, those prisons should be considered early follow-up inspection.</p> <p>If common difficulties are discovered across a number of prisons, then a thematic inspection on those difficulties can be considered.</p> <p>Thus, in addition to regular inspection, risk-driven inspection becomes the norm. Risk-based prioritisation subject to a minimum inspection cycle.</p> <p>An on-going self-assessment regime across each of the individual of prisons should be undertaken in parallel to the Inspectorate’s Inspection programme.</p> <p>The Inspection Programme should be confidential although it should be shared with delivery partners (see below) in order to coordinate availability of resources</p>
16	<p><b>Each prison should be inspected at least once in the next three years (i.e. 2019-2022) to establish a baseline of information for the Inspectorate.</b> This baseline can then be used to inform the approach to inspections in the next cycle for the Inspectorate.</p> <p>We share the strongly expressed view from stakeholders that it is essential for confidence in the new Inspectorate regime that a first prison General Inspection is conducted by the renewed Inspectorate’s team before the end of 2019.</p> <p>The Inspectorate should undertake a programme of engagement with the IPS and its delivery partners prior to this first inspection to help ensure awareness and understanding of the processes to be applied (and indeed such engagement should be an on-going characteristic of the Inspectorate’s relationship with the IPS).</p>
17	<p><b>The first General Inspection of a prison establishment under the Inspectorate’s new inspection regime should be announced.</b> Further, senior IPS officials from other prisons should be encouraged to shadow this initial inspection to understand both the process of inspection and the nature of future engagement by the Inspectorate.</p>
18	<p><b>The IPS Compliance Unit should provide self-assessment returns to the Chief Inspector of Prisons</b> (against the Inspection areas and assessment/scoring approach set out by the Inspectorate).</p>
Capabilities - Inspections	
	See Section 4.3

Ref	Recommendation
19	<p><b>The Inspection approach adopted by the Prison Inspectorate should initially focus on both:</b></p> <ul style="list-style-type: none"> <li>• <b>Outcomes</b> – the end results that the IPS is aiming to achieve, and the interim step outputs that indicate that these end results are likely to be achieved.</li> <li>• <b>Coverage &amp; Compliance</b> – the operational policies and procedures that the IPS has in place to deliver these outcomes, and the compliance by operational staff against these policies and procedures.</li> </ul> <p>This inspection approach should be reviewed over time with a view, as both the inspection and prison systems mature, to moving further towards a focus on enabling outcomes rather than ensuring compliance.</p>
20	<p><b>The Inspectorate should define those outcomes that it expects the IPS to deliver and the associated measures (with defined targets) for each.</b></p> <p>The Inspectorate should reflect on the operational outcomes and associated performance measures set by the IPS. There should be alignment between these Outcomes and the KPIs that Inspectorate use to assess, for example, the overall performance of Prisons and the Governing Governor within each Prison.</p>
21	<p><b>The Inspectorate should define those service delivery areas that it expects IPS to have up-to-date and comprehensive operational policies and Standard Operating Procedures (SOPs).</b></p> <p>These operational policies and SOPs should be clearly defined and accessible to IPS managers and staff. Managers and staff should be both aware of and trained in the policies and procedures that are relevant to the roles that they are fulfilling.</p> <p>Staff are expected to comply with IPS operational policies and SOPs and to record their compliance.</p>
22	<p><b>The inspectorate should develop a transparent rating system</b> which will be used to provide a summary assessment of the inspection of a prison establishment / IPS function.</p>
23	<p><b>The IPS should continue its on-going work to develop:</b></p> <ul style="list-style-type: none"> <li>• <b>Target outcomes and associated measures</b> for each prison (and for the overall prison system)</li> <li>• <b>Comprehensive operational policies and associated SOPs</b></li> <li>• <b>The overarching governance and compliance regime</b> which will manage and monitor adherence to both dimensions.</li> </ul> <p>The system-wide definition of these outcomes and policy / SOP Coverage &amp; Compliance must be completed by Autumn 2019 in order to support the conduct of the first General Inspection.</p> <p>The IPS should liaise with the Inspectorate in the development of these outcomes, policies and SOPs.</p> <p>This first General Inspection should be conducted by the end of December 2019 irrespective of whether the IPS delivers on this requirement.</p>
24	<p><b>The Prison Inspectorate's inspection and investigation processes should have appropriate due regard for the human rights of prisoners.</b> The human rights</p>

Ref	Recommendation
	<p>standards that underpin its core services should be in line with what is expected from an NPM.</p> <p>These human rights standards should be derived from both binding treaty law and authoritative standards including the newly revised UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the European Prison Rules.</p>
25	<p><b>The recommendations set out by the Inspectorate in its inspection reports will be evidence based and will relate to (as applicable):</b></p> <ul style="list-style-type: none"> <li>• <b>IPS Prison Management</b> (i.e. the Governor and the senior management team with a specific prison) in relation to issues within a particular prison such as, amongst other things: <ul style="list-style-type: none"> <li>→ relatively poor outcomes</li> <li>→ operation delivery and/or compliance issues</li> </ul> </li> <li>• <b>IPS Headquarters</b> (i.e. Director General and senior IPS management) in relation to thematic issues that potentially apply across more than one prison such as, amongst other things: <ul style="list-style-type: none"> <li>→ Maximising the realisation and value of desired outcomes</li> <li>→ Operational delivery issues and /or system-wide standard operating procedures</li> <li>→ Prison service wide operational policies and their implementation</li> </ul> </li> <li>• <b>DJE</b> <ul style="list-style-type: none"> <li>→ Overarching prison policy and legislation</li> </ul> </li> </ul>
<b>Capabilities - Investigations</b> <span style="float: right;"><i>See Section 4.4</i></span>	
26	<p><b>The recommendations set out by the Inspectorate in its investigation reports will be evidence based and will relate to (as applicable):</b></p> <ul style="list-style-type: none"> <li>• <b>Individual officers in relation to lack of performance of their duties</b> to a level that suggests that disciplinary proceedings by IPS should be initiated</li> </ul> <p>Individuals will not be identifiable within the published investigation reports.</p> <ul style="list-style-type: none"> <li>• <b>IPS Prison Management</b> (i.e. the Governor and the senior management team with a specific prison) in relation to issues within a particular prison such as, amongst other things operational delivery and/or compliance issues</li> <li>• <b>IPS Headquarters</b> (i.e. Director General and Senior IPS management) in relation to thematic issues that potentially apply across more than one prison such as, amongst other things: <ul style="list-style-type: none"> <li>→ Operational delivery issues and /or system-wide standard operating procedures</li> <li>→ Prison service wide operational policies and their implementation</li> </ul> </li> <li>• <b>DJE</b> <ul style="list-style-type: none"> <li>→ Overarching prison policy and legislation</li> </ul> </li> </ul>
<b>Capabilities – Transparency and Publication of Reports</b> <span style="float: right;"><i>See Section 4.5</i></span>	
27	<p><b>Inspectorate should publish (online) its:</b></p> <ul style="list-style-type: none"> <li>• Inspection and investigation <b>processes</b></li> <li>• <b>Standards</b> (and associated measures) that reflect its expectations</li> <li>• <b>Rating system used</b> to summarise Inspection findings.</li> </ul>
28	<p><b>Inspectorate will publish (inspection and investigation) reports:</b></p>

Ref	Recommendation
	<ul style="list-style-type: none"> <li>• on behalf of the statutory role of the Chief Inspector of Prisons.</li> <li>• directly both in hardcopy (limited numbers) and electronically on their website.</li> </ul> <p>The Inspectorate will issue an embargoed press release prior to publication and will support the publication of reports with an appropriate level of public relations activity e.g. media statements and interviews.</p> <p>In publishing a report publicly, the Inspector of Prisons may exclude a part of a report from the copy so published if, in his opinion, the publication of the part:</p> <ul style="list-style-type: none"> <li>• would be against the public interest, or</li> <li>• might jeopardise criminal investigation or prosecution against any person or organisation;</li> <li>• might jeopardise the safety of any person.</li> </ul> <p>The Chief Inspector may seek the advice of the legal shared service function within DJE and/or the Attorney General (or indeed if appropriate external legal advice) in respect of such matters.</p> <p>The Inspectorate will maintain a history of all published reports on its website.</p>
<b>Capabilities – People &amp; Skills</b>	
29	<p><b>The statutory role should be renamed as Chief Inspector of Prisons.</b></p> <p><b>The Inspectorate should be comprised of four teams covering inspection, investigation and support:</b></p> <ul style="list-style-type: none"> <li>• 3 teams of inspectors (each with a Senior Inspector and two Inspectors) – 2 teams focused on inspections and 1 team focused on investigations</li> <li>• 1 team to ensure that Inspection and Investigation teams have the necessary resources and data to deliver their services efficiently and effectively.</li> </ul> <p>Senior Inspectors of Prisons posts should be recruited externally (note that one Senior Inspector post is already filled) while Inspector and administrative support posts can be initially recruited internally within the Civil Service.</p> <p>Overall the Inspectorate should have a staff complement of 14 FTEs in steady-state. There can be phased growth over the initial period to reach this steady-state i.e. not all roles are needed immediately.</p>
30	<p><b>The Inspectorate should build and maintain an Expert Panel whose individuals can support inspection and investigation activities.</b> Individuals on this Expert Panel will be paid a per diem plus travel and subsistence expenses. Individuals will be required to commit to a minimum of days per annum with flexibility to take on additional days as required.</p> <p>Individuals should be appointed to this panel on merit against specific skillsets that complement those within the Inspectorate. Individuals should be appointed to this Expert Panel for an initial three-year term. Individuals should be provided with formal induction into their roles on the Panel.</p>
31	<p><b>In the initial period of the new inspection and investigation regime, the Inspectorate should not use staff on secondment from the IPS to fulfil key roles,</b> including those of Senior Inspector and Inspector. This approach should be reviewed after an initial 3-year period, when all prisons have been subject to at least one General Inspection.</p> <p>The Inspectorate should also closely consider, on a case by case basis, how much value in terms of “good practice” insights recently retired IPS officers can bring to the</p>

Ref	Recommendation
	Inspectorate and its Expert Panel against any perceptions of an impingement on the independence of the Inspectorate.
32	<p><b>The Inspectorate should develop specific SLAs with the relevant supporting shared services functions within the Department (and the OPW) to ensure that it receives the necessary expert assistance and guidance.</b></p> <p>In addition to accessing the services of the DJE's legal function, the Inspectorate may also request the advices of the Attorney General's office in relation to any aspect of its work. The Chief Inspector may also wish to seek external legal opinion if, for example, an independent perspective is required. However, it is recommended that the IPS and the Inspectorate should aim to work collaboratively on key legal issues i.e. make a joint approach to DJE's legal function or the Attorney General's office on shared matters of interest e.g. access to specific information.</p>
33	<p><b>The Inspectorate should commission external suppliers to provide specific capabilities that it does not require (or does not have the scale) to maintain internally</b>, for example:</p> <ul style="list-style-type: none"> <li>• Public Relations</li> <li>• Report Design and Publication.</li> </ul>
<b>Capabilities – Relationship with IPS and other Partnerships</b> <span style="float: right;"><i>See Section 4.7</i></span>	
34	<p><b>Inspectorate and IPS should work collaboratively</b> on, amongst other things:</p> <ul style="list-style-type: none"> <li>• On-going education and awareness of the role and approach of the Inspectorate to IPS managers and staff – examples may range from quarterly briefing to IPS senior managers through to briefing at the IPS induction of new employees</li> <li>• IPS informing the Inspectorate of material changes to operational policies and/or standard operating procedures and/or operational initiatives</li> <li>• IPS consulting with Inspectorate on significant changes to operational policies and/or standard operating procedures and/or operational initiatives. The Inspectorate's participation in such a consultation does not impinge on the independence of its inspection and investigation roles.</li> <li>• Sharing insights and good practice examples gained, for example, through their own international networks</li> </ul>
35	<p><b>In support of the work of the Inspectorate, IPS should be obliged to:</b></p> <ul style="list-style-type: none"> <li>• <b>share information</b> required by the Inspectorate in a timely manner in the format and structure requested by the Inspector of Prisons</li> <li>• <b>ensure immediate access</b> for Inspectors to prisons and other IPS locations, subject to reasonable security and administrative activities</li> <li>• <b>conduct self-assessment of its own performance</b> against an agreed performance regime</li> <li>• <b>review draft reports in a timely and comprehensive manner</b>, providing feedback within timescales required</li> <li>• <b>develop Action Plans</b> in relation to inspection and investigation reports.</li> </ul> <p>These obligations should also fully apply to any organisation working with the IPS in the delivery of its services in prisons and within its Headquarter functions.</p> <p>It is the responsibility of the IPS to ensure that all staff and delivery partner organisations are aware of these statutory obligations to comply with the Prisons Inspectorate through a programme of training and education.</p>



Ref	Recommendation
	An appropriate SLA should be developed between the Inspectorate and IPS.
36	<p><b>The Inspectorate should develop an ecosystem of partner organisations through a range of formal and informal arrangements</b>, including:</p> <ul style="list-style-type: none"> <li>• Delivery Partners such as HIQA, MHC, DES and IHREC;</li> <li>• Interested parties who can provide insights to specific prison establishments such as Visiting Committees and Prison Chaplains;</li> <li>• Peer organisation in other jurisdictions who would be willing to support the Inspectorate through “mutual aid” arrangements; and</li> <li>• Academic and advocacy organisations such as IPRT and PRILA, creating an informal advisory ecosystem for the Chief Inspector as well as providing insights and perspectives on “good practice” in other jurisdictions.</li> </ul>
37	The Inspectorate, primarily through the person of the Chief Inspector, should play an <b>active role in driving international standards and approaches through participation in representative and network organisations</b> e.g. Expert Network on External Prison Oversight and Human Rights.
<b>Capabilities – Technology &amp; Data</b> <span style="float: right;"><i>See Section 4.8</i></span>	
38	<p><b>The Inspectorate should develop user requirements and an associated business case to support the procurement / development of its core systems</b>, including:</p> <ul style="list-style-type: none"> <li>• Case Management System</li> <li>• Internet Website</li> <li>• Intranet / knowledge sharing platform</li> </ul>
<b>Capabilities – Estate and Facilities</b> <span style="float: right;"><i>See Section 4.9</i></span>	
39	<p><b>Prison Inspectorate should have an appropriate office in Greater Dublin area.</b> This office space should:</p> <ul style="list-style-type: none"> <li>• Be secure and separate from other bodies</li> <li>• Support the Inspectorate’s ways of working, for example inspections, investigations and potentially private meetings with families (including those whose relatives died in custody)</li> </ul>
<b>Capabilities – Organisation Status and Governance</b> <span style="float: right;"><i>See Section 4.10</i></span>	
40	<p><b>The Inspectorate should continue to exist as a discrete function within the Department of Justice and Equality</b> with the members of this function supporting the work of the enhanced statutory role of the Chief Inspector of Prisons.</p> <p>This function should now be renamed “Prisons Inspectorate (Ireland)”, perhaps evolving to “Places of Detention Inspectorate” as its scope increases.</p> <p>In the future, if the remit of this function is increased, it should then be renamed “Inspectorate for Places of Detention (Ireland)” with the statutory role renamed as “Chief Inspector of Places of Detention”.</p>
41	<b>Recruitment to the [specialist] Senior Inspector roles should be subject to open external recruitment.</b> The ultimate decision to appoint to these roles should be made by the Chief Inspector of Prisons, in line with public sector recruitment guidelines.
42	<b>The on-going day-to-day relationship between the Inspectorate and the DJE should be through the Governance Unit in the Justice &amp; Equality Division.</b> There should be

Ref	Recommendation
	a nominated point of contact within this Governance Unit who acts as both a facilitator and a point of escalation for the Inspectorate in its dealing with the Department.
43	<p><b>The Chief Inspector of Prisons should provide appropriate updates on their work to the Minister, Secretary General and the two divisional Deputy Secretaries General</b> including:</p> <ul style="list-style-type: none"> <li>• Notification of the publication of reports</li> <li>• Notification of any serious issues that the Inspectorate has identified, including any Immediate Action Notifications which the Inspectorate has raised</li> <li>• Formal annual briefing on the work of the Inspectorate.</li> </ul>
44	<p><b>Performance Management of the Chief Inspector of Prisons should be conducted by the Deputy Secretary of the Justice &amp; Equality Division within DJE.</b></p> <p>This Performance Management regime should be focused on value for money that the Inspectorate provides, illustrated by the frequency and timeliness of published inspection and investigation reports. In order to reflect the independence of the role of the Chief Inspector of Prisons, this performance management regime should exclude any consideration of the nature of Inspectorate reports or inspection and investigation activities.</p> <p>In this context, the Chief Inspector of Prisons should only be dismissed by the Minister of Justice &amp; Equality (at the formal request of the Secretary General) for gross misconduct likely to bring the statutory role into disrepute or their inability to perform this role, as reflected in a level of Inspection and Investigation activity that is unacceptable.</p>
<b>Capabilities – Indicative Budget Implications</b> <span style="float: right;"><i>See Section 4.11</i></span>	
45	<b>Sufficient budget should be made available to the Chief Inspector of Prisons</b> to enable the full and quality delivery of services required in order to fulfil its statutory obligations.
<b>Roadmap</b> <span style="float: right;"><i>See Section 5</i></span>	
46	<p><b>A phased implementation plan (over the next five years) should be adopted</b> in order to deliver the future POM for the Prisons Inspectorate. The ambitions for the Inspectorate should be:</p> <p><u>By the end of 2019</u></p> <ul style="list-style-type: none"> <li>• At least one full inspection of a prison will have been commenced</li> <li>• Investigations in SAIs will be conducted under new approach</li> </ul> <p><u>By the end of 2022</u></p> <ul style="list-style-type: none"> <li>• All prisons in Ireland will have had at least one inspection</li> <li>• Prison Inspectorate will act as NPM contact in Ireland</li> </ul> <p><u>By the end of 2023</u></p> <ul style="list-style-type: none"> <li>• Inspectorate's remit will cover all places of detention in justice</li> <li>• Inspectorate may provide full range of NPM coordination activities</li> </ul> <p>Full resourcing of the Inspectorate (i.e. all posts in recommended future staffing complement filled) should be complete by 2021 i.e. by end of Year 3.</p>
47	<p><b>A detailed Phase 1 implementation plan should be developed setting out the necessary actions to be progressed in all component areas of the POM</b> i.e. the actions required to support the outcome objectives for Phase 1.</p> <p>This plan should set out, inter alia:</p>

Ref	Recommendation
	<ul style="list-style-type: none"> <li>• Actions with descriptions and durations</li> <li>• Start and end dates with dependencies</li> <li>• Roles and responsibilities</li> </ul> <p>Phase 1 progress should be tracked against this baseline plan.</p> <p>A risk and issue log (setting out agreed mitigation actions) should be developed and maintained.</p>
48	<p><b>The detailed preparations for the first General Inspection of a prison should be completed.</b></p> <p>This first inspection will be announced and will be supported by an education and awareness campaign by the Inspectorate working with the IPS.</p>
49	<p>The Inspectorate should continue, through Phase 1, to <b>progress a number of the necessary long-term enablers of the POM, including design, build and implementation of suitable technology solutions</b> and its on-going engagement internationally.</p>

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# 1 INTRODUCTION AND APPROACH

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## 1.1 Introduction

- 1.1.1 In July 2018, PA Consulting Services Limited (“PA”) was commissioned by the Office of the Inspector of Prisons (“OIP” in relation to its current form or “Inspectorate” in relation to the proposed future organisation) in Ireland to conduct a review of its operational structure and resources, developing a preferred operating model for the Office moving forward.
- 1.1.2 The Inspector of Prisons is a statutory, independent role established pursuant to the Prisons Act 2007 (“the Act”).
- 1.1.3 The key role assigned to the Inspector is to carry out regular inspections of the 12 prisons in Ireland operated by the Irish Prison Service (“IPS”) and to present report(s) on each institution inspected as well as an Annual Report to the Minister for Justice and Equality for laying before the Houses of the Oireachtas and for publication.
- 1.1.4 The Inspector may, and shall if so requested by the Minister, investigate any matter arising out of the management or operation of a prison and shall submit to the Minister a report of any such investigation. The Inspector of Prisons also investigates the circumstances surrounding the deaths of prisoners in custody and/or temporary release from custody. The Inspector of Prisons currently has oversight of the Prisoner Complaints Procedure.
- 1.1.5 Judge Michael Reilly was the first person to fill the statutory role of Inspector of Prisons in 2008. Judge Reilly guided the OIP through its initial years and led the production of a portfolio of early Inspection and Thematic reports which represented a step-change in the formal scrutiny of the Irish Prison Service.
- 1.1.6 Many observers agree that the OIP, in support of the Inspector’s statutory scrutiny role, has made a considerable positive impact on the Prison System in Ireland. It has published 128 reports including 90 in relation to investigations into DiCs plus a number of Inspection Reports. Its Thematic Report (2015) into the “Culture and Organisation” of the Irish Prison Service (“IPS”) was of particular note.
- 1.1.7 The untimely death of Judge Reilly in post in November 2016 left the OIP without both a voice and direction at that very senior level. The OIP, with minimal staff levels (effectively just two resources with even some level of inspection and investigation experience and expertise), has since struggled to keep up with the volume of work that it faced, albeit that the good work of the Acting Inspector during this period should be noted.
- 1.1.8 Ms Patricia Gilheaney was recently appointed, effective from 7 May 2018, as the new Inspector of Prisons. The new Inspector of Prisons will lead the Inspectorate as it now seeks to deliver a step-change in its performance as it seeks to introduce a robust programme of work, defined processes and formal protocols with delivery partners, all supported with an appropriate level of resource.



## 1.2 Scope and Purpose of this Review

1.2.1 The overall scope of this review was to:

**“prepare a detailed plan for the continued operation of the Office of the Inspector of Prisons and also support further development, including organisation chart, supporting business processes, management controls and risk management. Identification of resources and supporting ICT infrastructure is also required.”**

1.2.2 The specific objectives of this review are to:

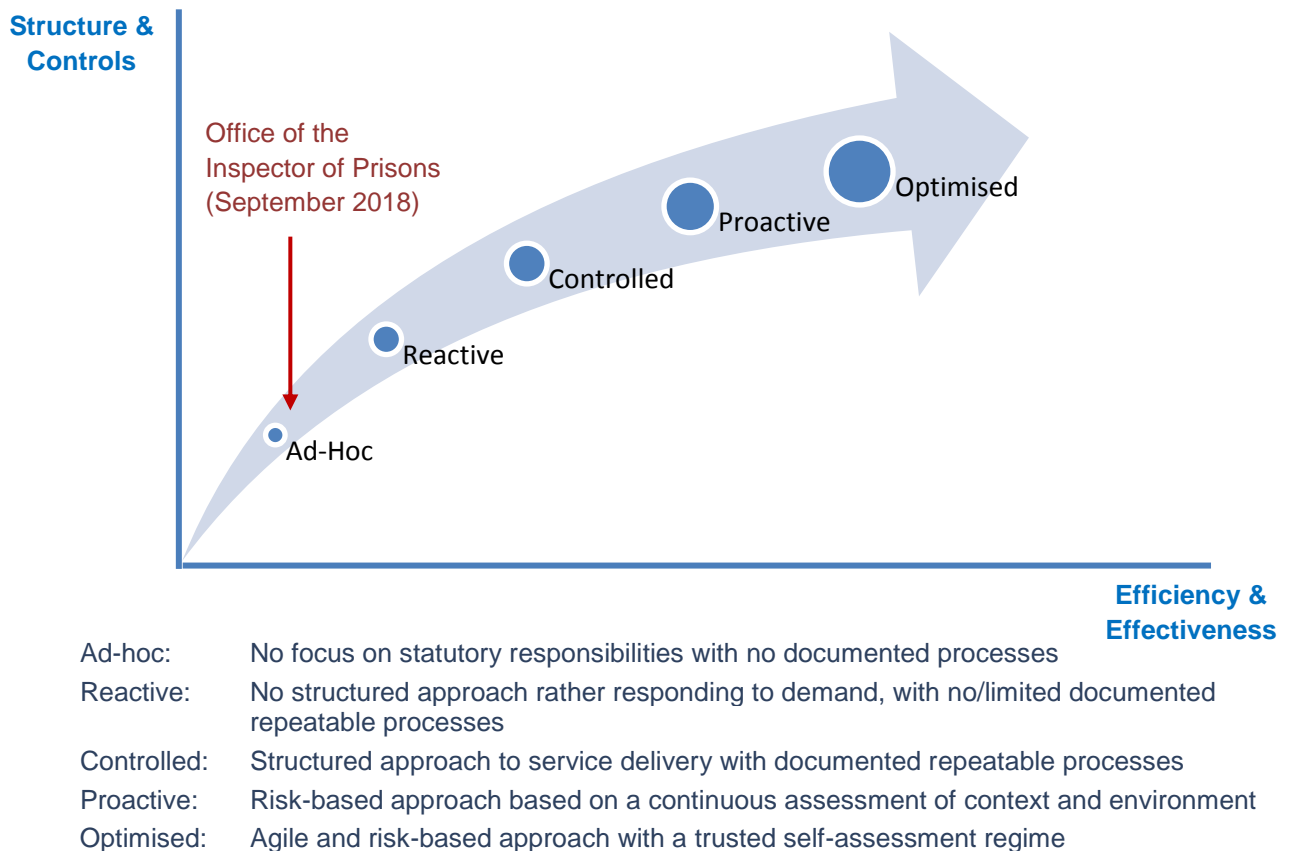
- To assess the current structure and operating model in the Office of the Inspector of Prisons and its fitness for purpose.
- Assess potential options.
- Arrive at a Preferred Operating Model (POM).
- Evaluation of the POM.
- Identify barriers to implementation.
- Review the current operation of the office of the Inspector of Prisons to include end to end business processes for Inspections, Oversight of Complaints, and Reviews of DiCs or on Temporary Release.
- Identify suitable operating models to include pros and cons and associated risks and identify a preferred operating model and associated business case.
- Operating models to include the range of resources required and associated costs on a once off and per annum basis, in years 1-5.
- When identifying the operating model, cognisance should be taken for opportunities for collaboration with other regulatory / inspection bodies – with the aim of harnessing required expertise both internal and external to the office of the Inspector of Prisons.
- Development of a focussed operating model and supporting business processes for the statutory functions of the OIP and management of administrative support functions.

1.2.3 It was agreed during the initiation of the review that the greatest value would be delivered by focussing on developing a clear vision and purpose for the Inspectorate and a blueprint for its future organisation and operation. The review is forward looking, building on lessons learned from within the organisation and making sure the Inspectorate is fit for its future purpose.

1.2.4 In the tender document for this review, it was stated that *the “Department of Justice and Equality is currently reviewing the Inspector’s Statutory remit with the aim of enabling Ireland to ratify the Optional Protocol to the Convention Against Torture (OPCAT). This review may result in the expansion of the Inspector’s role in the medium term to include inspections of other places of detention, such as prison transport and Garda detention cells.”*

## 1.3 Context and Strategic Drivers

- 1.3.1 All organisations are continually in a process of evolution of their operating models and growth in maturity of business processes. For Inspectorate organisations, this maturity curve can be summarised as follows:



- 1.3.2 The context for this Review is a current OIP organisation that the Review Team has assessed as being somewhere between Ad-hoc and Reactive. This assessment is not intended to reflect negatively on the current staff within the OIP. Indeed, their dedication and contribution over this recent difficult period is to be acknowledged.

- 1.3.3 This high-level assessment of a relatively immature organisation – one that is not currently fulfilling its primary statutory role in line with recognised international good practice - is evidenced by, amongst other things:
- ✗ **Only 3 prisons have been subject to a formal inspection (i.e. a report published) in the last 5 years** – the independent publication of a formal inspection report is recognised internationally (e.g. in UN guidance) as the core basic “good practice” metric of prison inspection regimes.
  - ✗ **Half of the prison estate has not been formally inspected at all since the inception of the OIP 10 years ago** – staff provided assurances that all prisons had been visited multiple times in the course of various inspection, investigation and thematic report activities but the lack of formal Inspection Reports (and ideally an associated Action Plan published by IPS) means that the necessary openness, transparency and rigor is not properly evidenced.
  - ✗ **No structured forward-looking programme of [announced and unannounced] inspections** – there is currently insufficient resource within the Office (and it is noted that the external Expert Panel has lapsed) to take on additional work over and above the investigations of DiCs which understandably have been prioritised

- ✗ **No repeatable processes with many ways of working not aligned to recognised international “good practice”** – there are some documented processes and checklists which, while undoubtedly valuable in themselves, are not sufficiently robust or comprehensive, and do not provide the basis of a repeatable inspection and investigation regime
- ✗ **Legal framework in the Prisons Act (2007) which lacks clarity and comprehensiveness** – the need to formalise the statutory remit, powers and protections of the Inspector of Prisons (and those to whom his/her authority is appropriately delegated) was recognised by the previous Inspector and Acting Inspector.
- ✗ **Insufficient funding in its approved budget to meet its current staffing and resource expenditure** – this is an on-going issue with the Office and it is acknowledged that the previous [Acting] Inspector of Prisons had previously flagged this matter.

1.3.4 Consequently, the initial conclusion from PA’s discovery work was that, looking forward, the **current Inspection and Investigation regime** within the existing OIP is **not fit for purpose** (a finding which does not detract from the good work done to date or the dedication of staff):

1.3.5 The appointment of a new Inspector of Prisons in May 2017 provides **the opportunity for a step-change in the performance of the Inspectorate**. The new Inspector comes from a professional inspection background and has clearly stated her intention to drive development of:

- A comprehensive and on-going programme of inspections across the prison system
- Robust and repeatable business processes which adhere to recognised international “good practice”
- Ecosystem of expert delivery partners and advisors
- Properly resourced Inspectorate which contributes to better outcomes from prisons, for prisoners, staff, visitors and society in general.

1.3.6 The key strategic drivers for developing a robust and sustainable organisation structure and resourcing allocation for the Inspectorate are:

## **1. Need for a robust regime for the inspection of prisons in Ireland**

There was widespread agreement across all stakeholders that the core responsibility of the Inspectorate must be focused on the delivery of a comprehensive programme of inspections across the prison system. These inspections need to be:

- primarily unannounced (although there was recognition that some inspections may benefit from being announced e.g. inspections in specific thematic areas)
- enabled by a robust and comprehensive set of statutory powers that provide the Inspectorate with the ability to access all areas of the prison system as well as documents, information and people
- supported by a core team of professional inspectors within the Inspectorate who will in turn be supported by experts from both a panel of individuals (maintained by the Inspectorate) with specific knowledge and capabilities and from partner organisations bringing specialist knowledge of inspections in, for example, health and education

All prison inspections will contribute to Ireland’s response to its international obligations under the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) – see below.

## 2. Optional Protocol to the Convention Against Torture (OPCAT)

OPCAT requires that all places of detention are visited regularly by independent bodies – known as the National Preventive Mechanism (NPM) – which monitor the treatment of and conditions for detainees.

In July 2018, the Minister for Justice and Equality told the Dáil that the Department was preparing an Inspection of Places of Detention Bill “*with a view to enabling the ratification of OPCAT as soon as possible*” and that following stakeholder consultations, a meeting had been arranged with the Inspector “*to discuss the future role of the Inspector’s Office as part of the implementation. This engagement will inform the development of the draft Inspection of Places of Detention Bill to enable ratification of OPCAT. My intention is that the draft Scheme will be finalised in the Autumn so that I can bring it to Government before the end of the year.*” The ratification of OPCAT and the establishment of a NPM was therefore a major driver in this review and became a focus of our engagement with the overwhelming majority of the stakeholders we consulted with. While we have made a series of recommendations that are not dependent on the ratification of OPCAT, it is self-evident that the good practice developed in relation to OPCAT should inform the future development of the future Inspectorate.

### What is OPCAT?

OPCAT was adopted by the United Nations General Assembly in 2002. It reflected a consensus among the international community that those deprived of their liberty are particularly vulnerable to ill-treatment and that greater efforts are needed to prevent such ill-treatment from occurring. It entered into force in 2006. It is an unusual treaty which seeks to assist States in the prevention of torture and ill-treatment. As of January 2018, the Protocol has 75 signatories and 87 parties.

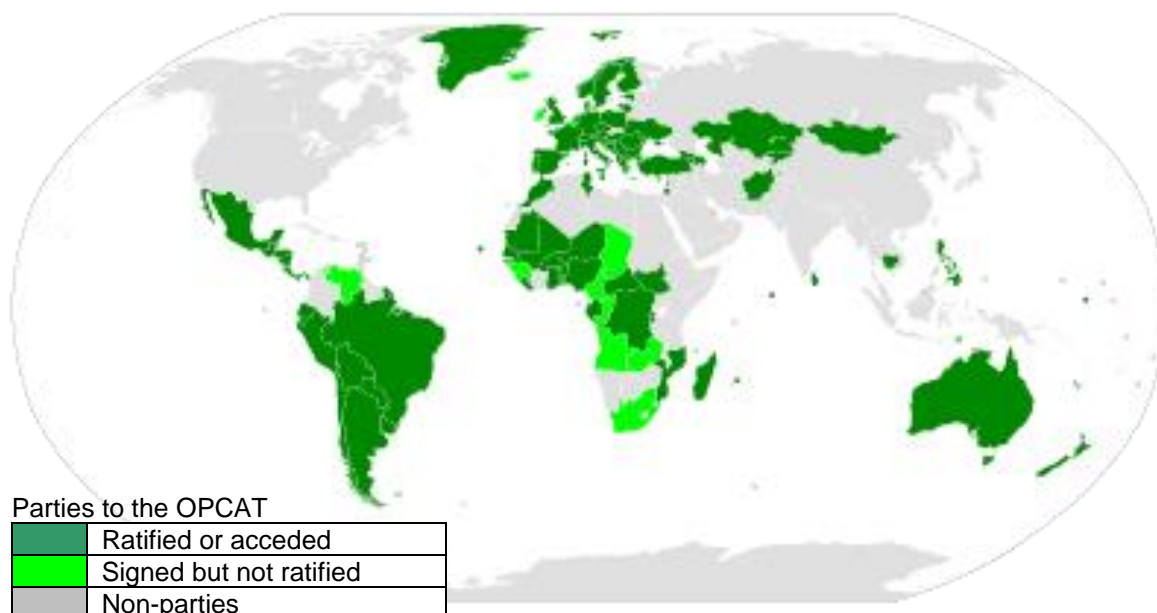
OPCAT establishes a system of regular visits to all places of detention, conducted by national bodies which are called National Preventive Mechanisms (NPMs) and an international body, the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT). These bodies are designed to work closely with governments to identify gaps in the protection of those deprived of their liberty. Essentially the thrust of OPCAT is that a system of regular, independent visits to places of detention will serve as an important safeguard against abuses and will assist in preventing the ill-treatment of those held in places of detention.

No specific model for NPMs is prescribed in OPCAT and the decision on the structure of NPMs is primarily left to the discretion of each State. However, some clear principles are laid out in terms of the expectations of an NPM and these have clear relevance for establishment of an Irish NPM, and by extension, the OIP. NPMs must be independent, have adequate resources, and expertise. National authorities also must co-operate with the NPM.

The SPT is composed of 25 independent and impartial experts from countries which have ratified or acceded to the OPCAT. It has developed some Basic Principles to provide guidance on the establishment and operation of NPMs. Those suggest that the NPM should “*complement rather than replace existing systems of oversight and its establishment should not preclude the creation or operation of other such complementary systems.*” However, it adds that where the body designated as the NPM performs functions other than those under OPCAT, its NPM functions “*should be located within a separate unit or department, with its own staff and budget.*”

OPCAT is not prescriptive about the nature of the NPM to be established in any jurisdiction. That is a matter that is left to the individual state having regards to its particular legal and constitutional circumstances.

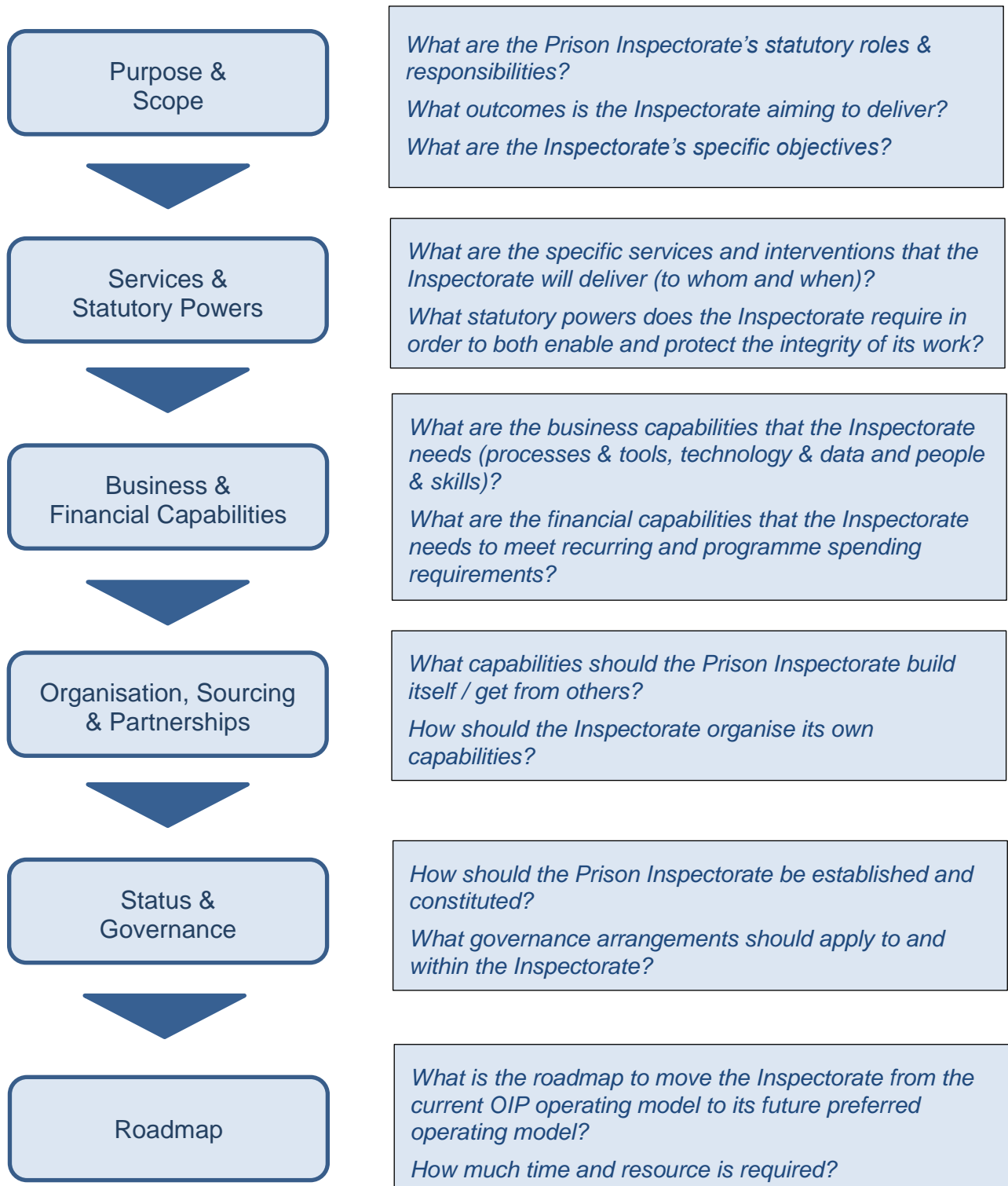
Ireland is one of 15 states which have signed but not ratified the protocol – the other states are: Angola, Belgium, Cameroon, Chad, Republic of the Congo, East Timor, Guinea, Guinea-Bissau, Iceland, Sierra Leone, South Africa, Venezuela, and Zambia.





## 1.4 Approach

- 1.4.1 The approach to this review was designed to provide a holistic view of the Prison Inspectorate's future Preferred Operating Model (POM). An Operating Model provides a holistic view of an organisation – what is its purpose, what does it do to fulfil this purpose and how it is structured to do these things efficiently and effectively. A key hypothesis underpinning the development of the new Operating Model for the Inspectorate is that “**form follows function**”.
- 1.4.2 The approach to defining the POM is summarised below:



- 1.4.3 In order to inform the findings and recommendations of this review, throughout this review expert insights and inputs were sought from the following perspectives:

<b>Key Interviews / Information Sources</b>	
<b>Policy Intent</b>	<ul style="list-style-type: none"> <li>• Department of Justice and Equality <ul style="list-style-type: none"> <li>→ Oonagh McPhillips (Deputy Secretary – Justice and Equality)</li> <li>→ Michael Flahive (Assistant Secretary, Criminal Law Reform)</li> <li>→ Noel Dowling (Prisons Policy)</li> <li>→ Sandra Smith (Criminal Law Reform)</li> <li>→ Barry Fulham (Criminal Law Reform)</li> </ul> </li> <li>• Draft “Inspection of Places of Detention” Legislation</li> </ul>
<b>International Standards</b>	<ul style="list-style-type: none"> <li>• Standard Minimum Rules for the Treatment of Prisoners (Revised) – also known as the Mandela Rules. <ul style="list-style-type: none"> <li>→ Rule 83 onwards relevant to inspections</li> </ul> </li> <li>• European Prison Rules <ul style="list-style-type: none"> <li>→ Rule 92 onwards relevant to inspections</li> </ul> </li> <li>• Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) publications – for example: <a href="https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx">https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx</a></li> <li>• European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) publications</li> <li>• European Convention on Human Rights (ECHR) - Convention for the Protection of Human Rights and Fundamental Freedoms</li> </ul>
<b>Best practice from other inspectorates and jurisdictions</b>	<ul style="list-style-type: none"> <li>• Professor Andrew Coyle (international expert)</li> <li>• Health Information and Quality Authority (HIQA) <ul style="list-style-type: none"> <li>→ Phelim Quinn (Chief Executive Officer)</li> </ul> </li> <li>• Mental Health Commission <ul style="list-style-type: none"> <li>→ Rosemary Smyth (Interim Chief Executive)</li> </ul> </li> <li>• Interviews with UK Inspectorates plus review of key publications <ul style="list-style-type: none"> <li>→ Peter Clarke (HMIP)</li> <li>→ Wendy Sinclair-Gieben (HMIPS)</li> <li>→ Brendan McGuigan (CJINI)</li> </ul> </li> <li>• Desk review of UK documentation <ul style="list-style-type: none"> <li>→ Human rights scoping - Expectations: criteria for assessing the treatment of prisoners and conditions in prisons</li> </ul> </li> <li>• Desk review of other jurisdictions (primarily Europe, North America)</li> </ul>

	<ul style="list-style-type: none"> <li>→ World Prison Brief</li> <li>→ US Department of Justice, National Institute of Corrections – Guidance on Jail Inspections</li> </ul>
<b>Key stakeholders e.g. ISP</b>	<ul style="list-style-type: none"> <li>• OIP <ul style="list-style-type: none"> <li>→ Patricia Gilheaney</li> <li>→ Helen Casey</li> </ul> </li> <li>• Irish Prison Service (IPS) <ul style="list-style-type: none"> <li>→ Michael Donnellan (Director General)</li> <li>→ Caron McCaffrey</li> <li>→ Governor Willie Conlon</li> </ul> </li> <li>• Irish Human Rights and Equality Commission (IHREC) <ul style="list-style-type: none"> <li>→ Emily Logan (Chief Commissioner)</li> </ul> </li> <li>• Office of the Ombudsman <ul style="list-style-type: none"> <li>→ Jacqui McCrum (Direct General)</li> <li>→ Tom Morgan (Senior Investigator)</li> </ul> </li> </ul>
<b>Advocacy organisations and academics</b>	<ul style="list-style-type: none"> <li>• Irish Penal Reform Trust (IPRT) <ul style="list-style-type: none"> <li>→ Deidre Malone (Director)</li> </ul> </li> <li>• PRILA Research Project <ul style="list-style-type: none"> <li>→ Dr Mary Rogan (Trinity College Dublin) - Principal Investigator</li> </ul> </li> </ul>

Note:

- i. Andrew Coyle is Emeritus Professor of Prison Studies at the University of London. In 2015 he assisted the Inspector of Prisons for Ireland in reviewing the culture and organisation of the Irish Prison Service. He has been a specialist adviser to several UK Parliamentary Committees, most recently to the Justice Select Committee in its review of the Government's proposals for prison reform in England and Wales. Professor Coyle has been an adviser on prison and criminal justice matters to the Office of the UN High Commissioner on Human Rights, the UN Office on Drugs and Crime and the UN Latin American Institute for the Prevention of Crime and the Council of Europe, including its Committee for the Prevention of Torture (CPT). He was an expert member of the CPT's first two inspection visits to places of detention in the Russian Federation in 1998 and 1999. He was a member of the UK Foreign Secretary's Advisory Committee against Torture from 2003 to 2010 and negotiated with the Israeli Government and the Palestinian Authority for the oversight of certain Palestinian prisoners between 2002 and 2006. Andrew Coyle is President of the Howard League Scotland, Vice President of the Prison Visitors Association and Patron of Unlock and of Prisoners Abroad. He was appointed a Companion of the Order of St Michael and St George (CMG) in the New Year's Honours 2003 for his contribution to international penal reform.
- ii. OPCAT was adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199, which came into force on 22 June 2006 - <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>
- iii. The World Prison Brief is an online database providing free access to information on prison systems around the world. It is a unique resource, which supports evidence-based development of prison policy and practice globally. The World Prison Brief is

hosted by the Institute for Criminal Policy Research (ICPR), at Birkbeck, University of London – see <http://www.prisonstudies.org/Prison Brief/>

- iv. Irish Human Rights and Equality Commission (IHREC) is Ireland's national human rights and Equality institution. We are an independent public body that accounts directly to the Oireachtas. Its stated purpose is to promote and protect human rights and equality in Ireland and build a culture of respect for human rights, equality and intercultural understanding in the State. See <https://www.ihrec.ie/>
- v. Irish Penal Reform Trust (IPRT) is Ireland's leading non-governmental organisation campaigning for rights in the penal system and the progressive reform of Irish penal policy. See <http://www.iprt.ie/>
- vi. Prisons: the rule of law, accountability and rights (PRILA) is a research project funded by the European Research Council. PRILA seeks to provide an understanding of how inspection/oversight/accountability operates from the point of view of prison staff, people in prison, & staff of accountability bodies. See <https://www.tcd.ie/law/research/prila>

- 1.4.4 The key finding from our discussions with key stakeholders, our literature review and a high-level assessment of the approaches adopted in other jurisdictions was that while there are lessons to be learned from how other jurisdictions have approached the inspections of prisons, and the implementation of their NPM, there is no single “best practice” solution that can simply be “lifted and shifted” into Ireland. Ireland must design its own solution which meets the needs of its specific context, while appropriately applying the learnings and instances of “good practice” from elsewhere.

## 2 WHAT IS THE ROLE OF THE INSPECTORATE & WHAT VALUES SHOULD DRIVE IT

To develop an Inspectorate that is fit for purpose there is a need to understand what the Inspectorate is here to do both now and in the future. There is also a need to understand which other organisations are best placed to support it in this role and how this links in with wider changes in the justice system (e.g. NPM). The focus of this review is therefore forward looking rather than historic. As well as our team's knowledge of international good practice, the guidelines and recommendations of OPCAT and the NPM have been used as the framework for describing the future role, responsibilities and structures of the Inspectorate.

### 2.1 Inspectorate's role in the scrutiny of prison system in Ireland

2.1.1 In defining the overarching role of the Inspectorate, it is important to consider the overarching policy, delivery and scrutiny functions that will apply to prisons in Ireland. There are four scrutiny functions in relation to prisons:

- **Inspection** – period, planned reviews of all aspects of each prison (plus thematic and functional inspections) by a cadre of professional inspectors
- **Monitoring** - on-going regular visits to each prison by “local” communities e.g. elected officials in local government and lay people volunteers.
- **Investigations** – expert inquiries into SAIs in prisons (currently limited to DiCs). Criminal investigations are conducted by An Garda Síochána.
- **Complaints** – investigation of complaints from prisoners, visitors and staff that cannot be resolved by the internal IPS processes

Figure 1: Future roles and responsibilities in prison oversight and inspection

Department of Justice and Equality			
Legislative and Policy framework for the delivery of prisons service in Ireland <i>Making Ireland a safe, fair and inclusive place to live and work</i>			
Irish Prison System <sup>1</sup>			
Operational responsibility for the delivery of the prison service in Ireland <i>Providing safe and secure custody, dignity of care and rehabilitation to prisoners for safer communities</i>			
Inspection	Monitoring	Investigations	Complaints
Periodic inspections of individual prisons, thematic issues and IPS functions	Regular unannounced visits to each prison to view conditions and speak to prisoners	Expert investigations into SAIs within prisons	Resolution of complaints that cannot be resolved within the scope of the internal complaints processes of the IPS
Office of the Inspector of Prisons	Visiting Committees <sup>2</sup>	Office of the Inspector of Prisons <sup>3</sup>	Office of the Ombudsman <sup>4</sup>

Source: PA

Note:

1. Irish Prison System includes 12 prisons operated by IPS as well as community based schemes involving prisoners and IPS support functions for example – Irish prison Service College (IPSC), Prison Service Escorts Corps (PSEC) and Operational Support Group (OSG).
2. A Visiting Committee is appointed to each prison under the Prisons (Visiting Committees) Act, 1925 and Prisons (Visiting Committees) Order, 1925. Members of the Visiting Committees are appointed by the Minister for a term not exceeding three years. Visiting Committees are intended to have roots in local communities and therefore capable of sustaining a regular relationship with a particular prison while being independent of the prison service. Visiting Committees typically publish short-form annual reports which are submitted to the Minister.
3. Currently investigations conducted by the OIP are limited in scope to Deaths in Custody. There is no statutory basis for this role within the current legislative framework, but recent clarification was provided by DJE confirming that the Minister continues to require the OIP to investigate these deaths.
4. It has been agreed by the Minister (in response to a report by the OIP which reviewed the existing complaints processes with the Prison Systems) that the Office of the Ombudsman will take on responsibility for the resolution of complaints that cannot be resolved within the scope of the IPS's internal complaint handling processes. The Office of the Ombudsman is in discussion with the IPS on the establishment of appropriate protocols and also with its sponsoring Department in order to get appropriate funding and resource allocation.

2.1.2 Key questions to be considered in shaping the future role of the Inspectorate include:

**a) Should the Inspectorate have overarching responsibility for coordinating the work of Visiting Committees?**

There is a clear distinction between the functions of Inspection and Monitoring. The Inspectorate will have responsibility for conducting periodic planned reviews of each prison. This inspection regime is very different from the regular, frequent, unannounced and sustained monitoring of a particular establishment by local people.

However, these two functions should undoubtedly be complementary, and indeed, need to be so in order to comply with the 'layered monitoring' mechanism of OPCAT. The crucial nature of this relationship between inspection and monitoring functions in respect of the National Preventive Mechanism was usefully articulated by Nick Hardwick, then HM Chief Inspector of Prisons for England and Wales and lead of the UK National Preventive Mechanism (he no longer performs these roles), when he wrote in his latter capacity to the UK Cabinet Secretary on 9 March 2012:

*In relation to both prisons and police custody in England and Wales and Northern Ireland, the National Preventive Mechanism role is performed at two levels – by a professional inspectorate and by volunteers from the local community. There are advantages to this layered monitoring. The professional inspectorate provides cyclical, in-depth professional inspection against published criteria and which includes the use of, for example, health care experts as recommended by the UN's Subcommittee for the Prevention of Torture (SPT). The lay monitoring body provides a frequency of visiting that cannot be achieved by a professional inspectorate. The regular monitoring of detention is a key requirement of OPCAT (Article 19(a)). Moreover, monitoring by lay bodies helps to address general recommendations from the SPT that civil society be involved in the work of the National Preventive Mechanism. The lay body publishes an annual report which, rather than being a snapshot of the prison at the time of an*



*inspection, paints a picture of an establishment over the course of a year. The monitoring of the lay body complements the monitoring of the inspectorate and vice versa. In our view, it is these layers of monitoring that, in total, meet the OPCAT requirements.*

*HM Chief Inspector of Prisons acknowledges the distinction between his role and that of independent monitors, while recognising the need for a complementary approach to the respective roles. In the course of discussion, he explained that while he has few formal links with Visiting Committees he usually makes a point of seeing the relevant committee before inspecting a prison. He is also in receipt of annual reports from each Visiting Committee.*

*There is room to develop understanding between HM Inspectorate of Prisons and independent monitors. This could be assisted by the adoption of a protocol between the two.*

It is noted that HM Chief Inspector of Prisons for Scotland (under the Public Services Reform (Inspection and Monitoring of Prisons) (Scotland) Order 2015 which came into force on 31 August 2015) has assumed overall responsibility for the monitoring of prisons, which is carried out on a day to day basis by independent prison monitors. However, it is difficult at this stage, accepting that it is a relatively new development, to articulate what, if any, benefits such responsibilities across both inspection and monitoring functions has brought to the outcomes for prisoners in Scotland.

The adoption of any formal role of the Inspectorate in the oversight, coordination and administration of Visiting Committees is likely to dilute the benefits that these separate but complementary layers of monitoring can realise. A key risk is that the distinct functions of the volunteer local monitors might become subservient or subordinate to the work of the professional Inspectorate.

**b) Should the Inspectorate have continuing responsibility for the conduct of investigations?**

The rights contained in the European Convention on Human Rights were incorporated into Irish law in 2003. Article 2 of the European Convention on Human Rights, which guarantees the rights to life, has been interpreted by the European Court of Human Rights as requiring states to conduct effective investigations into deaths in a range of circumstances including the death of a person detained by / in the custody of the state.

Under the European Convention on Human Rights, Ireland is therefore under an obligation to provide an effective system for the investigation of deaths in prison and, if appropriate, to hold to account those responsible. When a person dies in custody, there is an important obligation on the authorities to account for the person's treatment while s/he was detained. This obligation applies whether or not the death was caused by the agents of the State, that is, those working on its behalf. An effective investigation is necessary in order to ensure that failings which gave rise to a death are subject to public scrutiny and remedy. A proper investigation is necessary in order, to minimise the risk of similar deaths in the future, to lessen public concern and to attempt to provide justice for the bereaved.

The European Court of Human Rights has said that the right to life under Article 2 of the Convention requires that there be an investigation into a death in custody which fulfils certain minimum requirements. These are:

- It must be started by the State (i.e. not through, for example, a legal case taken by the deceased's family).

- It must be independent of those implicated or who might be responsible for the death. It should be carried out by somebody outside the prison system and be independent in its actions and procedures.
- It should be prompt. What 'prompt' means depends on the individual circumstances of each case but it is important that the authorities act quickly in carrying out an investigation, so the public can see they are not ignoring wrongdoing or are covering something up. Acting quickly is also important because the passage of time can affect the amount and quality of evidence and prolong the ordeal for the family involved.
- It should be open to public scrutiny (examination).
- The investigation must be capable of giving rise to a finding of responsibility and to enable the eventual prosecution, if appropriate, of those responsible through obtaining relevant evidence.
- Finally, the next-of-kin of the deceased must be given an opportunity to participate and be involved to the extent necessary to safeguard their legitimate interests. For example, the European Court has held that families should receive information about the progress of an inquiry and be able to receive the evidence given about the death of their family member

The OIP has investigated DiCs (either in custody or on temporary release within six months of leaving prison) since January 2012. These investigations are not and do not purport to answer all questions surrounding a death. The Inspector of Prisons' investigations are part of a potentially three-pronged process – the other elements being a criminal investigation by An Garda Síochána and the investigation / inquest led by the Coroner.

The combination of a Garda investigation, the Coroner's investigation and inquest together with a comprehensive and robust investigation, and subsequent report publication, by Inspector of Prisons is likely to provide compliance with national and international obligations meeting the strict criteria laid down by the European Court of Human Rights when interpreting the procedural requirement of Article 2 of the European Convention on Human Rights.

In December 2010 the Inspector of Prisons presented a report to the then Minister for Justice and Law Reform titled "Guidance on Best Practice relating to the Investigation of Deaths in Prison Custody" which was published in April 2011. This report gave an overview of the then investigation procedures in place following a death in custody in the Irish Prison Service. It further set out the guidance on best practice for investigating DiCs and made a number of conclusions and recommendation.

In April 2012 the then Minister announced the introduction of the "independent investigation of all prisoner deaths" and stated that the death of any prisoner in the custody of the Irish Prison Service shall be subject to an independent investigation by the Inspector of Prisons. The Minister stated *"I welcome this important development. Justice must not only be done, it must be seen to be done. There can be no question left unanswered when a person in State custody dies. The independence and track record of the Inspector speaks for itself and I am confident that the Irish Prison Service and other relevant public-sector agencies will cooperate with and indeed welcome the Inspector's involvement in this area"*.

In June 2014 the Inspector of Prisons presented another report title "Investigations into Deaths of Prisoners in Custody or on Temporary Release for the period 1 January 2012 to 11 June 2014". This report was published by the Minister on 12 September 2014. This report set out why an independent investigation of deaths of prisoners is important

and outlined the Inspector's investigation process and his *modus operandi*. The report further outlined the Inspector's main findings both positive and adverse.

Some jurisdictions combine the Investigation of DiCs and complaint handling functions into a specialist prison ombudsman organisation. However, this approach does not appear optimal in Ireland given:

- While the Office of the Ombudsman is taking on responsibility for handling complaints from prisoners, staff and visitors, it does not currently envisage taking on investigations to DiCs, and indeed many stakeholders considered this to be too specialist a role for a general public-sector ombudsman. In Northern Ireland, for example, a dedicated Prison Ombudsman has responsibility for investigating both complaints and DiCs. In the wider UK, the Prisons and Probation Ombudsman (PPO) fulfils the same role across both complaints and deaths in custody. The relatively recent decision to have the Office of the Ombudsman in Ireland take responsibility for the handling of complaints arising from the prison system does not suggest that the establishment of such an equivalent body in Ireland a preferred solution.
- Intelligence value that can be generated from understanding the operational context of deaths in custody, conducting a deep dive into these specific incidents is often extremely useful in helping to identify issues with policy and practice in individual prisons. The Prison Inspector in Scotland, for example, identified a gap in her intelligence landscape as she does not currently have responsibility for these investigations.
- Suggestion that the scope of these investigations is expanded to SAls rather than simply DiCs e.g. attempted murders, attempted suicides, serious assaults and self-harm, etc. It is not suggested that the Inspectorate necessarily directly take on the investigation of all such incidents but rather that they have an initial role in the triage of all such incidents and decide on who is best placed to investigate - the assumption that following this triage IPS will continue to progress the majority matters internally, albeit copying their findings, recommendations and action plans to the Inspectorate.
- Other Prison Inspectors we talked to recognised both the fit with this investigation role with the inspection role (both require similar capabilities and skills) and the potential significant value in support of their core inspection role that could potentially be gained from having access to the intelligence and insights gained through investigations.

Therefore, it is suggested that the Inspectorate takes on responsibility for the investigation into all SAls in the prison system, on the understanding that it will delegate responsibility for investigating many of these incidents to the IPS while maintaining an oversight role on such delegated investigations.

A key practical challenge with this suggestion is the, by definition, reactive nature of this work. While a level of predictive analytics can to a certain extent project the annual and even monthly profile and pattern of just incidents, there will always be "spikes" that the Inspectorate will need to respond to. Given the nature of these incidents there is an on-going risk that the resource implications of such investigations may negatively impact on the Prison Inspectorate's ability to fulfil its core responsibility of conducting an on-going programme of inspections. Over the past period, for example, the Inspectorate (which has only had two active Inspectors) has focused on conducting Death in Custody investigations at the expense of conducting inspections. This risk must be mitigated in the design and resourcing of the future Inspectorate organisation.

**c) Should the Inspectorate have continuing responsibility for the oversight of the complaints process within prisons?**

In September 2010 the Inspector of Prisons presented the “Guidance on Best Practice relating to Prisoners’ Complaints and Prison Discipline” report to the Minister for Justice and Equality. The Report outlined the deficiencies with the existing Prisoner Complaints Procedure and set out the requirements which were necessary for a robust prisoners’ complaints model by reference to, inter alia, this country’s international obligations as laid down in various Treaties and Instruments.

In January 2013 the Prison Rules (Amendment) 2013 (S.I. 11/2013) came into effect. This legislation set out the guidelines for the new Irish Prison Service Prisoner Complaints Procedure.

In April 2016 the Inspector of Prisons presented the “Review, Evaluation and Analysis of the Operation of the present Irish Prison Service Prisoner Complaints Procedure” to the Minister for Justice and Equality. This report provided the first review, evaluation and analysis of the operation of the present Irish Prison Service Complaints Procedure since its formal introduction in June 2014. This Report highlighted significant deficiencies relating to the operation of the prisoner complaints procedure.

Following this report, the Tánaiste and the then Minister for Justice and Equality, Frances Fitzgerald, announced that prisoners should be able to have their complaints independently investigated by the Office of the Ombudsman. The IPS is currently working with the Office of the Ombudsman to design and implement a new complaints handling process.

The practical reality is that the OIP does not currently provide proper oversight of the Prisoner Complaints Procedure within prisons. While the OIP gets returns from some (but not all) prisons on the nature status of complaints raised by prisoners – these returns are provided in a range of formats and it is not clear that these returns are explored and assessed by OIP in any formal and structured manner. It is certainly not clear that these returns are routinely checked for compliance with an agreed complaints process.

As stated above, the Office of the Ombudsman is to take on responsibility for handling complaints (that cannot be resolved through the IPS’s internal complaint processes), from staff, visitors and persons coming into contact with IPS as well as prisoners. This role will include the provision of a telephone “hotline” which will allow prisoners to raise complaints, issues and queries directly with the Office of the Ombudsman (albeit that the internal processes must be exhausted before the Ombudsman will intervene). The Office of the Ombudsman will take on this role subject to the allocation of resources from its sponsoring Department (it is requesting an additional 7 FTE staff) and agreement of protocols with IPS.

It seems logical that the Office of the Ombudsman should also take on oversight of the complaints processes within the prison system for prisoners, staff and visitors and it is understood that it has been agreed that in the future this responsibility will indeed sit with the Ombudsman. As such the Inspectorate will have no formal role in the oversight of the complaints process or the resolution of individual complaints.

However, it is noted that the nature, source and volume of complaints potentially provide the Inspectorate with a key source of intelligence to help inform the shape and priorities of both its overall inspection programme and the individual inspection of each prison. Therefore, it is recommended that appropriate protocols are developed to allow the Ombudsman to:

- share summary complaint information with the Inspectorate both for individual prisons and the overall prison system

- highlight any specific complaint which the Ombudsman believes should be investigated by the Inspectorate due to its serious nature
- share observations and feedback on the operation of the complaints processes within the prison system.

**d) Should the Inspectorate have continuing responsibility for Rule 44?**

Rule 44 of the Irish Prison Rules 2007 allows a Prisoner to write to the Inspector of Prisons with any matter of concern. The Inspectorate receives a large number of letters from prisoners relating to a wide range of specific issues and concerns, typically relating to the individual prisoner. The Inspectorate currently endeavours to respond to all of these letters.

The proposed enhanced role of the Office of the Ombudsman in handling those complaints that cannot be resolved within the prison system itself, and providing a telephone hotline for prisoners, suggests that the Ombudsman is more logically placed to be the recipient of Rule 44 correspondence. The consolidation of complaints and Rule 44 correspondence will reduce complexity for prisoners in seeking external support.

**Recommendation #1**

**The future core role of the Inspectorate should be:**

- **Provision of a regime of independent inspections of prisons operated by IPS, plus community-based schemes and support functions including Irish Prison Service College (IPSC), Prison Service Escorts Corps (PSEC) and Operational Support Group (OSG)**
- **Conduct of investigations into SAIs in the prison system (as defined in consultation with key stakeholders)**

**The Monitoring function, delivered by local Visiting Committees, should remain separate from the Inspectorate although protocols around information sharing and coordination of activities should be agreed.**

**Complaints by prisoners, staff, visitors and other persons coming into contact with IPS that cannot be resolved within the prison system should be adjudicated on by the Office of the Ombudsman. The Ombudsman should also have oversight of the operation of the complaints processes within the prison system.**

**Rule 44 of the Irish Prison Rules should be amended to allow a Prisoner to communicate with the Office of the Ombudsman rather than the Inspectorate.**

## 2.2 Inspectorate's potential role in a future National Preventive Mechanism in Ireland

***The National Preventive Mechanisms represent the most significant single measure which States can take to prevent torture and ill-treatment occurring over time."***

Ms. Aisha Shujune Muhammad, Vice-Chair  
United Nations Subcommittee on Prevention of Torture (SPT)

- 2.2.1 The primary purpose of the introduction of an NPM is to provide inspection coverage for all places of detention. The Inspectorate will continue to have the lead role in inspecting those places of detention, across the prison estate, where individuals are most clearly and obviously deprived of their liberty. The Inspectorate and Departmental officials seemed at one with the idea that the Inspectorate will fulfil the NPM role with regards to those places of detention which fall under the remit of the Department of Justice, including in addition to the prison estate, court cells, court and prison transports.
- 2.2.2 The issue of inspection of Garda detention cells was also identified as a gap in the current inspection arrangements. The recent report from the Commission on the Future of Policing remained silent on this particular issue and a logical extension of the current OIP's role would be to include Garda detention cells under the remit of a future "Inspector of Places of Detention" within the Justice sector. Such a specialist inspectorate will bring an expert "detention" expertise which would be difficult and nugatory to maintain in a broader based organisation.
- 2.2.3 It is understood that areas of detention which fall under the remit of other government departments, apart from the Department of Justice, are currently being identified and efforts are being made to ensure that they are subject to appropriate inspection. It is also understood that there are no current plans for the Inspectorate to be asked to take on additional responsibilities in those areas although that position may change. Given the extent of the workload facing Inspectorate in the coming years merely to discharge its primary role this is a logical position.
- 2.2.4 Irrespective of the final shape and operation of the NPM in Ireland (and indeed irrespective of whether OPCAT is actually ratified by Ireland and the NPM is established), there are implications for the future design of the Inspectorate drawing from the SPT guidance and associated good practice elsewhere. The guidelines, principles and recommendations of OPCAT and the NPM have therefore been used as the framework for describing the future role, responsibilities and structures of the Inspectorate in this review.

### Recommendation #2

**The DJE should consider extending the remit of the Inspectorate to include places of detention within the jurisdiction of both Courts Service and An Garda Síochána, once (and only if) it has established a comprehensive and robust inspection regime in the prison system operated by IPS. The achievement of this "steady state" is likely to require a minimum of 2 years from the date of publication of this report and the initiation of the transformation that a renewed Inspectorate requires.**

**This future extension of the Inspectorate's remit may lead to the Inspectorate being renamed as the "Inspectorate of Places of Detention" to reflect its broader scope.**

- 2.2.5 The role of the NPM is set out in UN guidance as comprising four key functions:

#### 1. Visiting

NPM must have the power to conduct visits to any place under the jurisdiction or effective control of the State parties where persons are or may be deprived of their



liberty in order to regularly examine the treatment of persons in those places and to make recommendations to the relevant authorities.

Consistent with a preventative approach, a broad understanding of the meaning of “places of deprivation of liberty” should be adopted.

There are policy decisions, outwith the remit of this review, on whether deprivation of liberty should be understood to include *de facto* deprivation of liberty and that therefore places of detention should include, for example, Direct Provision centres.

NPM must have the power to:

- access freely all places where they believe persons may be deprived of their liberty, including those places not situated within their territories but still within their powers or effective controls
- regularly examine treatment of persons deprived of liberty in those places
- select the timing of visits and whether they are announced or unannounced
- choose persons to be interviewed
- conduct interviews without the presence of the authorities
- access all information premises and persons necessary for pursuing its mandate without restriction - confidential information collected by the NPM should be privileged
- make recommendations to relevant authorities
- submit proposals and observations concerning existing or draft legislation
- have contact with the Sub-Committee for the Prevention of Torture

## **2. Advisory**

NPM should have the power to make proposals and provide guidance on draft and existing legislation in light of obligations under international human rights norms and standards.

NPM may also submit to relevant authorities all opinions, recommendations, proposals and reports on any matters concerning persons deprived of their liberty or any other issues within their mandate.

NPM must have the power to choose to publicly disseminate its materials to the extent that it decides is warranted.

- State should alert NPM to any draft legislation which is relevant to their mandate
- State shall examine any proposals or observations received from NPM

## **3. Cooperative**

NPM should cooperate and communicate with national, regional and international actors on the prevention of torture.

NPM must have the power to formulate and publish their findings and recommendations expediently, identify responsible persons and indicate timelines for compliance without any Ministerial involvement or control.

The legislation must place a duty on the relevant authority to examine the recommendations, comply with the recommendation or explain the reason why compliance with the recommendation is not possible within the timetable specified by the NPM

NPMs should contribute to reports submitted by States to the UN treaty bodies.

NPM should establish and maintain contact with the SPT through regular meetings and information exchanges.

#### **4. Education and Communication**

NPM should widely disseminate their opinions, findings and other relevant information through education, training and awareness raising programmes on OPCAT and related matters. UNHCR has identified relevant professional groups who should be targeted for education, training and awareness raising

NPM should produce and widely disseminate an annual report

- accounts of current challenges to the protection of the rights of persons deprived of their liberty and to the effective execution of the NPMs' mandates, and strategic short-term and longer-term plans, including with respect to the setting of priorities;
- analysis of the most important findings and recommendations and the responses to them by the authorities and other addressees;
- follow-up on issues from previously-published reports;
- consideration of thematic issues;
- accounts of cooperation with other actors on the prevention of torture;
- an overview of all their other activities and outcomes; and
- an overview of their structures and of the resources made available to them and spent. The States parties to the Optional Protocol have a legal obligation to publish and widely disseminate the annual reports of NPMs which should be presented to and discussed in Parliament and transmitted to the SPT.

- 2.2.6 As set out above, OPCAT is not prescriptive about the nature of the NPM to be established in any jurisdiction. That is a matter that is left to the individual state having regards to its particular legal and constitutional circumstances. Some countries have chosen to set up new bespoke bodies to operate as the NPM while most appear to have tasked several existing bodies with the role. Some examples are set out below:

##### **New Zealand**

New Zealand designed five different bodies as its NPM. These are coordinated by the Human Rights Commission (central NPM), and include the Office of the Ombudsman, the Independent Police Conduct Authority, the Office of the Children's Commissioner and the Inspector of Service Penal Establishments of the Office of the Judge Advocate General of the Armed Forces.

##### **Norway**

Norway created an NPM department within the office of the Parliamentary Ombudsman to perform the NPM tasks. It also created an advisory committee to provide advice to the NPM. It is composed of representatives of the Norwegian National Human Rights Institution, NGOs and professional associations.

##### **Moldova**

Moldova appears to have created a new body called the Council for the Prevention of Torture as its NPM. This is composed of 7 members, including the Ombudsperson, the Ombudsperson for children and 5 members proposed by the civil society. The Council is chaired by the Ombudsperson but is separated from the Ombudsperson's Office. The Council for the Prevention of Torture is also supported by a special division within the Ombudsperson's Office.

## United Kingdom

The UK Ministry of Justice formally appointed 18 existing oversight bodies as the UK's NPM in a written ministerial statement made to Parliament on 31 March 2009. On 3 December 2013, a further written ministerial statement was issued to appoint two additional bodies as NPM and correct the title of one body. In January 2016, an additional institution was appointed as NPM, which is now composed of 21 bodies. The UK government designated HM Inspectorate of Prisons (England and Wales) to co-ordinate the NPM.

2.2.7 See also UN publication "Preventing Torture - A Practical Guide, Professional Training Series No. 21: The Role of National Preventive Mechanisms" for further examples of NPM implementations in different jurisdictions.

2.2.8 There are a number of broad options for establishment of the NPM in Ireland:

Option	Commentary
NPM established as a single organisation	All existing inspection organisations are consolidated into a single new organisation which fulfils the role of the NPM.
NPM established as a new organisation	A new organisation is established as the NPM with oversight over all existing Inspectorates. This new organisation fulfils the role of the NPM.
NPM established as a collective of existing organisations	The NPM is established as a virtual organisation comprising existing inspectorates. The members of the NPM meet on a regular basis.

2.2.9 How the NPM in Ireland will be constituted remains a live issue with no clear consensus on the structure. Most stakeholders are of the view that a number of organisations with inspection powers in their respective areas will come together to be designated as the NPM. There is some merit in this as it appears to chime with the guidance of the SPT that NPMs should "complement rather than replace" existing systems of oversight or inspection and indeed it appears to be reflect best international practice.

2.2.10 Majority of stakeholders also suggested that establishing the NPM in Ireland as a collective of existing bodies was the most likely and most appropriate way to proceed in Ireland i.e. several bodies including HIQA, MHC and Inspectorate are nominated as the NPM.

2.2.11 While it is not for this report to make a recommendation on the establishment of the NPM in Ireland it is certainly a fundamental **working assumption that the NPM will be established as a collective of existing organisations.**

2.2.12 In this scenario a question then arises as to whether a particular body is given a lead role in co-ordinating the work of the various elements of the NPM. There is also a strong argument reinforced by international experience and best practice that the efforts of the various bodies making up the NPM should be co-ordinated and led by one of the bodies. The recent Ministerial statement to the Dáil strongly suggests that a role for the Inspectorate in being at least part of the Irish NPM is under consideration by government. The options set out below were canvassed in our engagement with stakeholders. It is important to note that those stakeholders included not only officials from the Department but also from other agencies which will potentially also be part of any NPM.

Option	Commentary
NPM coordinated by Prison Inspectorate <sup>1</sup>	The NPM is coordinated by the Inspectorate as both the body which inspects all "justice" detention areas and the centre of excellence in inspecting places of detention.

NPM coordinated by another inspectorate	The NPM is coordinated by an existing inspectorate body other than Inspectorate e.g. HIQA
NPM coordinated by another organisation	The NPM is coordinated by an independent body i.e. not one of the current inspectorate organisations. The obvious organisation would be the Irish Human Rights and Equality Commission (IHREC).

<sup>1</sup> An appropriately resourced Inspectorate with a renewed and proper legal basis

- 2.2.13 There was a degree of consensus, although not unanimity, across key stakeholders that the Inspectorate's core focus on the prison system (and its recommended future extended scope over detention facilities in Courts and Garda stations) means that it is best placed to act as NPM coordinating body.
- 2.2.14 It is worth noting that there was also a generally-held view that there should be a role for IHREC in providing independent advice on Human Rights to the NPM (and its individual members) potentially as a "non-voting" member of the NPM, although the exact role of IHREC and potentially other specialist advisors should be decided by the NPM itself.
- 2.2.15 There were several views on what such a coordinating role would entail. In our research and discussions with international stakeholders, most evidence underlined the importance of an active co-ordinating role for the central mechanism of the NPM. In discussions with colleagues in the UK, where the NPM comprises more than 20 organisations (a situation unlikely to be replicated in Ireland), there was some frustration that the NPM did not function effectively due to insufficient co-ordination. Efforts have been made recently to address that situation by the appointment of an independent Chair. However, it appears to us that some of the difficulties that arise in the UK have done so largely due to the scale of the NPM. In Ireland, where the number of bodies comprising the NPM is likely to be much smaller the co-ordinating role is likely to be less onerous. Nevertheless, best practice internationally would suggest that an active co-ordinating on the part of the central NPM body is important in effectively discharging the obligations arising under OPCAT. Apart from the necessary logistical duties such as co-ordinating meetings, drafting agendas and minute-taking, this would be an important role across areas such as identifying gaps in coverage of places of detention, highlighting systemic issues arising across all areas of detention, co-ordinating the relationship between the NPM and government and between the NPM and the SPT. In addition, the central body would have a vital role to play in terms of sharing of learning and best practice both domestically and internationally. Reducing this role to a purely functional one may well miss a significant opportunity to make Ireland an example of best practice in this regard.

### **Recommendation #3**

**The DJE should consider the Inspectorate filling the coordination role for the NPM in Ireland (which it is assumed will be formed as a virtual organisation comprising the existing inspectorate bodies in justice, health, defence and elsewhere).**

**This coordination role will involve working with other NPM members on, amongst other things:**

- **Communication - Acting as a contact point for the SPT, CPT and OPCAT monitoring bodies, and communications with NPMs in other jurisdictions (there is already an active network of NPMs sharing information, insights and good practice learnings). It is envisaged that the NPM in Ireland will maintain regular contact with the SPT. This role will also involve disseminating NPM communications from external bodies to the Inspection bodies in Ireland's NPM.**

- **Reporting - Collecting and aggregating returns on visits (against NPM standards) from the inspection bodies that comprise the NPM in Ireland and submitting these returns to SPT.**
- **Supporting - Working collectively to support any members of the NPM that require improvements to their inspection regime and processes, and/or addressing any short-term capacity issues.**
- **Advising - Providing opinions, recommendations and proposals to the Government of Ireland on future legislative and policy changes in relation to places of detention**
- **Educating - Conducting a programme of awareness and education events to both key stakeholders and the general public on the role of the NPM**

**It is suggested that in this coordination role the Inspectorate will also lead the members of the NPM in the:**

- **Conduct of quarterly meetings to discuss related matters (e.g. cross sectoral issues) and agree joint approaches on, for example, draft legislation. It is envisaged that the Inspectorate (in the form of the statutory role of the Chief Inspector) will chair the NPM.**
- **Production of an Annual Report setting out the role and activities of the NPM in Ireland, setting out key findings and recommendations across all sectors**
- **Contribution to related multi-jurisdictional reports compiled on/by NPMs globally.**

2.2.16 UN guidance suggests that NPMs should also have exclusive authority to develop their own Rules of Procedure in order to ensure their operational autonomy and independence. These Rules of Procedure should, at a minimum, address the following issues:

- Budgets for all activities
- Decision-making processes
- Employment and dismissal of staff
- Prevention of conflict of interest
- Employment of external experts (establishing qualifications and terms of reference)
- Information-sharing within NPMs
- Communication with other actors – national and international, including SPT and media
- Data protection and confidentiality

2.2.17 Under the Optional Protocol, States are obliged to accord members and the staff of NPMs the privileges and immunities necessary for the independent exercise of their functions. These privileges and immunities protect the independent exercise of NPMs' mandates.

#### **Recommendation #4**

**In establishing the Inspectorate, due consideration should be given to the UN stipulated standards and expectations of a future NPM in Ireland. Even if such an NPM is not eventually established in Ireland (i.e. OPCAT is not ratified) these standards and expectations reflect internationally recognised good-practice for “places of detention” inspectorate bodies.**

## 2.3 Phasing of the [potential] future remit of the Inspectorate

- 2.3.1 In this context of this recommendation, it is proposed that the overarching aim of the Inspectorate should be defined as:

***Supporting excellence in both delivery and outcomes  
in Ireland's prisons and places of detention through  
an independent programme of inspections and investigations  
[and coordinating the National Preventive Mechanism]***

- 2.3.2 The lack of core inspection activity was recognised by all stakeholders as the most critical issue facing OIP. Everyone recognised that urgent steps were required to put in place a robust and risk-driven inspection process across the prison system operated by the IPS as the key priority for this review.
- 2.3.3 The remit of the Inspectorate should be increased on a phased basis. We would suggest the following phases of evolution of the Inspectorate:

Phases	Remit of Prison Inspectorate
<b>Core Responsibilities</b>  <i>Focus on Irish Prison Service</i>	<u>Irish Prison Service (IPS)</u> <ul style="list-style-type: none"> <li>• Prisons operated by IPS (12 prisons in Ireland)</li> <li>• Headquarter and support functions within IPS</li> <li>• IPS Training College (IPSC)</li> <li>• Transport of prisoners operated by IPS (e.g. PSEC)</li> <li>• Delivery of work within the IPS prison estate by partner organisations</li> <li>• Community based schemes involving prisoners (e.g. Community Return Scheme and Community Support Scheme)</li> <li>• Specific schemes led by IPS that impact on those external to the prison system (e.g. Irish Prison Service Victim Liaison Service)</li> <li>• IPS contribution to wider cross-cutting initiatives working with other partner organisations to achieve agreed outcomes</li> <li>• Prisoners, Staff, Visitors and other persons/organisations in contact with the IPS</li> </ul>
<b>Extended Responsibilities</b>  <i>All places of detention within remit of DJE</i>	<u>Courts Service</u> <ul style="list-style-type: none"> <li>• Detention facilities within Court Estate</li> </ul> <u>An Garda Síochána (AGS)</u> <ul style="list-style-type: none"> <li>• Transport of prisoners in vehicles operated by AGS (e.g. to/from courts and prisons and after arrest into An Garda police custody)</li> <li>• Detention facilities within AGS stations</li> </ul>
<b>National Preventive Mechanism</b>  <i>Coordination of NPM delivery</i>	<ul style="list-style-type: none"> <li>• Contact point for NPM in Ireland</li> <li>• Coordination of NPM activities in Ireland               <ul style="list-style-type: none"> <li>→ Internally – advice on standards, identification of good practice, knowledge sharing</li> <li>→ Externally – policy suggestions, awareness and educational activities</li> </ul> </li> </ul>

Note:

- i. Prison Acts 1970 and 1972 define the places of detention operated by the Irish Prison Service. Note that Minister may from time to time specify a place or places to be used as a prison or prisons.
- ii. The 12 Prisons operated by the IPS are:



- Arbour Hill Prison – is a closed, medium security prison for males aged 18 years and over. Its prisoner profile is largely made up of long term sentenced prisoners.
- Castlereagh Prison – is a closed, medium security prison for males aged 18 years and over. It is the committal prison for remand and sentenced prisoners in Connaught and also takes committals from counties Cavan, Donegal and Longford.
- Cloverhill Prison – is a closed, medium security prison for males aged 18 years and over which primarily caters for remand prisoners committed from the Leinster area.
- Cork Prisons – is a closed, medium security prison for males aged 18 years and over. It is the committal prison for counties Cork, Kerry and Waterford.
- Dóchas Centre – is a closed, medium security prison for females aged 18 years and over. It is the committal prison for females committed on remand or sentenced from all Courts outside the Munster area.
- Limerick Prison – is a closed, medium security prison for males and females aged 18 years and over. It is the committal prison for males for counties Clare, Limerick and Tipperary and for females from all six Munster counties.
- Loughan House – is an open, low security prison for males aged 18 years and over who are regarded as requiring lower levels of security.
- Midlands Prison – is a closed, medium security prison for males aged 18 years and over. It is the committal prison for counties Carlow, Kildare, Kilkenny, Laois, Offaly and Westmeath.
- Mountjoy Prison – is a closed, medium security prison for males aged 18 years and over. It is the main committal prison for Dublin city.

There is a need for clarity on the status of the Training Unit within Mountjoy Campus.

- Portlaoise Prison – a closed, high security prison for males aged 18 years and over. It is the committal prison for those sent to custody from the Special Criminal Court and prisoners accommodated here include those linked with subversive crime.
- Shelton Abbey – is an open, low security prison for males aged 19 years and over who are regarded as requiring lower levels of security.
- Wheatfield Prisons – is a closed, medium security place of detention for males aged 17 and over.

iii. For clarity, the remit of the Inspectorate should cover (for those places of detention within its remit):

- Prisoners (see below for definition)
- Staff
- Visitors
- Any other persons coming into contact with the prison regime.

iv. Prisoners within the IPS prison system include those:

- In custody (convicted)
- Remanded in custody
- Temporary Release
- Community Support Scheme

- Community Return

OIP's remit should extend six months after an individual's release from custody.

- v. There are five administrative regions within the Courts Service with Circuit and District courts with Dublin region also supporting the Supreme Court, Court of Appeal and the High Court
- vi. There are six administrative regions within An Garda Síochána. It is noted that An Garda Síochána recently announced the deployment of 42 "Twin cell" vans to various regions around the country. These vans carry up to 5 members and provide safe containment of two prisoners, in separate cells.

### **Recommendation #5**

**Remit of Inspectorate should be phased over the next period.**

- **Initial focus of the Inspectorate must be on the prison system in Ireland. There is a pressing need to build and maintain a robust regime of inspection and investigation on the 12 prisons and associated temporary release and community schemes operated by IPS. The Inspectorate should then focus on thematic and functional inspections of, for example, Headquarters and support functions and programmes, across the Irish Prison System.**  
**Only once this core function is appropriately addressed should the Inspectorate look to increase the scope of its inspection and investigation services.**
- **The Inspectorate should aim to formally take on responsibility for all other places of detention within the jurisdiction of the Department of Justice and Equality within the next 3 years. This will include detention facilities within court houses and An Garda police stations, as well as transport operated by the Courts Service and An Garda Síochána.**
- **OIP should immediately take on the role of the contact point for the establishment and operation of the NPM in Ireland. The Inspectorate should only take on its proposed role coordinating the NPM once its core responsibilities of delivering inspection and investigatory services on the prison system in Ireland are properly established.**

**All phases in this increasing remit are predicated on covering legislation and appropriate resourcing.**

## 2.4 Values of the Prison Inspectorate

2.4.1 The Inspectorate should adopt the following values<sup>1</sup> – these should be reflected in what it does (focus and activities) and how it does it (behaviours and tone):

- **Independent & Impartial**

The Inspectorate will be fair and reasonable in how it conducts its work, using evidence to arrive at its conclusions.

- **Human rights focused**

The Inspectorate will have a focus on Human Rights at the core of its work. This Human Rights focus will apply to prisoners, visitors, staff and others who come into contact with the IPS.

- **Transparent and collaborative**

The Inspectorate will publish both its approach to Inspections and Investigations, and the standards that it expects to be met by the IPS. There will be no sense of attempting to “catch out” the IPS but rather to work collaboratively with them to drive both compliance and good practice, leading to better outcomes.

- **Capable and systematic**

The Inspectorate will be professional and structured in both its approach (e.g. gathering evidence) and the articulation of its findings conclusions and recommendations.

### Recommendation #6

**The stated values of the Inspectorate must be reflected in:**

- **Statutory powers and how it applies these powers**
- **Processes and Ways of working**
- **Behaviours of its staff (and delivery partners)**

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<sup>1</sup> Developed in consultation with Chief Inspector of Prisons and OIP

## 3 INSPECTORATE SERVICES & STATUTORY POWERS

The current legislative basis for the Inspector of Prisons is contained in the Prisons Act 2007. This statute reflects the needs of the State and the criminal justice system at that time but it may well need to be amended to reflect current and future obligations and standards. Irrespective of the timetable for ratification there will be a need to update the primary legislation to provide the statutory basis for the implementation of the best practice policies, procedures, structures and services set out in this review.

### 3.1 Services to be provided by the Prisons Inspectorate

3.1.1 The Inspectorate will provide a number of services and interventions in order to fulfil its statutory responsibilities:

1. **Inspection of the management and operation of those places of detention that fall within its remit**

It is envisaged that there will be four types of inspection:

<b>General Inspection</b>	Inspection of <u>all</u> aspects of the management and operation of a specific prison. Typically, these General Inspections will be unannounced.
	<ul style="list-style-type: none"><li>→ All prisons will be subject to at least one General Inspection every three years.</li><li>→ Prisons (or parts of a prison) holding remand prisoners will be subject to at least one General Inspection every year.</li><li>→ Prisons (or parts of a prison) holding female or young offenders will be subject to at least one General Inspection every year.</li></ul>
<b>Thematic Inspection</b>	Inspection of a specific operational area across the whole prison estate, for example: <ul style="list-style-type: none"><li>• Solitary confinement</li><li>• Prisoner safety</li><li>• Prisoner restraint</li><li>• Staff well-being</li></ul> Typically, these Thematic Inspections will be announced.
	<ul style="list-style-type: none"><li>→ Thematic Inspections will be conducted against a risk-based assessment i.e. where the Inspectorate perceives that a cross-cutting issue exist within the overall prison estate.</li><li>→ It is proposed that, in steady-state, the Inspectorate should aim to conduct at least one thematic inspection each year.</li></ul>
<b>Functional Inspection</b>	Inspection of a specific functional area across the whole prison estate, for example: <ul style="list-style-type: none"><li>• Human Resources</li><li>• Finance</li><li>• Governance</li></ul>

	Typically, these Functional Inspections will be announced.
	→ Thematic Inspections will be conducted against a risk-based assessment i.e. where the Inspectorate perceives that a cross-cutting issue exist within the overall prison estate. → It is proposed that, in steady state, the Inspectorate should aim to conduct at least one functional inspection each year.
<b>Follow-up Inspection</b>	Follow-up Inspection (after a General, Thematic or Functional Inspection) to assess progress against Action Plan, which IPS will have produced against the recommendations in the original inspection. The Follow-up Inspection may focus on one or more areas of specific concern. Typically, these Follow-up Inspections will be announced.
	→ Follow-up inspections are optional and the Inspectorate may decide to rely on self-assessment by prison management if the Action Plan is particularly low-risk.

The key output from the provision this service will be an Inspection Report which will set out:

- Key findings setting out supporting evidence
- Recommendations with responsibilities and target timescales for implementation

This Inspection Report will be published directly by the Inspectorate within 3 months of the completion of an inspection.

General, Thematic and Functional Inspections will be conducted against the same overarching inspection process. See detailed process description in Section 4 below.

## 2. Independent investigation of SAIs

SAIs should be defined by the Inspectorate in consultation with the IPS. It is suggested that this definition SAIs should include:

- Death in custody (including deaths of prisoners within one calendar month of temporary release from prison)
- Serious injury to a person in custody
- Death or serious injury to a member of staff or a person interacting with IPS (e.g. visitor)
- Escape or significant attempted escape from lawful custody
- Significant breach of security including physical and information security
- Significant operational delivery issues i.e. persistent and prolonged material failure to meet operational targets
- Significant breach of discipline by prison officers

It is not envisaged that the Inspectorate will automatically conduct a full investigation into all SAIs that are reported to it. Inspectorate will conduct an initial triage of each SAI to determine if there is public value to be gained from a full investigation.

Factors that may considered by the Inspectorate in taking a decision on whether to conduct an investigation into an SAI itself include:

- Specific circumstances and nature of the reported SAI
- Investigation of the SAI by An Garda Síochána in the event of potential criminal activity

- Investigation and/or disciplinary proceedings by the IPS – the Inspectorate may wait for the outcome of such proceedings before taking a final decision on whether to conduct a full investigation.

The Minister may refer any matter in relation to the IPS and/or prisons and/or prisoners to the Inspectorate for it to undertake an independent investigation. Further, the IPS may voluntarily refer a specific matter (not covered by the definition of SAIs) to the Minister with a recommendation that the Inspectorate conducts an independent investigation

### 3. **Independent coordination and support of NPM in Ireland**

In order to fulfil its proposed role in coordinating the activities of the NPM in Ireland (which is assumed will be comprised by a number of Inspectorates from across different sectors), the Inspectorate will perform the following roles, working collaboratively with other NPM member organisations:

- Chair the NPM in Ireland – in this role it will:
  - Host quarterly meetings of the NPM (which should be held nationally)
  - Lead in the development of an Annual Report for the NPM
  - Act as the contact point for the NPM both within Ireland and internationally
- Secretariat for the NPM in Ireland – in this role it will:
  - Coordinate activities across NPMs
  - Provide administrative support for NPM activities and returns

#### **Recommendation #7**

**Inspectorate should develop a Services Catalogue which sets out, amongst other things:**

- **The services it will provide, and the purpose of these services**
- **Nature of these services and the outputs that will be produced**
- **The quality and timeliness standards it sets itself for the delivery of these services**

3.1.2 Prison Inspectorate should establish itself as a Centre of Excellence in Ireland for the inspection of places of detention. This Centre of Excellence will be characterised by:

- Having deep Insights into recognised good practice in inspecting places of detention, and the surrounding policy and legislative frameworks
- Being an active member of a national ecosystem including academics, voluntary sector advocacy and support organisations and inspection bodies, commissioning research and studies
- Being an active member of an international ecosystem of peer organisations, “horizon scanning” emerging good practice elsewhere, and the Inspectorate’s future role in coordinating Ireland’s NPM will be a key enabler of this international network

3.1.3 In this Centre of Excellence role, the Prison Inspectorate will provide specialist advice and inputs in support of other organisations, including other inspection bodies. In addition, competent authorities other than IPS may request the Inspectorate to conduct an inspection or an investigation into a place of detention within its remit. The Prison Inspectorate may apply an appropriate monetary charge for any such services.



## Recommendation #8

**Inspectorate should establish itself as an internationally recognised national Centre of Excellence for the inspection of places of detention. In this role it should offer insights and support to other organisations. It may apply a charge for these services.**

### 3.2 Statutory Powers of the Prison Inspectorate

- 3.2.1 The role and responsibilities of the Inspectorate needs to be properly reflected in the portfolio of statutory powers (and protections) that are appropriately defined to allow the effective performance of its role.
- 3.2.2 The current legislative basis for the Inspector of Prisons is contained in the Prisons Act 2007. Part 5 of the Act, comprising three sections, makes provision for the appointment of an Inspector of Prisons. Section 30 provides the Minister with the power to appoint such a person for a term not exceeding five years with the possibility of renewal. Section 30(5) states that “[S]ubject to this Part, the Inspector of Prisons is independent in the performance of his or her functions.”
- 3.2.3 The functions of the Inspector are set out in Section 31 which states that the Inspector shall carry out regular inspections of prisons and can therefore enter any prison, request documents or records from the Governor from the prison, and bring any issues arising from an inspection to the notice of the governor, prison, Director General of the Prison Service or the Minister as the Inspector considers appropriate.
- 3.2.4 In addition, Section 31 makes provision for the Inspector, if requested by the Minister, to investigate any matter arising out of the management or operation of a prison and to submit a report to the Minister in relation to the investigation, such reports generally to be laid before the Oireachtas and published.
- 3.2.5 The Inspector is precluded from investigating individual complaints but may “examine the circumstances relating to the complaint where necessary for performing” her functions.
- 3.2.6 Section 31(7) obliges prison staff to comply with any request for information that the Inspector may make “as far as reasonably practicable.” Section 32, the final section relating to the Inspector, makes provision for the submission and publication of an annual report. This report is to include details regarding each prison inspected during the course of the preceding year.
- 3.2.7 There was widespread acceptance among stakeholders, both government and non-government, that these powers (as currently stated in statute) were too limited in order for the Inspectorate to effectively perform its role. In addition, a comparison with other similar agencies confirmed that the current legislation defining the statutory powers of the OIP is “light” relative to other inspectorates.
- 3.2.8 Certain critical issues were identified. The first of these was the current level of co-operation by individual prisons with the OIP. In discussions with staff in the office and in a review of documentation and death in custody files at OIP, it was clear that this was not full co-operation. For instance, every month each prison is requested to forward numbers of prisoner complaints to the OIP. Some prisons do this on a consistent basis but several do not and no explanation is offered. Indeed, some prisons have simply not provided the requested statistics for some considerable time. This less than fulsome co-operation may well reflect the significant caveat in the provision of the 2007 Act for governors and prison staff to co-operate with requests from the Inspector only “as far as reasonably practicable.” One stakeholder compared this very qualified duty on prison staff to co-operate with the Inspector to the fact that it is a criminal offence to obstruct the work of the Chief Inspector of Criminal Justice in Northern Ireland by virtue of Section 48 of the Justice (Northern Ireland)

Act 2002. This section may be worth setting out in full for a comparison the powers of the closest comparator to Inspectorate on the island of Ireland:

*Section 48 Powers of Inspectors*

- (1) *A person involved in the carrying out of an inspection or review by the Chief Inspector may, on showing evidence of his authority (if required to do so), enter any premises at any reasonable hour for the purposes of the inspection or review.*
- (2) *Such a person may, for the purposes of the inspection or review, require-*
  - (a) *That documents be produced in a form in which they can be taken away or be made available for inspection and copying.*
  - (b) *That an explanation be given of any document produced or made available, or*
  - (c) *That other information be provided.*
- (3) *A person commits an offence if-*
  - (a) *He fails, without reasonable excuse, to comply with a requirement imposed on him by virtue of subsection (2), or*
  - (b) *He intentionally obstructs a person involved in the carrying out of an inspection or review by the Chief Inspector.*

3.2.9 Similarly, under the Health Act 2007 which established HIQA and the Chief Inspector of Social Services, those authorised to conduct an inspection, according to Section 73, may “*enter and inspect at any time any [relevant] premises.*” Authorised individuals may also inspect, take copies of and/or remove documents or records and interview in private any person working at the premises concerned. Related criminal offences are also created.

3.2.10 It is noteworthy that the Health Act provisions echo to a large extent the expectations for inspection outlined in OPCAT which make clear that NPMs should be able to access all places of detention, access all information relating to the treatment of those in detention, and interview privately those deprived of their liberty.

3.2.11 The majority of those stakeholders that we interviewed with experience in the inspection field considered it critical that the powers of the Inspectorate be significantly strengthened and set out clearly in revised legislation. Certainly, if future compliance with OPCAT is envisaged, these are necessary changes.

**Recommendation #9**

**The DJE should consider amending or replacing the 2007 Act with legislative provisions setting out more clearly the powers of the Inspector of Prisons and persons authorised by the Inspector to carry out these functions on his or her behalf.**

**These powers should include:**

- **unimpeded access at any time to all prisons and offices of the IPS**
- **access to all records, documents and data connected with the management and operation of a prison (or prisons, or the overall IPS) which the Inspector considers relevant**
- **access to personal records, including medical records, with consent of prisoners or legal guardian/representative**
- **in cases of Death in Custody (DiC) or on temporary release, access to personal and medical records without consent of any other party**

- the ability to interview privately those detained (prisoners) and those working within the prison (IPS staff, contractors and delivery partners)

No enactment or rule of law prohibiting or restricting the disclosure, sharing or communication of information shall preclude a person from providing the Inspectorate any information or record that is deemed by it to be required for the purpose of carrying out its functions.

- 3.2.12 The Inspectorate will have responsibility for the investigation of SAIs. This is not to say that the Inspectorate will itself conduct all of these investigations but rather that it will have oversight of all such investigations including those conducted on its behalf by the IPS. In this oversight role, no recommendations in relation to an SAI may be progressed by the IPS (which in this role is acting with the delegated authority of the Inspectorate) without the imprimatur of the Inspectorate

#### **Recommendation #10**

There should be an obligation on the IPS (and other authorities responsible for places of detention within the remit of the Inspectorate) to:

- inform the Inspectorate of the occurrence of an SAI
  - this notification must be made for all SAI identified by the Inspectorate (as soon as is reasonably possible with a maximum of 24 hours)
  - this notification must be made to the Inspectorate in a timely manner
  - this notification must be in the format required by the Inspectorate
- support the Inspectorate in the investigation of this SAI
  - identification, gathering, provision and sharing of evidence in a timely, structured and professional manner
  - ready access to prisoners, staff and managers involved in the SAI.

It is envisaged that the IPS will be asked to lead on a number (potentially the majority) of these investigations reporting their findings and recommendations back to the Inspectorate. The Inspectorate will review these findings and recommendations and may direct that further work is undertaken and/or the recommendations are refined. No recommendations arising from an Investigation into an SAI by the IPS (acting with delegated authority from the Inspectorate) may be progressed without the authoritative approval of the Inspectorate.

The Inspectorate can take on the investigation of an SAI at any stage (even if it initially requested the IPS to progress this investigation).

The Minister for Justice and Equality should also have the ability to request the Inspector of Prisons to investigate any matter in relation to the IPS and the operation of places of detention within its remit.

The IPS may voluntarily refer a specific matter (not covered by the definition of SAIs) to the Minister with a recommendation that he requests the Inspectorate to conduct an independent investigation.

- 3.2.13 UN guidance and “good practice” from elsewhere also suggest that it should be an offence to obstruct the Inspector or persons authorised by the Inspector

#### **Recommendation #11**

**Obstruction of the Inspector of Prisons in the exercising of any of these powers should be a criminal offence. Obstruction includes a failure to cooperate with the Inspectorate and attempting to unduly influence the work of the Inspector.**

**It will be a criminal offence for any person to obstruct or unduly influence the work of the Inspectorate. Upon conviction this offence should be punishable by a period of time in prison and/or fine.**

**In addition, for prison officers and other staff members of the IPS, it should be a disciplinary offence to obstruct the work of the Inspectorate.**

- 3.2.14 The 2007 Prisons Act currently makes provision for the Inspector to provide an annual report to the Minister who will arrange to have that report laid before the Oireachtas and published. That report is to contain details of the prison inspections carried out during the preceding year. The OIP’s Annual Reports since 2007 have not been published in a timely manner or meet the requirements as laid down in the statute. It is noted that on the death of Judge Reilly, the Department did not require the resumption of the publication of an Annual Report until the appointment of a new Inspector of Prison (see letter from DJE dated 20<sup>th</sup> February 2017). In addition, any reports arising from special investigations requested by the Minister under Section 31 of the Act are to be published in the same fashion.
- 3.2.15 As described elsewhere in this report, the bulk of the work of the OIP in recent years has involved the investigation of DiCs and the preparation of subsequent reports – this is understandable given the limited resources within OIP and the imperative to provide families with insights into the deaths of their loved ones. The process of publishing those reports, although they do not fall under the 2007 Act, appears to mirror the anticipated process in the Act. Our understanding is that those reports are forwarded to the Minister for publication and the Department then shares the report with the IPS. There is no direct contact between the OIP and the IPS with regards to the report but there is often a delay between OIP forwarding the report to the Department and the report being published. Concerns were expressed to us about this delay diluting the currency of the findings of the report and also the process itself undermining the perceived independence of the OIP.
- 3.2.16 In the event that a new properly resourced and robust Inspectorate is regularly inspecting prisons and therefore seeking to publish inspection reports, this process needs to be significantly streamlined and improved.
- 3.2.17 Best practice from other inspection bodies inside and outside the state which we engaged with would suggest a more appropriate and collaborative approach in the publication of inspection reports. The final report is unlikely to contain anything that will greatly surprise the inspected prison as feedback will already have been provided before the report is finalised and certainly before it is ready for publication. Once the report is ready, most other inspectorates will share the report in draft status with the inspected body both for factual accuracy and to allow the inspected body to prepare its own commentary and action plan (to be published on or after the date of the publication of the finalised inspection report). Once the factual accuracy check is completed, the final report is then, in many but not all, cases shared with the relevant parent Department as a courtesy along with an indication of the likely publication date. Practice in this regard varied in accordance with relevant statutory provision. Certain agencies, for instance the IHREC and the Office of the Ombudsman provide their reports directly to the Oireachtas. Others provided their reports to the relevant

government Department with notification as to when it was going to be published. However, none appear to share the current practice in relation to OIP Death in Custody reports.

- 3.2.18 It is noted that the new Inspector of Prisons has already articulated her desire to adopt a more collaborative yet independent process in the development and publication of inspection and investigation reports, drawing on her prior experience of recognised “good practice” inspection processes within the mental health environment.
- 3.2.19 The detailed process leading towards publication was not regarded as critical by many stakeholders outside the immediate process but the Inspectorate having ownership of the final report and the timing of publication and control of any related media work was considered vitally important in confirming the independence of the Inspectorate. Most stakeholders agreed there was merit in continuing to have full prisons inspection reports laid before the Oireachtas, potentially by the Minister for Justice and Equality on receipt of the report from the Inspectorate.

#### **Recommendation #12**

**The Inspectorate should have the statutory power to publish its reports directly i.e. without reference to or approval of any other party, including the Minister.**

**The Minister and senior Departmental officials should be provided with an indication of the likely publication date of a report from the Inspectorate. The Minister and DJE (plus other key stakeholders) in the sector should receive an embargoed copy of the report for information purposes at least one working week prior to publication.**

**The Inspectorate will share draft inspection and investigation reports with the IPS as appropriate and in advance of publication in accordance with best practice. The sharing of such draft reports is to allow the IPS to both provide a factual accuracy check and to develop an action plan against the recommendations contained within that report. Ideally this action plan should be published at the same time (or shortly after) the relevant Inspectorate Report.**

**The action plan (in response to the recommendations in an inspection or investigation report) should be published by the IPS, which “owns” the action plan in that it is responsible for the implementation of the [agreed] identified actions. It is envisaged that the Inspectorate’s web site would provide a link to the action plan (on the IPS website) along with the link to a particular inspection or investigation report, and vice versa.**

- 3.2.20 UN guidance and recognised good practice from elsewhere suggests that the work of the Inspectorate needs to be confidential and protected from interference, including any reprisal in the form of legal action.

#### **Recommendation #13**

**There should be statutory protection for the integrity and confidentiality of the work of the Inspectorate and for its ability to conduct its work including the publication of reports without negative consequential impact or legal action.**

**The work in relation to inspections and investigations of the Inspectorate should be exempt from Freedom of Information.**

**The conduct of its function and publications of the Inspectorate should be privileged. Specifically, the Chief Inspector of Prisons and designated inspection staff should have immunity, in respect of words spoken or written, or acts done, in the course of the performance of their statutory duties, set out in statute from:**

- **personal arrest and detention**

- **seizure of personal baggage**
- **seizure or surveillance of papers and documents**
- **legal action**

**There should be a legally-enforced absence of interference with communication from/to the Chief Inspector and designated inspection staff (including those in partner organisations) during and after the exercise of their mandates.**

- 3.2.21 It is envisaged that the Inspectorate will be subject to FOI requests in relation to the general work of the office.
- 3.2.22 UN guidance also suggests that those individual and bodies who raise issues to and/or support the work of the Inspectorate should also have protection against negative consequential impacts (including disciplinary and legal actions).

#### **Recommendation #14**

**Prisoners, staff, visitors and others should be permitted to speak privately and confidentially to the Chief Inspector of Prisons and nominated persons.**

**There should be a statutory prohibition on ordering, applying, permitting or tolerating any sanctions against any persons or organisations for having communicated with the Inspectorate any information, whether true or false, and no such persons or organisations shall be otherwise prejudiced in any way.**

- 3.2.23 In other jurisdictions, the presence of such statutory provisions is typically sufficient to dissuade any attempt to undermine the work of the Inspectorate, and it is not envisaged that there will be a frequent requirement to take sanction against individuals.



## 4 INSPECTORATE CAPABILITIES

Working with the Chief Inspector of Prisons and the OIP, we have used our approach to business design to identify the future capabilities across people process and technology capabilities the inspectorate needs to have in place to deliver the statutory obligations and services set out above.

### 4.1 Business and Financial Capabilities

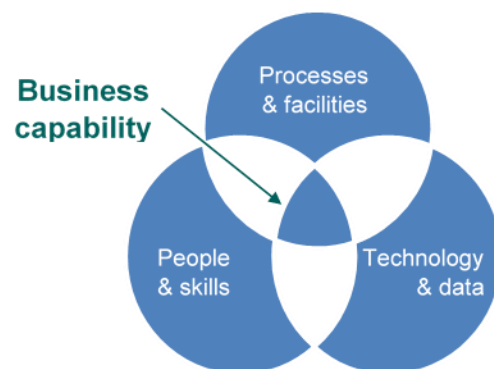
- 4.1.1 The key concept within PA's Business Design framework is that of a **"Business Capability"** which is defined as in this instance:

*"the ability for the Office of the Inspector of Prisons to deliver the services and interventions it wants to provide in order to meet its statutory responsibilities and achieve the outcomes it seeks".*

- 4.1.2 A **Business Capability Model** will identify what an organisation needs to build for the future. It is a key step in understanding the totality of what the Inspectorate will need to be able to do as an organisation going forward

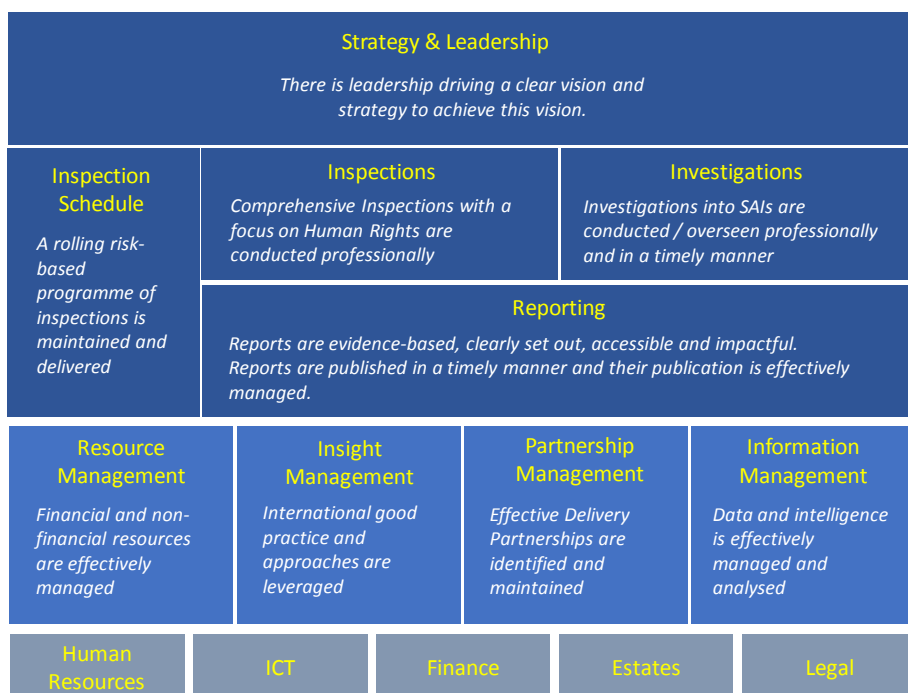
- 4.1.3 A business capability is a building block which includes:

- people & skills
- processes & facilities and
- technology & data.



- 4.1.4 It is all these elements that the Office will need in the future, and we would suggest that this review needs to especially consider the implications for people, technology and data in developing new business processes.

- 4.1.5 This Business Capability approach also considers the Capacity required to deliver the services and interventions that it wants to i.e. it is not just the ability of Inspectorate to deliver its services but also having access to the level of resource that will allow the Inspectorate to deliver these services across those organisations within its scope.

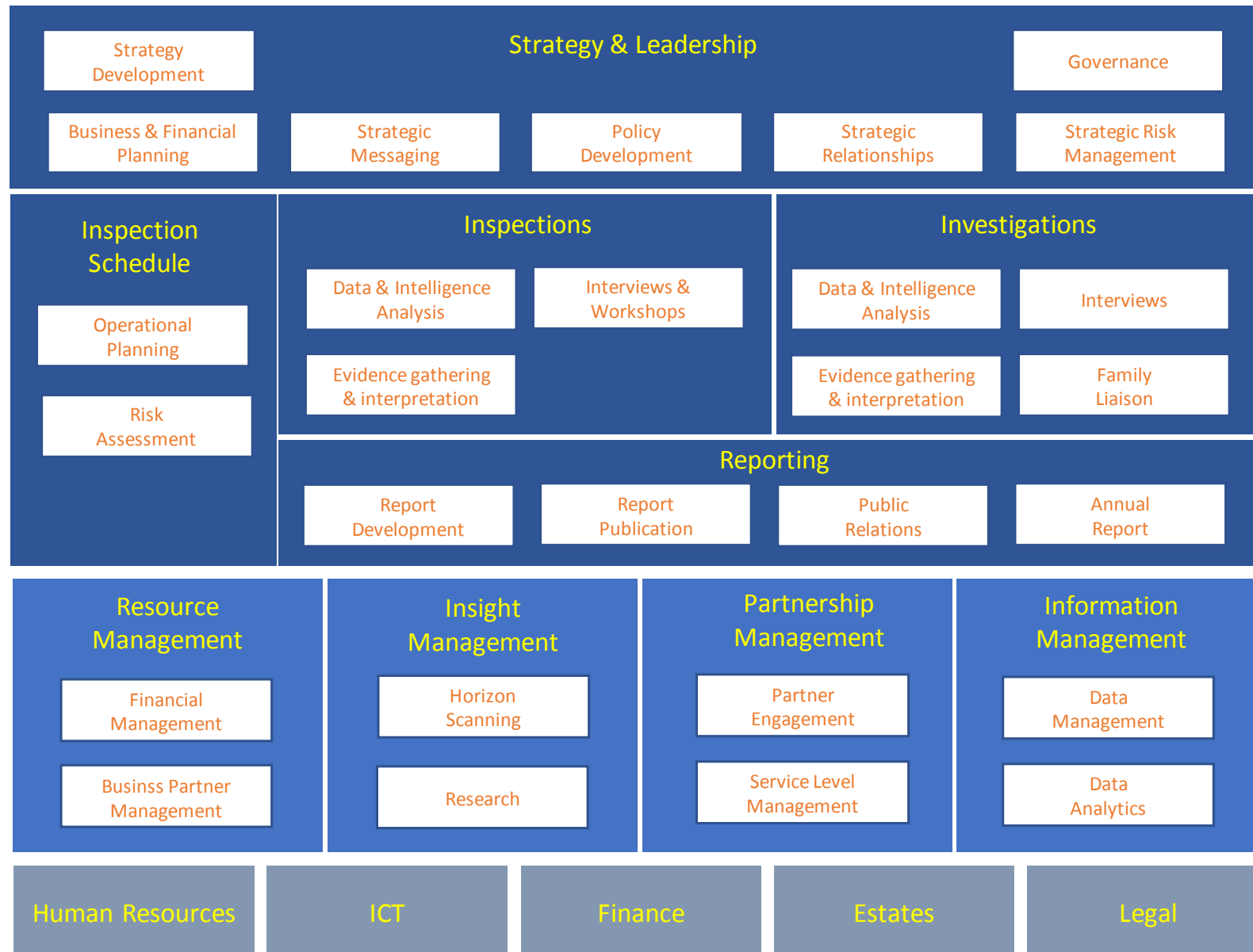




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## Future Capabilities Map for the Office of the Inspector of Prisons

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4.1.6 The future Financial Capabilities of the Inspectorate must cover:

- One-off delivery infrastructure build costs (over next period); and
- On-going recurring operating costs.

4.1.7 Examples of these cost elements are set out below:

One-Off Cost Items	On-going Recurring Costs
ICT Costs e.g. new systems (which may have an associated recurring support cost) Recruitment costs e.g. external recruitment	Core Staffing Office Costs Panel (day rate) Partner inputs (fixed fee/day rate) Report Publications e.g. public relations Travel & Subsistence e.g. inspections on prisons across Ireland Incidental e.g. room hire for meetings with families

## 4.2 Programme of Inspections

- 4.2.1 It hardly needs stating that if an Inspectorate of Prisons is to exist, it must engage in regular inspections of prisons. It is axiomatic that all stakeholders that we spoke to from other inspectorate type bodies in Ireland and further afield confirmed this obvious truism. In addition, OPCAT envisages a system of “regular” visits to places of detention (Article 1).
- 4.2.2 It is noteworthy that the IPS and the Department of Justice stakeholders recognised that a robust programme of inspections was necessary and also that the IPS was clear that it would welcome such an inspection process as a means of improving performance across the various prisons making up its estate.
- 4.2.3 Once the inspection process proper begins, it will be critical for Inspectorate to carry out regular inspections of the prisons making up the IPS estate. The precise interpretation of regularity will be a matter for the Inspectorate but our engagement with other prison inspectorates would suggest that a prison should expect to be inspected on an unannounced basis at least once every three years.
- 4.2.4 Indicative maximum periods between General Inspection are set out below:

### Phase 1 – Core Scope

General Inspection Focus		Maximum period between Inspection
Prisons	Remand Female Young persons (i.e. under 21)	1 year
	Convicted	3 years

Note:

- It is envisaged that Prison Transport (both to/from Courts and between Prisons) will be included in each General Inspection.
- OIP will also conduct Thematic and Functional inspections

### Phase 2 – Extended Scope

General Inspection Focus		Maximum period between Inspection
Court Cells	Court Regions	3 years implies minimum of 2 regions per year
Garda Cells	Policing Regions Including airports	3 years implies minimum of 2 regions per year

- 4.2.5 The Inspectorate should develop and maintain a rolling programme of inspections, at least 12 months. In steady state, this rolling 12-month programme should be characterised by:
- Scheduled Functional Inspections
  - Slots for [potential] Follow-up Inspections
  - Flexibility to refocus based on risk assessment.
  - On-going programme of General Inspections (the establishment of which will be the key initial priority for the OIP)

- Scheduled Thematic Inspections

4.2.6 The Inspection Programme should prioritise inspection activity based on risk. Key considerations in determining risk in relation to a particular prison establishment include:

- Data Indicators – SAIs, prisoner complaints
- Intelligence Indicators - Visiting Committee feedback and reports, chaplain reports, third party insights and feedback (e.g. IPRT)
- Time since last inspection of place, with due consideration given towards the maximum period between inspections set out above.

4.2.7 In steady state we would suggest:

- a minimum of two parallel inspection workstreams (each supported by a dedicated internal inspection team)
- each workstream should aim to conduct at least three General, Thematic or Functional Inspections per annum i.e. the Inspectorate will have a minimum of six “full” inspection slots per annum
- each workstream should also make provision for up to three shorter-form follow-up inspections

#### **Recommendation #15**

**The Inspectorate should develop and maintain a future Inspection Programme.**

**The annual Inspection Programme should provide at least six “full” General, Thematic and Functional inspection slots and four shorter-form “follow-up” inspection slots.**

**At the core of this Inspection Programme should be a priority focus on the General Inspections of individual prisons.**

**If particularly egregious problems have been identified in particular prisons, those prisons should be considered early follow-up inspection.**

**If common difficulties are discovered across a number of prisons, then a thematic inspection on those difficulties can be considered.**

**Thus, in addition to regular inspection, risk-driven inspection becomes the norm. Risk-based prioritisation subject to a minimum inspection cycle.**

**An on-going self-assessment regime across each of the individual of prisons should be undertaken in parallel to the Inspectorate’s Inspection programme.**

**The Inspection Programme should be confidential although it should be shared with delivery partners (see below) in order to coordinate availability of resources**

4.2.8 Most stakeholders were clear in their view that a collaborative approach to inspections was the best way forward. There is little merit or indeed fairness in inspecting any agency without that agency being clear in advance what it is to be inspected against. It is also noted that acknowledgement that this is the preferred approach described by the Inspector when she met with senior IPS management following her appointment in May 2018. Many other inspectorate bodies publish their inspection methodology on their websites and elsewhere in order to be completely transparent with the agency to be inspected and indeed all other relevant stakeholders including civil society actors. These methodologies can and often are

updated and refined in light of experience gained during inspections and also best practice elsewhere.

- 4.2.9 The above approach, informed as it is by best practice domestically and internationally, and reinforced by the feedback from stakeholders appears to be the most appropriate approach for the Inspectorate to take. This is particularly the case in an environment where neither the Inspectorate nor the IPS, as the inspected body, have recent significant substantive experience of inspection, primarily as a result of the understandable recent focus on progressing investigations into Deaths in Custody. In addition, it is a constructive approach where both the inspectorate and the inspected body share common goals – the health and safety of prisoners, the protection of their human rights, constructive use of time in prison, rehabilitation opportunities etc.
- 4.2.10 One suggestion, from the new Inspector of Prisons amongst others, which we canvassed with most stakeholders and which was positively received was that the Inspectorate, having developed a draft inspection methodology based on international best practice and informed by its likely responsibilities as at least part of the NPM, engage in a series of consultations with senior IPS staff and prison governors. These consultations will serve two purposes. The first is to alert and educate the IPS as to what inspections will look and feel like at the receiving end. The IPS should be reassured that there will be no surprises during the inspection process. However, in addition it will allow the IPS to feedback to the Inspectorate any suggested changes it feels could improve the methodology. While refinement of the methodology will of course ultimately be a matter for the OIP, this appears to be a sensible way forward.

#### **Recommendation #16**

**Each prison should be inspected at least once in the next three years (i.e. 2019-2022) in order to establish a baseline of information for the Inspectorate. This baseline can then be used to inform the approach to inspections in the next cycle for the Inspectorate.**

**We share the strongly expressed view from stakeholders that it is essential for confidence in the new Inspectorate regime that a first prison General Inspection is conducted by the renewed Inspectorate's team before the end of 2019.**

**The Inspectorate should undertake a programme of engagement with the IPS and its delivery partners prior to this first inspection to help ensure awareness and understanding of the processes to be applied (and indeed such engagement should be an on-going characteristic of the Inspectorate's relationship with the IPS).**

- 4.2.11 It is beyond contention that best practice in prison inspection is that most regular visits to prisons should take place on an unannounced basis. This is the general practice of the Criminal Justice Inspectorate in Northern Ireland (CJINI) and Her Majesty's Inspector of Prisons (HMIP) in Britain. It is also the general practice in relation to Health Information and Quality Authority (HIQA) inspections in Ireland. International experts with whom we engaged were also clear that this was the best approach for inspection of places of detention. If the Inspectorate wishes to be regarded as an example of best practice domestically and internationally, the presumption must be that most of its inspections will be unannounced and this reflected above.
- 4.2.12 However, the reality is that, given the relative lack of inspection activity since the inception of the OIP, a lack of activity which has been particularly pronounced in recent years as a direct consequence of existing staffing levels, there is currently limited institutional memory of the inspection process across both the Inspectorate and IPS. For example, there is only one Inspector (at Principal Officer grade) in the OIP with experience of the former inspection regime. The challenges with the current low level of staffing within the OIP is compounded by the lapsing of the expert panel that had previously been formed by the former Inspector,

ensuring that there is no ready access to any level of flexible resourcing which could assist through the peaks and troughs of the OIP's workload.

- 4.2.13 Given the "low base" from which the Inspectorate is beginning its inspection process and the fact that the IPS has in effect not experienced a robust programme of prison inspections before, it was suggested to us that it may be useful, initially, to have an announced inspection take place. This approach would help ensure that the inspection would proceed smoothly and a collaborative approach towards inspection could be established from the beginning.

#### **Recommendation #17**

**The first General Inspection of a prison establishment under the Prison Inspectorate's new inspection regime should be announced. Further, senior IPS officials from other prisons should be encouraged to shadow this initial inspection to understand both the process of inspection and the nature of future engagement by the Inspectorate.**

- 4.2.14 Self-assessment by the IPS will be a key component of the new Inspection regime. IPS will be expected, through its Compliance Unit, to make self-assessment returns on a quarterly basis for each of the 12 prisons within its estate. These self-assessments should be completed in summary form, against the Inspection areas and assessment/scoring approach set out by the Inspectorate. These summary self-assessments will be a key input to the prioritisation process within the Inspectorate's programme of work.

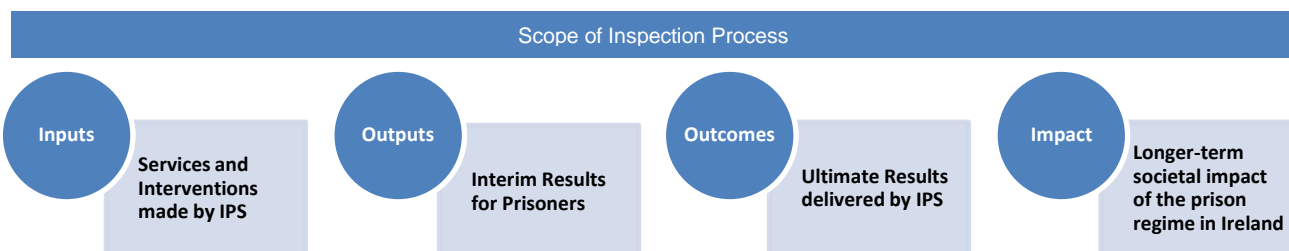
#### **Recommendation #18**

**The IPS Compliance Unit should provide self-assessment returns to the Chief Inspector of Prisons (against the Inspection areas and assessment/scoring approach set out by the Inspectorate).**

### **4.3 Inspections**

- 4.3.1 Generally, the preferred approach to inspections being adopted in other sectors and jurisdictions is to focus on driving best practice rather than simply confirming compliance – inspectorates in many sectors (both in Ireland and internationally) are aiming to move from a role of enforcement to a role of enabling and driving better outcomes.
- 4.3.2 However, in developing an inspection approach for prisons in Ireland there is a need to reflect the relatively lack of:
- organisational maturity in both in the IPS and the Inspectorate (both of which do not currently possess a comprehensive and robust set of optimised processes); and
  - maturity in the inspection of prisons in Ireland – there is an absence of documented inspection processes, only half of the prisons have ever been formally inspected (i.e. have had an Inspection Report published in relation to them) and only three prisons have been formally inspected in the last five years, meaning there is a distinct lack, some would argue complete absence, of corporate memory in relation to the inspection process.
- 4.3.3 In this context it is considered that the renewed inspection regime for prisons in Ireland must consider both outcomes and the coverage and compliance of operational delivery.

#### 4.3.4 A proposed Inspection Framework is set out below:



- Inputs:** activities, services and interventions undertaken by the IPS and its delivery partners (against operational policies, standards and procedures)
- Outputs:** interim results for prisoners delivered by IPS (which provide a proxy indicator to positive end results)
- Outcomes:** end results for prisoners and society delivered by the IPS
- Impact:** ultimate consequential benefits of the prison regime leading to safer communities in Ireland

Example – Education and Training			
Inputs	Outputs	Outcomes	Impact
Education and training facilitates and activities	Prisoners spending productive and structured time on education and training	Prisoners gaining qualifications and skills – greater employability	Prisoners less likely to reoffend and less likely to lead non-chaotic lifestyle.

#### 4.3.5 In the context of this inspection process the Inspectorate must develop a process that is focused on both outcomes and the coverage and compliance of inputs and outputs i.e. operational delivery.

##### Recommendation #19

**The inspection approach adopted by the Inspectorate should initially focus on both:**

- **Outcomes – the end results that the IPS is aiming to achieve, and the interim step outputs that indicate that these end results are likely to be achieved.**
- **Coverage and Compliance – the operational policies and procedures that the IPS has in place to deliver these outcomes, and the compliance by operational staff against these policies and procedures.**

**This inspection approach should be reviewed over time with a view, as both the inspection and prison systems mature, to moving further towards a focus on enabling outcomes rather than ensuring compliance.**

#### 4.3.6 General Inspections of individual prisons should consider two aspects of the operation and delivery of that establishment:

- **Outcomes (i.e. the results delivered by the IPS)**

Inspections should assess outcomes for prisoners, staff and visitors plus the overall contribution (i.e. Impact) of the IPS prison system to safer communities in Ireland.

The Inspectorate's expectations will include:

→ Outcome targets exist in the following areas:



- Security & Safety
  - Respect & Dignity
  - Health & well-being
  - Rehabilitation & Development
  - Resettlement
- Managers and staff are fully aware (necessary to fulfil their roles) of the outcomes that the Prison System is aiming to achieve, and how their particular prison is currently performing.

The proposed focus areas of an Inspection are as follows:

<b>Outcome Area</b>	<b>Target Outcomes with indicative potential measures</b>
<b>Security &amp; Safety</b>	<ul style="list-style-type: none"> <li>• Prisoners are held securely # of [attempted] escapes from custody</li> <li>• Prisoners are held safely</li> <li>• IPS Staff and delivery partners are safe # of assaults (and threats) on IPS staff</li> <li>• Visitors and other persons coming into contact with IPS are safe # of assaults (and threats) to others coming into contact with IPS</li> </ul>
<b>Respect &amp; Dignity</b>	<ul style="list-style-type: none"> <li>• Prisoners are treated with respect for their human dignity</li> </ul>
<b>Health &amp; well-being</b>	<ul style="list-style-type: none"> <li>• Prisoners are supported to maintain and develop relationships with their family and friends.</li> </ul>
<b>Rehabilitation &amp; Development</b>	<ul style="list-style-type: none"> <li>• Prisoners are able to engage in purposeful activities % of prisoners engaged in training/work % of prisoners gaining qualifications</li> </ul>
<b>Resettlement</b>	<ul style="list-style-type: none"> <li>• Prisoners are helped to reduce their likelihood of reoffending</li> <li>• Prisoners risk of harm is managed effectively.</li> <li>• Prisoners are prepared for their release back into the community.</li> </ul>

An example Outcome Matrix (initially populated) is provided at Appendix A.

### **Recommendation #20**

**The Inspectorate should define those outcomes that it expects the IPS to deliver and the measures (with defined targets) for each.**

**The Inspectorate should reflect on the operational outcomes and associated performance measures set by the IPS. There should be alignment between these Outcomes and the KPIs that Inspectorate use to assess, for example, the overall performance of prisons and the Governor within each prison.**

- **Operational Guidance and Compliance**

Application of and adherence to IPS SOPs (including job descriptions) and any applicable operational policies and agreed minimum standards.

The Inspectorate's expectations will include:

→ Legislation and Departmental policy

Legislation is clearly set out both in the Act and the Prison Rules 2007 and provides unambiguous guidance on IPS statutory responsibilities and powers.

IPS managers and staff developing their operational policies are fully aware of the overarching legislative and policy framework.

→ IPS operational policy

Operational policies exist in all operational areas and reflect the relevant legislative and policy framework, as well as minimum standards that are expected. Operational policies also reflect recognised good practice.

Operational policies are clearly articulated and readily accessible by staff.

Operational policies are monitored and updated in a controlled manner and that any changes are effectively communicated to staff.

→ IPS SOPs

SOPs exist for all operational processes and tasks.

SOPs set out step-by-step instructions to guide IPS (and delivery partner) conduct routine operations.

SOPs reflect a good practice approach which will drive efficiency, effectiveness and uniformity of performance, while reducing miscommunication and failure to comply with statutory and policy obligations.

SOPs are monitored and updated in a controlled manner and that any changes are effectively communicated to staff.

→ IPS delivery execution

Job descriptions are clear in terms of qualification and training requirements.

Operational staff are fully trained in the operational policies and SOPs that are relevant to the execution of their role.

Operational staff can record (through technology systems or hardcopy records) their compliance with SOPs at the point of execution.

The proposed focus areas of an Inspection are as follows:

Coverage & Compliance Area	Inspection Focus areas with indicative potential measures
<b>Legislation &amp; Departmental Policy</b>	<ul style="list-style-type: none"><li>• Does the legislation provide a comprehensive framework that clearly sets out the relevant statutory obligations and powers?</li><li>• Does the overarching prison policy framework provide a clear statement of the government's intent in the five inspection outcome areas?</li><li>• Are IPS staff developing operational policies and SOPs fully aware of the overarching legislative and policy framework and do they understand the outcome intentions?</li></ul>

<b>IPS Operational Policy</b>	<ul style="list-style-type: none"> <li>• Do the relevant operational policies exist (and are they accessible)?</li> <li>• Does the operational policy provide a comprehensive “good practice” approach that fully reflect the governing legislative and policy framework?</li> <li>• Are IPS managers and staff familiar with and trained in the operational policy and associated standards relevant to the roles they are fulfilling?</li> </ul>
<b>IPS Standard Operating Procedures (SOPs)</b>	<ul style="list-style-type: none"> <li>• Do the relevant SOPs exist (and are they accessible)?</li> <li>• Does the SOP provide a comprehensive and robust set of step-by-step processes that allow staff to efficient and effectively complete the necessary tasks?</li> <li>• Are the relevant managers and staff familiar with and trained in the SOPs that govern how work should be carried out in their business area?</li> </ul>
<b>IPS Delivery Execution</b>	<ul style="list-style-type: none"> <li>• Do managers and staff have the necessary skills to perform their role as defined in the IPS operational policies and SOPs?</li> <li>• Do managers and staff comply (and record their compliance) with the IPS operational policies and SOPs?</li> </ul>

- 4.3.7 General Inspections of individual prison establishments will focus, at least initially, on those coverage and compliance areas within the remit of IPS both at a local and national level. Thematic and functional inspections are more likely to have an initial greater focus on the overarching legislative and policy framework which sits with the DJE.

#### **Recommendation #21**

**The Inspectorate should define those service delivery areas that it expects IPS to have up-to-date and comprehensive operational policies and SOPs.**

**These Operational Policies and SOPs should be clearly defined and accessible to IPS managers and staff. Managers and staff should be both aware of and trained in the policies and procedures that are relevant to the roles that they are fulfilling.**

**Staff are expected to comply with IPS operational policies and SOPs and to record their compliance.**

- 4.3.8 The inspection team will summarise their assessment of a prison establishment’s performance using a standard scoring matrix. An example scoring scheme is below:

<b>Score</b>	<b>Outcomes</b>	<b>Coverage &amp; Compliance</b>
<b>4</b>	There is no evidence that outcomes are being adversely affected in any significant areas.	<p>There is comprehensive coverage of operational policies and SOPs in these areas; and</p> <p>There is comprehensive evidence of staff having the ability to comply / complying with those policies and SOPs that are in place.</p>

<b>3</b>	There is evidence of adverse outcomes in only a small number of areas. For the majority there are no significant concerns.	There is significant but not comprehensive coverage of operational policies and SOPs in these areas; and There is significant but not comprehensive evidence of staff having the ability to comply / complying with those policies and SOPs that are in place.
<b>2</b>	There is evidence that outcomes are being adversely affected in many areas or particularly in those areas of greatest importance to the well-being of detainees. Problems/concerns, if left unattended, are likely to become areas of serious concern.	There is limited coverage of operational policies and SOPs in these areas; and/or There is limited evidence of staff having the ability to comply / complying with those policies and SOPs that are in place.
<b>1</b>	There is evidence that outcomes are being adversely affected in many areas or particularly in those areas of greatest importance to the well-being of detainees. Problems/concerns, if left unattended, are likely to become areas of serious concern.	There is no coverage of operational policies and SOPs in these areas.

#### **Recommendation #22**

**Inspectorate should develop a transparent rating system which will be used to provide a summary assessment of the inspection of a prison establishment / IPS function.**

4.3.9 It is only fair and reasonable (as well as being the most effective approach) to inspect prisons against their performance against IPS outcome targets and their compliance with IPS SOPs rather than introduce a new set of measures and metrics. Governors should be fully aware of and be aiming to operate to the targets and standards against which the Inspectorate will conduct inspections. There are two caveats to this desired approach:

- The IPS must have a defined set of outcome measures for each prison, which the Inspector of Prisons believes provides an ambitious but achievable results-driven target for each prison
- The IPS must have a defined set of SOPs covering all aspects of the prison regime. These may include minor variations to reflect the context of individual prisons but such variations will be both subject to appropriate IPS approvals and fully documented.

#### **Recommendation #23**

**The IPS should continue its on-going work to develop:**

- **Target outcomes and associated measures for each Prison (and for the overall prison system)**
- **Comprehensive operational policies and associated SOPs**
- **The overarching governance and compliance regime which will manage and monitor adherence to both dimensions.**

**The system-wide definition of these outcomes and policy / SOP coverage and compliance must be completed by Autumn 2019 in order to support the conduct of the first General Inspection.**

**The IPS should liaise with the Inspectorate in the development of these outcomes, policies and SOPs.**

**This first General Inspection should be conducted by the end of December 2019 irrespective of whether the IPS delivers on this requirement.**

***“All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”***

Article Ten, United Nations International Covenant on Civil and Political Rights

- 4.3.10 Some stakeholders suggested to us that inspections carried out by the Inspectorate under its likely future NPM role would have to be conducted to a different standard than its normal inspection methodology. Essentially it was suggested that a more focused human rights lens would have to be used for such inspection work. That is not our view and is not supported either by international best practice or by a pragmatic approach to likely duplication of effort or indeed confusion of standards. In a state such as Ireland with its constitutional and statutory human rights protections, any prison inspection should have at its core due regard to the human rights of prisoners. OPCAT and NPM experience elsewhere, as well as other appropriate and relevant regional and international human rights standards, should in our view contribute to the development of the Inspectorate inspection methodology. This methodology will then inform the Prison Inspectorate’s core function as well as its NPM function. Whatever the ultimate composition of the NPM, it appears that the IHREC as well as local and international human rights NGOs will be useful partners in the development of such an approach.

#### **Recommendation #24**

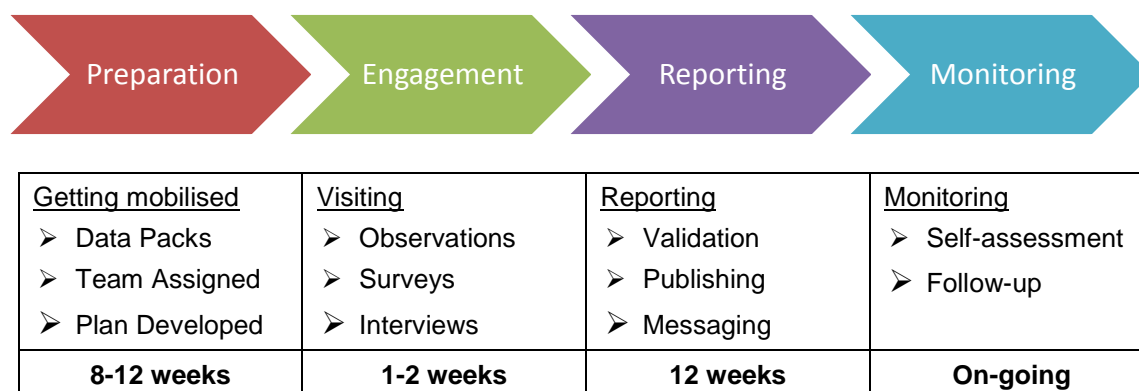
**The Inspectorate’s inspection and investigation processes should have appropriate due regard for the human rights of prisoners. The human rights standards that underpin its core services should be in line with what is expected from an NPM.**

**These human rights standards should be derived from both binding treaty law and authoritative standards including the newly revised UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the European Prison Rules.**

- 4.3.11 Other sources of these standards include:
- UN Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment, 1988 - <http://www.un.org/documents/ga/res/43/a43r173.htm/>
  - UN Basic Principles for the Treatment of Prisoners - <http://www.ohchr.org/EN/ProfessionalInterest/Pages/BasicPrinciplesTreatmentOfPrisoners.aspx/>
  - UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990 - <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>
  - UN Basic Principles on the Role of Lawyers, 1990 - <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>

- UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), 2010 - <http://www.un.org/en/ecosoc/docs/2010/res%202010-16.pdf>
- UN Code of Conduct for Law Enforcement Officials, 1979 - <http://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx>
- UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities - [http://www.ohchr.org/Documents/Issues/Minorities/Booklet\\_Minorities\\_English.pdf](http://www.ohchr.org/Documents/Issues/Minorities/Booklet_Minorities_English.pdf)
- Council of Europe, Recommendation Rec[2006]2 of the Committee of Ministers to member states on the European Prison Rules (European Prison Rules), 2006 - [http://www.coe.int/t/dgi/criminallawcoop/Presentation/Documents/European-Prison-Rules\\_978-92-871-5982-3.pdf](http://www.coe.int/t/dgi/criminallawcoop/Presentation/Documents/European-Prison-Rules_978-92-871-5982-3.pdf)
- UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), 2015 - [https://www.unodc.org/documents/justice-and-prison-reform/GAREOLUTION/E\\_ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/GAREOLUTION/E_ebook.pdf)

4.3.12 All inspections should be conducted against defined processes. General, Thematic and Functional Inspections will follow a common core process. There are four stages to the proposed Inspection Process:



4.3.13 The key stages of this common Inspection process are set out in further detail below:

Stage 1 – Preparation
<p><u><b>Key activities</b></u></p> <ul style="list-style-type: none"> <li>• <b>Initial data and intelligence assessment</b> <ul style="list-style-type: none"> <li>→ <b>Establishment overview</b> <p>An overview of the prison establishment in terms of, inter alia:</p> <ul style="list-style-type: none"> <li>○ Brief History</li> <li>○ Location and layout</li> <li>○ Governor and key senior staff (roles and responsibilities)</li> <li>○ Prisoner profile and numbers</li> <li>○ Staff numbers, any other IPS delivery partners operating at prison</li> <li>○ Facilities e.g. health, education</li> <li>○ Previous Inspection and/or Death in Custody Reports</li> </ul> </li> <li>→ <b>Data assessment</b></li> </ul> </li> </ul>

In order to shape the Inspection Plan (including the prioritisation of specific areas for inspection), Inspectors will review and assess relevant data accessible by the Inspectorate and delivery partners.

Data sources will include SAIs, complaints and well as IPS self-assessment returns.

→ **Intelligence assessment**

In order to shape the inspection plan (including the prioritisation of specific areas for inspection), Inspectors will review and assess relevant intelligence held by the Inspectorate and delivery partners.

This intelligence will have been gathered on an on-going basis through, for example, Visiting Committees and advocacy organisations.

- **Inspection pre-work**

→ **Inspection team**

OIP will identify inspection team working with the Expert Panel and partner organisations.

→ **Inspection plan**

Inspection plan will be developed by the Inspection Team (led by Inspectorate Inspectors) – the plan will cover both:

- Engagement stage
  - What are the primary areas of focus in the Inspection
  - Who within the Inspection Team will have what responsibilities
  - Timescales over the period of the engagement
- Reporting stage
  - Format and structure of Inspection Report
  - Who is responsible for producing what content and by when

→ **Travel and accommodation**

OIP will make arrangements for travel and accommodation for all inspection team members

- **Briefing of inspection team**

→ **Briefing**

- Confirmation of Inspection dates, timings and logistics
- Confirmation of Inspection Plan
- Confirmation of roles and responsibilities
- Ways of working during inspection
- Contact details

### Key Outputs

- i. **Data pack**

OIP will produce an electronic data pack covering the prison establishment to be inspected.

This data pack will be shared with inspection team to inform development of Inspection Plan and conduct of the Inspection.

- ii. **Inspection team**

The Inspection Team will be confirmed and a pack containing short bios plus inspection roles and responsibilities of all individuals involved shared across the team.



### iii. **Inspection plan**

The Inspection Plan will provide a detailed set of actions, dependencies and responsibilities covering both the Engagement and Reporting phases.

### iv. **Briefing**

Formal briefing (potential conference call) to confirm inspection arrangements

#### Commentary

There is a lack of baseline information within the Inspectorate about individual prisons due to the lack of published general inspection reports of individual prison establishments over the past period. It is the continued development of this core baseline information that is key to future effective risk-based prioritisation of inspections. While the development of the initial Data Packs for each of the 12 prison establishments will be a significant task it is envisaged that this activity become less arduous over time as this data and intelligence is gathered and maintained.

A key factor will be the continued monitoring (i.e. not just in immediate preparation for an inspection) of each prison establishment e.g. number and nature of SAls, complaints and intelligence from the Inspectorate's network.

## **Stage 2 – Engagement**

### Key Activities

#### • **On-site inspection**

The key activities during an on-site inspection will include:

##### → **Initiation briefing**

Inspectors will brief Governor and senior staff at the start of the inspection. They will set out the Inspection Plan and associated timescales. They will confirm the powers of the inspection team and the approaches that will be taken.

Governor and senior staff will be able to raise any queries and flag any specific issues at this initial briefing session. Prison staff will support and facilitate the inspection team.

A briefing note will be issued to all prisoners and staff explaining that the inspection is underway, its purpose and how they can engage with the inspection team.

##### → **Prisoner survey**

Inspectors will conduct a survey of prisoners to gauge their perceptions. A paper copy survey will be distributed and collected by inspection team. Participation in the survey will be voluntary.

##### → **Staff survey**

Inspectors will conduct a survey of staff to gauge their perceptions. Survey will be made available electronically to staff. Participation in the survey will be voluntary.

##### → **Observation and assessment**

Inspectors will access all areas of the prison to assess compliance with minimum standards and IPS standard operating procedures. Inspectors will observe prison facilities and operations. Inspectors will engage with prisoners, staff and visitors in the course of these observations.

##### → **Interviews and discussions**

Inspectors will conduct a series of formal interviews with individual prisoners and discussions with particular cadres of prisoners e.g. life sentence prisoners, remand prisoners, sexual offenders. Prison staff will be asked to ensure that prisoners are made available for these interviews and discussions.

→ **Documentation review**

Inspectors will review key (electronic / paper) documentation and information within the prison to ensure accurate and timely compliance with IPS standard operating procedures.

→ **Close out Meeting**

Inspection team will provide feedback (session circa 2 hours) to the Governor and senior staff within the prison on both:

- Levels of engagement with the inspection
- Emerging Findings (including any Immediate Action Notifications, see below)

### **Key outputs**

i. **Evidence pack**

Evidence pack containing products from engagement phase, which may include:

- Observation notes and supporting evidence e.g. photographs
- Survey returns (prisoners, staff and visitors)
- Interview notes
- Focus group / workshop outputs
- Documentation e.g. copy of documents demonstrating compliance with SOPs

ii. **Emerging findings**

Emerging findings from the on-site engagement and the assessment of data and intelligence to be shared with the Governor and senior staff at the Inspection Close Out meeting.

iii. **Immediate Action Notification (IANs)** - if required

IANs will be raised by the Inspectorate where there the Inspection Team have significant concerns with regard to the safety, treatment and/or conditions of those detained i.e. concerns so significant that immediate action is required, rather than waiting for the Final Inspection Report to be published. IANs will be formally submitted to the DG of the IPS copied to the Minister for Justice and Equality within 7 days of the Inspection Close Out meeting.

### **Commentary**

Prisoner and Staff surveys are intended to provide a counter weight to the “official” evidence that the prison authorities will provide. The surveys will seek evidence of how the prison is actually doing by getting feedback from those living and working there. These surveys are vital pieces of evidence which can also refocus an inspection mid-stream if issues arise which demand exploration.

It is envisaged that the Inspectorate may issue information requests and/or questionnaires during its engagement in a prison. These completed information requests should be returned by the IPS within 5 working days.

Emerging findings are intended to be indicative and assist the IPS in understanding the broad conclusions of the Inspection. These emerging findings are not intended to be comprehensive and are subject to change and refinement.

It is envisaged that the IPS will issue an Action Plan to address any Immediate Action Notifications (IANs) that are raised by the Inspection Team. The raising of an IAP will reflect a serious issue impacting on, for example:

- Prisoner and staff safety
- Prison security
- Human rights [potential] violations e.g. conditions that prisoners are being held in and/or treatment of prisoners

The IPS Action Plan to address the IAN should be published within 7 working days of receipt of the IAN and should reflect the seriousness and urgency of the need that is reflected in the IAN.

### Stage 3 – Reporting

#### Key Activities

- **Prepare draft report**

Develop draft report in agreed structure and format (see below) setting out evidence-based findings and recommendations

- **Validate and finalise draft report**

- **Share draft report with IPS**

The sharing of the draft report with IPS will allow:

- IPS to identify any factual inaccuracies in report
- IPS to raise any clarifications they may have
- IPS to develop an Action Plan (which would ideally be published by IPS in parallel to the publication of the Inspection Report by the OIP)

The sharing of the draft report is not intended as providing a platform for IPS to challenge the findings and recommendations of the Inspection Report.

- **Finalise draft report**

- Draft report updated with feedback from IPS
- Report formatted and subject to final proof read

- **Publish final report**

- Notify Minister and DJE of publication
- Share embargoed version of report with key stakeholders
- Prepare embargoed press release and coordinate with media
- Publish on Inspectorate website (redacted as deemed appropriate by Inspector of Prisons)

#### Key outputs

- i. **Draft report**

Draft report to be shared with IPS to ensure factual accuracy and to address any clarifications they may have.

- ii. **Final report**

Final report for publication.

- iii. **Action plan (developed by IPS)**

Action plan setting out how recommendations will be addressed by IPS.

#### Commentary

The Inspection Report should follow a standard structure. It is suggested that this structure should reflect the Inspection Framework around outcomes and coverage and compliance, the proposed inspection focus areas.

It is intended that the recommendations made by Inspectorate will be relatively limited in number so that the Inspection Reports present something that is realistically actionable by IPS. Recommendations will typically be designed in order not to specify how the recommendation should be actioned and implemented, which is the responsibility of the IPS.

Co-ordination with IPS should allow its action plan to be published at the same time as the final report. This action plan should set out how the IPS will address the recommendations set out in the Inspectorate Report. It will require approval from the Inspectorate e.g. in relation to the acceptability of proposed timescales.

## **Stage 4 – Monitoring**

### **Key activities**

- **Monitor progress against action plan**

- **Agree monitoring approach**

Monitoring by the Inspectorate of progress by IPS against their action plan may involve:

- Self-Assessment of progress by IPS; and/or
- Follow-up Inspection (see below) – such an Inspection will be announced to ensure that the necessary IPS officials are present on site.

- **Conduct monitoring**

Follow-up Inspections will be initiated against a risk-based assessment. A Follow-up Inspection by the Inspectorate may be required if, for example:

- OIP believe that the nature of the recommendations (e.g. seriousness/sensitivity) to be addressed by the IPS Action Plan reflect a level of risk that mandates on-site assurance of progress is required.
- OIP does not get sufficient comfort from the IPS self-assessment of progress against the action plan.

OIP may also arrange a follow-up inspection on an ad-hoc basis to assure itself that recommendations in inspection reports are being progressed.

### **Key outputs**

- i. **Monitoring approach**

The Inspectorate will set out how it envisages that the IPS Action Plan will be monitored.

- ii. **Follow-up inspection**

A follow-up inspection may be scheduled by the inspection team.

### **Commentary**

Self-assessment by IPS will be a key component of the Inspectorate's monitoring toolkit. IPS should provide self-assessment returns for all prisons on an on-going basis.

- 4.3.14 Recommendations set out in Inspection Reports will be evidence based. These recommendations will not be designed to define solutions (which will be the responsibility of IPS and to a lesser extent DJE) but rather highlighting those issues that need to be resolved. Recommendations will be directed at a number of levels – local prison management (IPS), national prison management (IPS) and the overarching national policy framework for prisons (DJE).

#### **Recommendation #25**

**The recommendations set out by the Inspectorate in its Inspection reports will be evidence based and will relate to (as applicable):**

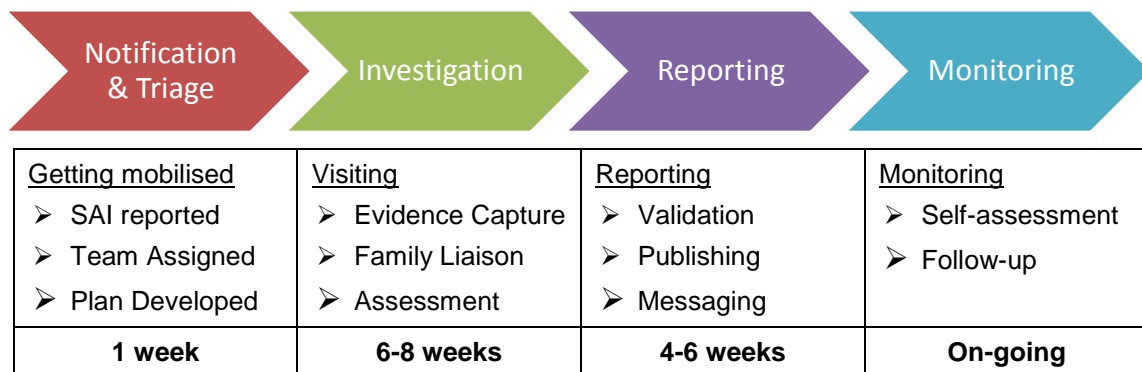
- **IPS Prison Management (i.e. the Governor and the senior management team with a specific prison) in relation to issues within a particular prison such as, amongst other things:**
  - **relatively poor outcomes**
  - **operation delivery and/or compliance issues**
- **IPS Headquarters (i.e. Director General and Senior IPS management) in relation to thematic issues that potentially apply across more than one prison such as, amongst other things:**
  - **Maximising the realisation and value of desired outcomes**
  - **Operational delivery issues and /or system-wide standard operating procedures**
  - **Prison service wide operational policies and their implementation**
- **Department of Justice & Equality**
  - **Overarching Prison Policy and Legislation**

## 4.4 Investigations

4.4.1 The overarching aim of this approach to Investigations is twofold:

- to ensure that serious incidents within prisons are investigated independently with a focus on identifying and actioning learning points
- to provide intelligence into the programme of inspections to ensure that particular prisons and issues are properly prioritised

4.4.2 All investigations into SAIs should be conducted against defined processes. There are four stages to the proposed Investigation Process:



4.4.3 The key stages of this common Investigation process are set out in further detail below:

Stage 1 – Notification & Triage
<p><u><b>Key Activities</b></u></p> <ul style="list-style-type: none"> <li>• <b>SAI occurs</b> <ul style="list-style-type: none"> <li>→ <b>SAI as defined by Inspectorate occurs</b> List of incident types defined by inspectorate will be published IPS can refer any other incident that it believes is of a significantly serious nature</li> </ul> </li> <li>• <b>Notification</b> <ul style="list-style-type: none"> <li>→ <b>Evidence capture (IPS)</b> IPS will (as applicable): <ul style="list-style-type: none"> <li>○ Capture physical evidence (e.g. CCTV, weapon)</li> <li>○ Secure area of incident (e.g. cell)</li> <li>○ Note potential witnesses who were present at time of incident</li> </ul> </li> <li>→ <b>SAI occurrence notification to inspectorate (IPS)</b> IPS will submit a notification using a standard [electronic] form to the Inspectorate. The information on this form will include, inter alia: <ul style="list-style-type: none"> <li>○ SAI unique reference</li> <li>○ Type of incident</li> <li>○ Prison that incident occurred in</li> <li>○ Location, Date and Time of SAI</li> <li>○ Parties involved e.g. injured party, key witnesses</li> <li>○ Short summary of incident, including any initial background information</li> <li>○ Evidence list e.g. statements, items, CCTV</li> </ul> </li> </ul> </li> </ul>

<ul style="list-style-type: none"> <li>○ Other bodies informed e.g. An Garda Síochána in the case of a death in custody or a potential criminal offence</li> <li>○ Investigation lead e.g. IPS or Inspectorate, guidance will be issued</li> <li>○ Nominated IPS lead (with contact details) for investigation into SAI</li> </ul> <ul style="list-style-type: none"> <li>● <b>Triage</b> <ul style="list-style-type: none"> <li>→ <b>Notification review</b> <p>Inspectorate will review the SAI notification within one working day.</p> <ul style="list-style-type: none"> <li>○ The Inspectorate may decide to take the lead on the investigation into the SAI (e.g. even if standard guidance suggests that IPS should lead). The factors that they will take into consideration in any such decision are the specific nature of SAI e.g. type of incident and summary of what happened, and the history of similar SAIs in particular prison.</li> <li>○ The Inspectorate will confirm the Senior/Inspector who will be the contact point for this SAI.</li> </ul> </li> </ul> </li> </ul> <p><b>Key Outputs</b></p> <ul style="list-style-type: none"> <li>i. <b>SAI Notification</b> <p>The Inspectorate will define a list of incident types that it considers to be SAIs. IPS will submit a standard [electronic] form to the Inspectorate notifying the occurrence of all SAIs.</p> </li> <li>ii. <b>Triage Outputs</b> <p>The Inspectorate will communicate with IPS:</p> <ul style="list-style-type: none"> <li>→ Confirming which agency should lead the investigation</li> <li>→ Confirming the lead contact point within the Inspectorate</li> </ul> </li> </ul>	<p><b>Commentary</b></p> <p>The definition of SAIs is not intended to remove the responsibility for normal operational delivery and performance management from IPS. The following points should be noted:</p> <ul style="list-style-type: none"> <li>● It is not intended that all incidents will be defined as SAIs e.g. an assault on a prison officer which requires overnight hospital treatment may be considered as an SAI, not necessary all assaults or threats which will be dealt with by the IPS under its normal policies and SOPs.</li> <li>● It is not intended that the Inspectorate will itself undertake the investigation into all SAIs, but rather the Inspectorate will provide an independent function within the Inspectorate that can investigate the most serious of incidents within a prison and ensure that the learnings from such incidents are identified and actioned.</li> </ul> <p>Even if an SAI is to be investigated by the IPS, the Inspectorate must be informed of its occurrence and will maintain oversight of the investigation. Importantly, no recommendations for action, including disciplinary proceedings, can be initiated without the review and approval of the Inspectorate. It is envisaged that the investigation into an SAI (conducted by either IPS or Inspectorate) will provide a key input to any future disciplinary proceedings.</p> <p><b>Stage 2 – Investigation</b></p> <p><b>Key activities</b></p> <ul style="list-style-type: none"> <li>● <b>Investigation</b> <p>The investigation team will work in conjunction with the IPS and other involved parties e.g. An Garda Síochána and Coroner's Office.</p> </li> </ul>
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→ **Evidence capture**

The investigation team will capture all relevant evidence including, but not limited to:

- Witness statements
- Documentary evidence of officer compliance with IPS SOPs in relation to incident
- CCTV
- Medical reports
- Related incidents
- Intelligence from IPS

→ **Family liaison**

In the event of a DiC (and for example, an attempted suicide or a serious injury to a prisoner), the investigation team should contact the prisoner's family with a view to understanding their perspectives on the background/context to the incident.

→ **SAI Assessment**

An assessment of the SAI enabling:

- An evidence-based narrative of the incident to be developed
- Learnings to be identified in terms of operational policies, SOPs and staff training
- Recommendations to be developed, including recommendations for any internal IPS disciplinary proceedings to be initiated.

**Key outputs**

i. **SAI assessment**

The investigation team will provide a detailed assessment of the SAI.

**Commentary**

The Inspectorate will require information sharing protocols with both the Coroner's Office and An Garda Síochána.

The summary narratives of the SAI should contain only relevant information and should aim to "tell the story" of what happened and what (if anything) went wrong or could be done differently in the future.

**Stage 3 – Reporting**

**Key activities**

• **Prepare draft report**

Develop draft report in agreed structure and format (see below) setting out evidence-based findings and recommendations

• **Validate and finalise draft report**

→ **Share draft report with IPS**

The sharing of the draft report with IPS will allow:

- IPS to identify any factual inaccuracies in report
- IPS to raise any clarifications they may have
- IPS to develop an action plan (which would ideally be published by IPS in parallel to the publication of the inspection report by the OIP)

The sharing of the draft report is not intended as providing a platform for IPS to challenge the findings and recommendations of the investigation report.

→ **Finalise draft report**

- Draft report updated with feedback from IPS
- Report formatted and subject to final proof read

• **Publish final report**

- Notify Minister and DJE of publication
- Share embargoed version of report with key stakeholders
- Prepare embargoed press release and coordinate with media
- Publish on Inspectorate website (redacted as deemed appropriate by Inspector of Prisons)

**Key outputs**

i. **Draft report**

Draft report to be shared with IPS to ensure factual accuracy and to address any clarifications they may have.

ii. **Final report**

Final report for publication.

iii. **Action plan (developed by IPS)**

Action plan setting out how recommendations will be addressed by IPS.

**Commentary**

The investigation report should follow a standard structure.

It is intended that the recommendations made by the Inspectorate will be relatively limited in number so that the investigation reports present something that is realistically actionable by IPS. Recommendations will typically be designed in order not to specify how the recommendation should be actioned and implemented, which is the responsibility of the IPS.

Coordination with IPS should allow its action plan to be published at the same time as the Final Report. This action plan should set out how the IPS will address the recommendations set out in the Inspectorate's report. This action plan will require approval from the Inspectorate e.g. in relation to the acceptability of proposed timescales.

**Stage 4 – Monitoring**

**Key activities**

• **Monitor progress against action plan**

→ **Agree monitoring approach**

Monitoring by Inspectorate of progress by IPS against their action plan may involve:

- Self-assessment of progress by IPS; and/or
- Follow-up inspection (see below) – such an Inspection will be announced to ensure that the necessary IPS officials are present on site.

→ **Conduct monitoring**

Follow-up inspections will be initiated against a risk-based assessment. A follow-up inspection by the Inspectorate may be required if, for example:

- Inspectorate believes that the nature of the recommendations (e.g. seriousness/ sensitivity) to be addressed by the IPS action plan reflect a level of risk that mandates on-site assurance of progress is required.
- Inspectorate does not get sufficient comfort from the IPS self-assessment of progress against the action plan.

Inspectorate may also arrange a follow-up inspection on an ad-hoc basis to assure itself that recommendations in inspection reports are being progressed.

#### **Key outputs**

##### **i. Monitoring approach**

The Inspectorate will set out how it envisages that the IPS action plan will be monitored.

##### **ii. Follow-up inspection**

A follow-up inspection may be scheduled by the inspection team.

#### **Commentary**

Self-assessment by IPS will be a key component of the Inspectorate's monitoring toolkit. IPS should provide self-assessment returns for all prisons on an on-going basis, including the implementation of all actions relating to Inspectorate reports.

- 4.4.4 Recommendations set out in investigation reports will be evidence based. These recommendations will not be designed to define solutions (which will be the responsibility of IPS and to a lesser extent DJE) but rather highlighting those issues that need resolved. Recommendations will be directed at a number of levels – local prison management (IPS), national prison management (IPS) and the overarching national policy framework for prisons (DJE).

#### **Recommendation #26**

**The recommendations set out by the Inspectorate in its investigation reports will be evidence based and will relate to (as applicable):**

- **Individual officers in relation to lack of performance of their duties to a level that suggests that disciplinary proceedings by IPS should be initiated**  
Individuals will not be identifiable within the published Investigation Reports.
- **IPS Prison Management (i.e. the Governor and the senior management team with a specific prison) in relation to issues within a particular prison such as, amongst other things operational delivery and/or compliance issues**
- **IPS Headquarters (i.e. Director General and Senior IPS management) in relation to thematic issues that potentially apply across more than one prison such as, amongst other things:**
  - **Operational delivery issues and /or system-wide standard operating procedures**
  - **Prison service wide operational policies and their implementation**
- **Department of Justice & Equality**
  - **Overarching Prison Policy and Legislation**

## 4.5 Transparency and publication of reports

- 4.5.1 Inspection and Investigation processes and the standards against which inspection standards are set by the Inspectorate should be transparent, not just to those being inspected but also to outside bodies and the general public. This approach emphasises the collaborative nature of inspection i.e. it is not trying to “catch out” any person or organisation but rather help drive best practice. Other prison inspectorate bodies publish their processes and expectations of standards online.

### **Recommendation #27**

**Inspectorate should publish (online) its:**

- **Inspection and Investigation processes**
- **Standards (and associated measures) that reflect its expectations**
- **Scoring system used to summarise Inspection findings.**

- 4.5.2 Concerns were raised by a number of parties about the negative impact on the perception of the independence and professionalism of the Inspectorate as a consequence of both the existing report publication processes and the timeliness of these publications. Publication of reports should be within the complete control of the Inspectorate and should be undertaken in a timely manner.

### **Recommendation #28**

**Inspectorate will publish (inspection and investigation) reports:**

- **on behalf of the statutory role of the Chief Inspector of Prisons.**
- **directly both in hardcopy (limited numbers) and electronically on their website.**

**The Inspectorate will issue an embargoed press release prior to publication and will support the publication of reports with an appropriate level of public relations activity e.g. media statements and interviews.**

**In publishing a report publicly, the Inspector of Prisons may exclude a part of a report from the copy so published if, in his opinion, the publication of the part:**

- **would be against the public interest, or**
- **might jeopardise criminal investigation or prosecution against any person or organisation;**
- **might jeopardise the safety of any person.**

**The Chief Inspector may seek the advice of the legal shared service function within DJE and/or the Attorney General (or indeed, if appropriate, external legal advice) in respect of such matters.**

**The Inspectorate will maintain a history of all published reports on its website.**

## 4.6 People & Skills

- 4.6.1 The OPI's current staffing levels (in addition to the statutory role of the Inspector of Prisons) are as follows:

Role	Grade	Number of Posts
Senior Inspector	PO	1
Admin Support	EO	1
Admin Support	CO	1
Admin Support <sup>1</sup>	CO (CTO)	1
	<b>Total</b>	<b>4</b>

*Only one of the staff (Senior Inspector/Principal Officer) in the current OIP based in Nenagh will transfer to the new Inspectorate based in Dublin.*

<sup>1</sup> Temporary until end of year in place of HEO who recently left the OIP.

- 4.6.2 These 4 staff roles have been in post since March 2017. Limited information has been made available to this review on the official staffing complement allocated to the existing OIP. However, it is noted that from December 2015 to March 2017 there were 5 staff (an additional HEO) in the Office in support of the Inspector of Prisons.

- 4.6.3 The key design principles underpinning the proposed future organisation structure of the Inspectorate include:

1. Chief Inspector of Prisons (i.e. rename the current "Inspector of Prisons" role) with overall responsibility for the Inspectorate.

Chief Inspector of Prisons role should continue to be subject to Top Level Appointments Committee (TLAC).

In this context there is perhaps a case for renaming the Inspectorate to the "Inspectorate of Prisons" or (with expanded responsibilities) "Inspectorate of Places of Detention".

2. Senior Inspectors of Prison and Inspectors of Prison nominated by the Chief Inspector of Prisons with delegated powers from this statutory role

- Senior Inspectors are specialist posts. Senior Inspectors will lead Inspections and Investigations and have responsibility for the production of the associated reports.

Senior Inspector posts should be recruited externally. It is noted that one Senior Inspector (at Principal Officer grade is already in post).

- Inspectors will support Senior Inspectors in the conduct of Inspections and Investigations and the production of associated reports.

Inspector posts should initially be recruited internally within Irish Civil Service. It is understood that a selection Board was recently conducted for inspector roles across various public-sector bodies.

3. Relatively small organisation with operational delivery provided through teams – it is proposed that there should be 3 operational teams:

- 2 teams focused on Inspections
- 1 team focused on Investigation of SAIs
- Each team will be headed by a Senior Inspector of Prisons and have two Inspectors of Prisons i.e. a total of 9 operational prison inspectors in addition to the Chief Inspector.

Dedicating one Inspectorate team to the investigation of SAls should mitigate against historic issues in the Inspectorate where the [understandable] demand for timely investigations into DiCsdrew significant resource and was a key factor in the current OIP's lack of capacity to undertake Inspections.

4. Small team to provide support to the Chief Inspector the 3 operational delivery teams. This Resources & Data team will:

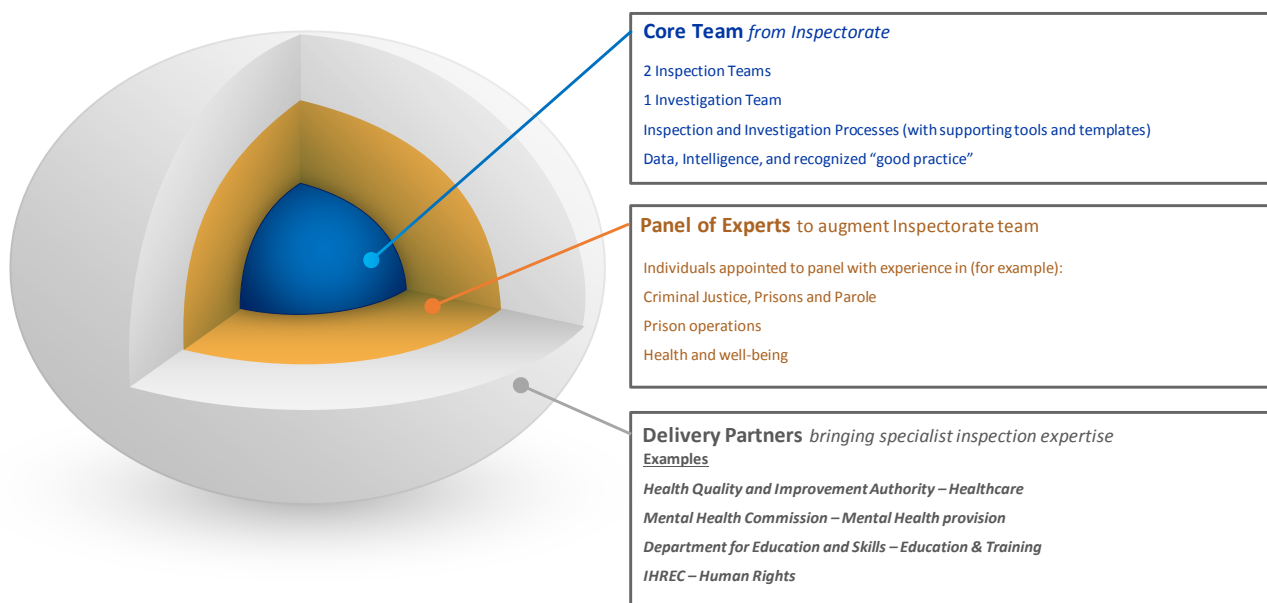
- Gather and present data and intelligence to operational teams
- Support preparation of Inspection and Investigation reports
- Provide administrative support to inspections and investigations e.g. arranging travel and accommodation

- 4.6.4 The internal Inspectorate Teams will be augmented as required (e.g. when conducting an inspection visit to a prison) by resources from:

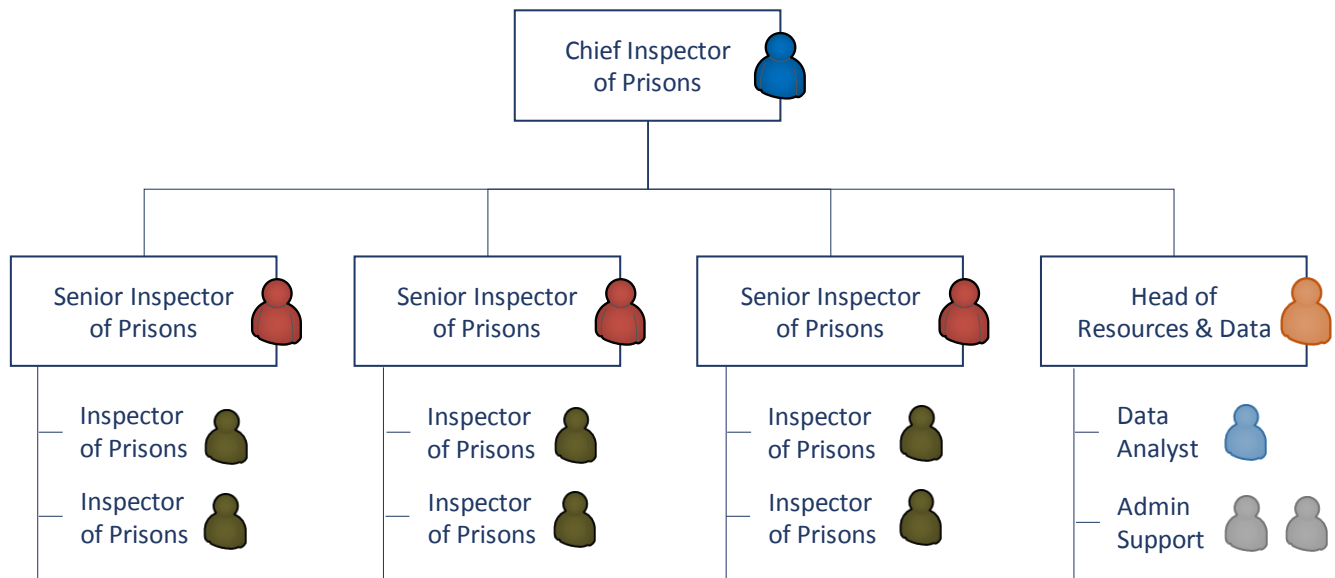
- OIP Expert Panel
- Delivery Partners e.g. HIQA, MHC, DES
- International peer organisations e.g. HMIP, CJINI, Inspector of Prisons for Scotland

- 4.6.5 The work of the Inspectorate will be resourced on three levels in order to:

- reduce the need for significant resources in the Inspectorate itself;
- maintain flexibility of resourcing (efficiency) and
- access expert resource from other sectors e.g. Health and Education (effectiveness)



- 4.6.6 It is envisaged that “Delivery Partners” will also include resources from peer organisations internationally, both UK and further afield, potentially on a mutual-aid reciprocal basis.
- 4.6.7 The proposed organisation structure for the future Inspectorate is as follows:



- 4.6.8 The proposed staffing (total of 14 posts in steady-state) is set out in the table below:

Role	Number	Envisaged Grade (equivalent)
Chief Inspector of Prisons	1	Assistant Secretary
Senior Inspector of Prisons	3	Principal Officer
Inspector of Prisons	6	Higher Executive Officer
Head of Resources & Data	1	Assistant Principal
Data Analyst	1	Executive Officer
Admin Support	2	Clerical Officer
<b>Total</b>	<b>14</b>	

Note:

- Envisaged grades are for indicative purposes only. Full job descriptions have not been developed for these roles and no formal job evaluation has been undertaken.
- Full establishment of 14 posts (Chief Inspector plus 13 staff) will be phased in over next period i.e. not all required in Year 1.
- The Senior Inspector posts are graded as Principal Officer level given the specialist nature of these roles.
- Staffing profile does not include any additional resources to support the introduction of the NPM, and the Inspectorate’s role in coordinating the work of the NPM. We would suggest that an additional (1) administrative support person may be required to fulfil this role if it cannot be readily consumed by the existing staffing.

- 4.6.9 This proposed total of 13 staff in the future Inspectorate (in addition to the statutory role of the Chief Inspector of Prisons) reflects an uplift of 7 posts on the staffing levels within the



OIP, albeit that many of these posts are a greater relative seniority in terms of civil service grading.

#### Recommendation #29

The statutory role should be renamed as Chief Inspector of Prisons.

The Inspectorate should be comprised of four teams:

- 3 teams of inspectors (each with a Senior Inspector and two Inspectors) – 2 teams focused on Inspections and 1 team focused on Investigations
- 1 team to ensure that Inspection and Investigation teams have the necessary resources and data to deliver their services efficiently and effectively.

Senior Inspectors of Prisons posts should be recruited externally (note that one Senior Inspector post is already filled) while Inspector and administrative support posts can be initially recruited internally within the Civil Service.

Overall the Inspectorate should have a staff complement of 14 FTEs in steady-state. There can be phased growth over the initial period to reach this steady-state i.e. not all roles are needed immediately.

- 4.6.10 This proposed staffing complement and structure is designed to cover the **full future remit of the Inspectorate** (i.e. its core focus on the prison system, its [likely] future extended focus on those other places of criminal justice detention and its [potential] future role coordinating the NPM. Given the lack of information available on which to project future workloads, **these initial proposals must be kept under review and refined as necessary** moving forward.
- 4.6.11 If the Inspectorate was to focus only on its core [existing] remit of the Irish Prison Service, it is suggested that only 2 teams of inspectors (each with a Senior Inspector and two Inspectors) would be required as well as 1 less post in the proposed administrative support function.
- 4.6.12 There is also a need to mobilise the Expert Panel to support the core Inspectorate teams.

#### Recommendation #30

The Inspectorate should build and maintain an Expert Panel whose individuals can support inspection and investigation activities. Individuals on this Expert Panel will be paid a per diem plus travel and subsistence expenses. Individuals will be required to commit to a minimum of days per annum with flexibility to take on additional days as required.

Individuals should be appointed to this panel on merit against specific skillsets that complement those within the Inspectorate. Individuals should be appointed to this Expert Panel for an initial three-year term. Individuals should be provided with formal induction into their roles on the Panel.

- 4.6.13 In some jurisdictions the Prison Inspectorate uses volunteers on secondment from the Prison Service itself to act as Inspectors. These secondment arrangements often provide the Inspectorate with a level of current “jail craft” knowledge and insight that is by definition difficult to obtain in the open market. However, it is considered that in establishing a new and enhanced inspection regime, particularly in the initial period, the presence of IPS prison officers on secondment (or indeed recently retired IPS officers acting as Expert Panel members] may create the perception of a lack of independence.

### **Recommendation #31**

In the initial period of the new Inspection and Investigation regime, the Inspectorate should not use staff on secondment from the IPS to fulfil key roles, including those of Senior Inspector and Inspector. This approach should be reviewed after an initial 3-year period, when all prisons have been subject to at least one General Inspection.

The Inspectorate should also closely consider, on a case by case basis, how much value in terms of “good practice” insights recently retired IPS officers can bring to the Inspectorate and its Expert Panel against any perceptions of an impingement on the independence of the Inspectorate.

- 4.6.14 The Inspectorate should access the following “shared services” from DJE rather than attempt to develop and maintain these capabilities itself internally:

- Finance
- HR
- IT
- Legal
- Internal Audit
- Estates (OPW)

### **Recommendation #32**

The Inspectorate should develop specific SLAs with the relevant supporting shared services functions within the Department (and the OPW) to ensure that it receives the necessary expert assistance and guidance.

In addition to accessing the services of the DJE’s legal function, the Inspectorate may also request the advices of the Attorney General’s office in relation to any aspect of its work. The Chief Inspector may also wish to seek external legal opinion if, for example, an independent perspective is required. However, it is recommended that the IPS and the Inspectorate should aim to work collaboratively on key legal issues i.e. make a joint approach to DJE’s legal function or the Attorney General’s office on shared matters of interest e.g. access to specific information.

- 4.6.15 The Inspectorate should also commission external commercial providers to provide those specific capabilities for which it does not need to develop a permanent internal capability, for example public relations and report design and publication.

### **Recommendation #33**

The Inspectorate should commission external suppliers to provide specific capabilities that it does not require (or does not have the scale) to maintain internally, for example:

- Public relations
- Report design and publication.

## 4.7 Relationship with IPS and other partnerships

- 4.7.1 It is emphasised throughout this report that a collaborative relationship is desired with IPS (and over time those other competent detention authorities such as Courts Service and An Garda Síochána). This collaborative relationship reflects the mutually desired improvement to outcomes for the prison system in Ireland and does not detract from the necessary and constructive tension that should exist between the Inspectorate and IPS.

### **Recommendation #34**

**Inspectorate and IPS should work collaboratively on, amongst other things:**

- **On-going education and awareness of the role and approach of the Inspectorate to IPS managers and staff – examples may range from quarterly briefing to IPS senior managers through to briefing at the IPS induction of new employees**
- **IPS informing the Inspectorate of material changes to operational policies and/or standard operating procedures and/or operational initiatives**
- **IPS consulting with Inspectorate on significant changes to operational policies and/or standard operating procedures and/or operational initiatives. The Inspectorate's participation in such a consultation does not impinge on the independence of its inspection and investigation roles.**
- **Sharing insights and good practice examples gained, for example, through their own international networks**

- 4.7.2 In addition to this collaborative approach, it is important that the specific responsibilities for in supporting the work of the Inspectorate should be set out in a Service Level Agreement.

### **Recommendation #35**

**In support of the work of the Inspectorate, IPS should be obliged to:**

- **share information required by the Inspectorate in a timely manner in the format and structure requested by the Inspector of Prisons**
- **ensure immediate access for Inspectors to prisons and other IPS locations, subject to reasonable security and administrative activities**
- **conduct self-assessment of its own performance against an agreed performance regime**
- **review of draft reports in a timely and comprehensive manner, providing feedback within timescales required**
- **develop Action Plans in relation to Inspection and Investigation reports.**

**These obligations should also fully apply to any organisation working with the IPS in the delivery of its services in prisons and within its Headquarter functions.**

**It is the responsibility of the IPS to ensure that all staff and delivery partner organisations are aware of these statutory obligations to comply with the Prisons Inspectorate through a programme of training and education.**

**An appropriate SLA should be developed between the Inspectorate and IPS.**

- 4.7.3 There is a need for the Inspectorate to develop formal (and mutually beneficial) relationships with key partner organisations. These relationships should define the role and expectations of both parties, and any appropriate Service Level Agreements (SLAs). The initial set of key relationships is set out below:

Organisation	Relationship	Considerations
<b>An Garda Síochána (AGS)</b>	Statutory Role - Criminal Investigations	Inspectorate and AGS should agree to share information (as appropriate) in relation to SAs within prisons in which a potential criminal offence was committed, and the subsequent investigation
<b>Coroner's Office</b>	Statutory Role - Deaths in Custody	Inspectorate and Coroner's office should agree to share information (as appropriate) in relation to Deaths in Custody.
<b>HIQA</b>	Delivery Partner SLA governing use of HIQA resources on Prison Inspectorate led jobs	Could Inspectorate provide resources (mutual aid arrangement) to HIQA in inspections of the Oberstown detention facility?  What is optimum approach to paying HIQA for use of their resources e.g. by days used across multiple inspections or by funding a 1 or 2 FTE posts in HIQA?
<b>MHC</b>	Delivery Partner SLA governing use of MHC resources on Prison Inspectorate led jobs	Could Inspectorate provide resources (mutual aid arrangement) to MHC in inspections of places of detention?  What is optimum approach to paying MHC for use of their resources e.g. by days used across multiple inspections or by funding an FTE post in MHC?
<b>Department for Education and Skills</b> <i>Resources who conduct inspections of Education &amp; Training Boards</i>	Delivery Partner SLA governing use of DES resources on Prison Inspectorate led jobs	What is optimum approach to paying MHC for use of their resources e.g. by days used across multiple inspections or by funding an FTE posts in DES?
<b>IHREC</b>	Delivery Partner SLA governing use of IHREC resources on Prison Inspectorate led jobs	What is optimum approach to paying IHREC for use of their resources e.g. by days used across multiple inspections?
<b>Public Sector Ombudsman</b>	Scrutiny Partner SLA and protocol governing exchange of information between	What [summary] information does the Inspectorate want from the Ombudsman (and how often)?

	Ombudsman and Inspectorate	
<b>Prison Visiting Committees</b>	Scrutiny Partner SLA and protocol governing exchange of information between Visiting Committees and Inspectorate	What [summary] information does the Inspectorate want from the Visiting Committees (and how often)?
<b>Prison Chaplains</b>	Interested Partner Assumed informal and confidential sharing of general observations by individual Prison Chaplains to Inspectorate	What mechanism will the Inspectorate provide to allow Prison Chaplains to share thematic concerns and observations

- 4.7.4 The Inspectorate should also develop formal “mutual aid” arrangements (e.g. exchange of resources and sharing of knowledge and tools) with peer organisations in UK and further afield. These organisations may be able to provide resources, materials and insights to support specific inspections and investigations, as well as assist the general evolution of the new Inspectorate. The international NPM network will be a valuable route to develop even better international relationships.
- 4.7.5 There are other organisations that the Inspectorate should develop both formal and informal relationships with. Informally the Inspectorate may meet with these organisations to share perceptions, insights and intelligence on their thematic observations around specific prison establishments, while more formally the Inspectorate may commission these organisations to conduct research and/or provide advice and guidance on specific issues. This cadre of organisations includes, inter alia:

Organisation	Relationship Considerations
<b>Irish Penal Reform Trust (IPRT)</b>	Should Inspectorate inform IPRT prior to publication of an Inspection or Investigation Report, perhaps sharing an embargoed copy of the report 24 hours prior to publication to allow IPRT to provide an independent commentary to the media?
<b>PRILA</b>	Should Inspectorate commission PRILA to provide an on-going horizon scanning service, identifying for example emerging good practice in other jurisdictions?

### Recommendation #36

**The Inspectorate should develop an ecosystem of partner organisations through a range of formal and informal arrangements, including:**

- **Delivery Partners such as HIQA, MHC, DES and IHREC;**
- **Interested parties who can provide insights to specific prison establishments such as Visiting Committees and Prison Chaplains;**
- **Peer organisation in other jurisdictions who would be willing to support the Inspectorate through “mutual aid” arrangements; and**

- **Academic and advocacy organisations such as IPRT and PRILA, creating an informal advisory ecosystem for the Chief Inspector as well as providing insights and perspectives on good practice in other jurisdictions.**

4.7.6 Many stakeholders suggested that the Inspectorate, primarily through the role of the Chief Inspector of Prisons, should be an active member of the international ecosystem of peer organisations i.e. prison inspectorates and related initiatives in other jurisdictions. The Chief Inspector should play an active role in the international community and while there is currently no international organization that brings together various agencies responsible for external prison oversight, it is noted that the new Chief Inspector has already accepted to join the new Expert Network on External Prison Oversight and Human Rights which is being established under the auspices of the International Corrections & Prisons Association (ICPA). The future establishment of an NPM in Ireland will further support international networking by the Inspectorate.

#### **Recommendation #37**

**The Inspectorate, primarily through the person of the Chief Inspector, should play an active role in driving international standards and approaches through participation in representative and network organisations e.g. Expert Network on External Prison Oversight and Human Rights.**

4.7.7 For information, the Mission and Objectives of the ICPA Expert Network are set out below:

### **ICPA Expert Network External Prison Oversight and Human Rights**

#### **1 Mission**

To share information, best practices and lessons learned on effective external prison oversight and to enhance openness, transparency and accountability among prison authorities.

#### **2 Objectives**

- Build an international community and network of organizations responsible for prison oversight.
- Share information on best practices and lessons learned on effective external prison oversight.
- Generate constructive dialogue on the values and benefits of external oversight with prison authorities.
- Promote compliance with the Rule of Law and domestic/international human rights obligations with respect to prisoners and prison staff.
- Provide technical advice and assistance to organizations responsible for prison oversight as requested and appropriate.
- Provide capacity building on oversight operations, including investigations, inspections, visits and alternative dispute resolution.

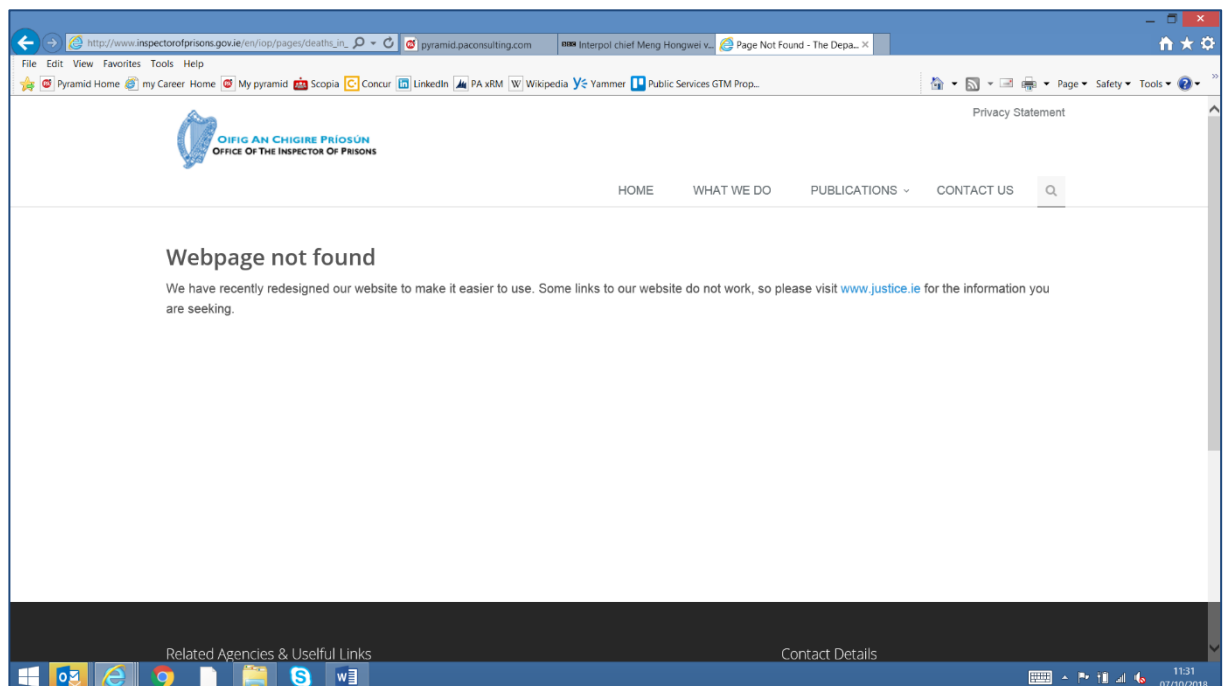
*Source: ICPA*

## 4.8 Technology & Data

4.8.1 The current technology solutions within the OIP do not provide adequate support to the delivery of services:

- Lotus Notes database-based solutions exist for File Tracking, Complaints, Correspondence, Rule 44 Letters, DiCs and a general document library. These Lotus Notes databases are augmented by a range of spreadsheets and hard copy files. Information is also held on individual PCs.
- These are separate databases and do not collectively provide the sense of a comprehensive approach to the “case management” of Inspections and Investigations.
- There is a lack of a standard approach to the use of these existing systems with little evidence of any coherent approach to naming, structuring and storing information. This is not all due to poor technology with weak internal controls and processes, and a lack of structured training (although it is understood that such training has been requested) also major contributing factors.
- While it is acknowledged that the existing OIP is a very small organisation, there is currently no internal knowledge sharing solution which would allow processes, standards and intelligence to be shared across the team, and to be available to mobile workers e.g. Inspectors on site at a prison.
- One member of the OIP staff described current information management arrangements as a “spaghetti junction” of different solutions and stated their view that “this chaos has to stop”.
- Systems are not segregated i.e. they can be accessed by others from across DJE
- Current Internet site (<http://inspectorofprisons.gov.ie/>) is not particularly user friendly, accessible and/or professional looking with missing links.

4.8.2 While there are undoubtedly some issues that relate to a lack of knowledge and poor training of staff, there are also obvious technology flaws that provide a poor impression of the Inspectorate to the general public – see screen shot of failed Internet site.





4.8.3 Indicative requirements across the core technology solutions that the future Inspectorate will require:

Overview of required characteristics and functionality	
<p><b>Case Management System (CMS)</b></p> <p><i>Potentially developed on a platform such as MS Dynamics</i></p>	<ul style="list-style-type: none"> <li>• Secure and standalone system for use solely by OIP</li> <li>• Maintenance of and access to: <ul style="list-style-type: none"> <li>→ Inspection Plans and schedules</li> <li>→ Inspection Personnel <ul style="list-style-type: none"> <li>○ OIP Personnel</li> <li>○ Panel Members</li> <li>○ Partner Personnel</li> </ul> </li> <li>→ Inspections: <ul style="list-style-type: none"> <li>○ Core details (date, time, location)</li> <li>○ Team membership</li> <li>○ Documentation and data e.g. images and photographs</li> <li>○ Observations and Analysis</li> <li>○ Findings and Assessments</li> <li>○ Recommendations</li> </ul> </li> <li>→ Prison Estate <ul style="list-style-type: none"> <li>○ Intelligence and data against each establishment</li> <li>○ Risk assessment</li> </ul> </li> <li>→ Comprehensive Reporting Functionality</li> <li>→ Ability to automatically produce initial draft reports from information recorded in system</li> </ul> </li> </ul>
<b>Intranet</b>	<ul style="list-style-type: none"> <li>• Inspection and Investigation Processes <ul style="list-style-type: none"> <li>→ Overview</li> <li>→ Detailed walkthrough</li> <li>→ Standards and assessment framework</li> <li>→ Tools and templates for delivering Inspectorate services</li> </ul> </li> <li>• Reference Materials <ul style="list-style-type: none"> <li>→ Links to internal / external guidance and standards</li> <li>→ Access to IPS Policies and Standard Operating Procedures</li> </ul> </li> <li>• Content Management and publication functionality</li> </ul>
<b>Internet</b>	<ul style="list-style-type: none"> <li>• External website <ul style="list-style-type: none"> <li>→ Branded and distinct web address which reflects the proposed renewed inspectorate e.g. <a href="http://www.prisoninspectorate.gov.ie">www.prisoninspectorate.gov.ie</a></li> <li>→ Professional look &amp; feel</li> <li>→ Accessibility and usability standards</li> <li>→ Content management</li> <li>→ Links in DJE site to this Inspectorate website</li> </ul> </li> <li>• What we do <ul style="list-style-type: none"> <li>→ Mission</li> <li>→ Remit/Scope</li> <li>→ Legislative Basis</li> </ul> </li> </ul>

Overview of required characteristics and functionality	
	<ul style="list-style-type: none"> <li>• Who we are <ul style="list-style-type: none"> <li>→ Chief Inspector</li> <li>→ Senior Inspectors</li> </ul> </li> <li>• How we work <ul style="list-style-type: none"> <li>→ Inspection process including standards and assessment framework</li> <li>→ Investigation process</li> </ul> </li> <li>• Publications <ul style="list-style-type: none"> <li>→ Annual Reports</li> <li>→ Inspection Reports</li> <li>→ Investigation Reports</li> </ul> </li> <li>• Content Management and publication functionality</li> </ul>

- 4.8.4 The Inspectorate's Case Management System and Intranet / Knowledge Sharing platform should allow secure mobile access to support inspection teams working off-site and access by authorised users in the Expert Panel and/or Delivery Partner organisations to relevant information.

#### **Recommendation #38**

**The Inspectorate should develop user requirements and an associated business case to support the procurement / development of new/enhanced:**

- **Case Management System**
- **Internet Website**
- **Intranet / knowledge sharing platform**

**The Inspectorate should have read-only access to, amongst other things operational policies, standard operating procedures and circulars on the IPS Intranet.**

## 4.9 Estate and Facilities

4.9.1 While the Inspectorate will be a relatively small organisation which operates nationally, there is a requirement to have a physical base from which staff can be based and operations can be planned and executed.

4.9.2 The proposed characteristics of accommodation for the Inspectorate are as follows:

- Greater Dublin area to support recruitment of individuals with necessary expertise, noting that majority of prison estate is clustered around the Dublin Metropolitan area.
- Secure location and storage given the sensitivity of materials and issues that the Inspectorate will be handling
- Physical separation both from DJE and other bodies to reinforce independence of the Inspectorate i.e. access to Inspectorate office (part of shared office) must be secure. No reason that the Inspectorate cannot sit within government owned offices providing this physical separation is in place.
- Desk accommodation for up to c14 individuals – it is recognised that persons will be working on-site at places of detention for a proportion of their time each year.
- Secure meeting rooms to allow inspection and investigation teams to, for example, meet in private and conduct investigatory interviews as appropriate. Inspection team may be up to 14 persons in size.
- Reception area and appropriate accessibility and hosting environment to support, for example, meeting families of persons who have died in custody.

### **Recommendation #39**

**The Inspectorate should have an appropriate office in Greater Dublin area. This office space should:**

- **Be secure and separate from other bodies**
- **Support the Inspectorate's ways of working, for example inspections, investigations and potentially private meetings with families (including those whose relatives died in custody)**

## 4.10 Organisation Status and Governance

4.10.1 While the existing role of the Inspector of Prisons is set out in statute, there is no statutory recognition for the Office itself and it is not established as a separate legal entity. Rather the existing OIP sits within the DJE and it is often beneficial for such relatively small organisations to be established in this way as they can take advantage of the Department's broader infrastructure and resources.

4.10.2 This report sets out a number of proposals to reinforce the operational and functional independence of the Chief Inspector and those to whom this role is delegated (e.g. enhanced statutory powers and new processes for development and publication of reports). In the context of this reinforced independence there is little obvious need to establish the Inspectorate as a standalone organisation, at arms-length from the Department. Indeed, such an arrangement would inevitably bring an additional level of governance and bureaucracy which is both cumbersome and resource intensive, while bringing little or no additional value. Furthermore, the DJE already acts as the parent sponsoring department for a relatively large number of arms-length bodies (ALBs) each of which require formal

governance, financial and reporting structures and there was understandably little appetite within DJE to create another ALB unless there was an overwhelming requirement to do so.

- 4.10.3 Therefore, it is considered that the Inspectorate should remain as a function within the DJE, supporting the enhanced statutory role of the Chief Inspector. This proposal is subject to the on-going confidence of the Chief Inspector of Prisons that this arrangement is not impinging on her operational and functional independence. It is also worth reiterating that, while the existing legislation and governance processes (e.g. in respect to publication of reports) require significant improvement, there is no history of the Minister of the Department involving themselves in the work of the Inspectorate in such a way that could reasonably be perceived as undermining its independence. A key aspect of the envisaged independence of the future Inspectorate is that the necessary financial resources are provided to the Chief Inspector of Prisons to allow the full provision of Inspection and Investigation services.

#### **Recommendation #40**

**The Inspectorate should continue to exist as a discrete function within the Department of Justice and Equality with the members of this function supporting the work of the enhanced statutory role of the Chief Inspector of Prisons.**

**This function should now be renamed “Prisons Inspectorate (Ireland)”, perhaps evolving to “Places of Detention Inspectorate” as its scope increases.**

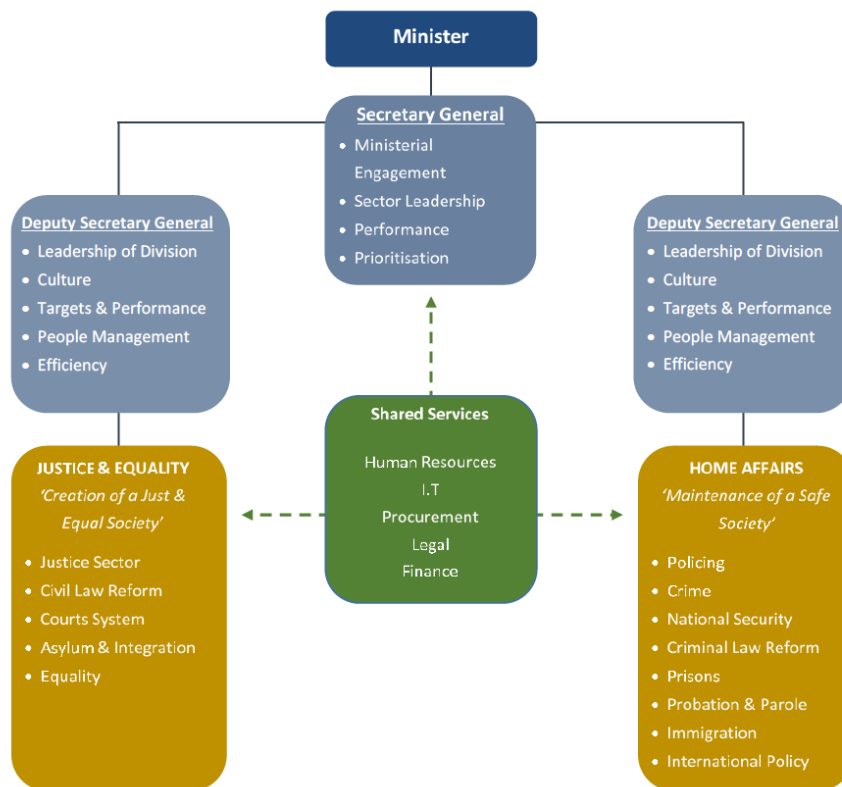
**In the future, if the remit of this function is increased, it should then be renamed “Inspectorate for Places of Detention (Ireland)” with the statutory role renamed as “Chief Inspector of Places of Detention”**

- 4.10.4 While under this arrangement all staff within the Inspectorate will continue to be civil servants, the envisaged roles of Senior Inspector posts both require a specialist knowledge and expertise and would benefit from non-civil service experience. Therefore, it is suggested that these Senior Inspector roles should be subject to external recruitment and not [even initially] internal trawls and competitions. This approach to recruitment of these senior posts also adheres with the relevant UN guidance. The more junior Inspector roles should be recruited internal across the public sector and we note that there was a recent trawl for similar Inspector roles to address demand across multiple organisations.

#### **Recommendation #41**

**Recruitment to the Senior Inspector roles should be subject to open external recruitment. The ultimate decision to appoint to these roles should be made by the Chief Inspector of Prisons, in line with public sector recruitment guidelines.**

- 4.10.5 It is assumed that one of the three Senior Inspector roles will be filled by the single senior member of staff who is remaining with the Inspectorate after the physical transfer of its office to Dublin, i.e. there is a requirement over the next period to externally recruit two new Senior Inspectors into the Prison Inspectorate.
- 4.10.6 DJE is embarking on a fundamental restructuring which aims to build a renewed, future-proofed organisation which is permanently more resilient and better aligned with the demands of the environment and society in which it operates.
- 4.10.7 There will be two distinct divisions each headed by a Deputy Secretary General – one will focus on Justice and Equality and one will focus on Home Affairs.



Source: Effectiveness & Renewal Group for Department of Justice & Equality, June 2018

- 4.10.8 These future Divisions will be defined by “what they do” rather than “what they know”. Each Division will be organised into five newly constituted units each of which is responsible for the delivery of one of the functions of the organisation. The envisaged roles of these units are set out in the Effectiveness & Renewal Group’s (ERG’s) proposals:



Source: Effectiveness & Renewal Group for Department of Justice & Equality, June 2018

- 4.10.9 There are two key areas of the relationship between the Inspectorate and the Department for consideration by for this review:

#### 1. Inspectorate

On-going liaison between the DJE and the Inspectorate should be through the Governance unit within the Justice & Equality Division.

This relationship reflects both:

- the roles of the new units as articulated by the ERG, i.e. the role of the Governance function in liaising with agencies and other bodies.
- the primary role of the Inspectorate in ensuring that Prisons provide a safe, just and fair environment for prisoners where rights are respected.

The Inspectorate’s link into the Justice & Equality Division also provides a healthy and constructive tension with the operational delivery of prisons through the Home Affairs Division (with the IPS likely to be reconstituted as a separate arms-length body).

#### Recommendation #42

**The on-going “day-to-day” relationship between the Inspectorate and the DJE should be through the Governance Unit in the Justice & Equality Division. There should be a**

**nominated point of contact within this Governance Unit who acts as both a facilitator and a point of escalation for the Inspectorate in its dealing with the Department.**

## **2. Chief Inspector of Prisons**

The Chief Inspector should have a formal relationship with the Minister, Secretary General and the two Deputy Secretaries General. Through this relationship the Chief Inspector should, amongst other things:

- Copy any Inspection and Investigation reports to the Department – the Department should be made aware of the broad timescales of when a report is to be published and an embargoed copy of a report should be shared with DJE prior to its publication.
- Raise any serious issues and matters that arise during the Inspectorate's work including SAI notifications
- Hold an annual briefing to the DJE on its role and work, and the thematic issues that the Inspectorate has identified, including any Immediate Action Notifications which the Inspectorate has raised with the IPS.

### **Recommendation #43**

**The Chief Inspector of Prisons should provide appropriate updates on their work to the Minister, Secretary General and the two divisional Deputy Secretaries General including:**

- **Notification of the publication of reports**
- **Notification of any serious issues that the Inspectorate has identified, including any Immediate Action Notifications which the Inspectorate has raised**
- **Formal annual briefing on the work of the Inspectorate.**

4.10.10 Performance management of the Chief Inspector should be conducted by the Deputy Secretary of the Justice & Equality Division. This performance management approach should focus solely on value for money and primarily the delivery of the Inspectorate against its performance targets for publication of inspection and investigation reports. It should not impinge on the independence of the Chief Inspector's statutory role by considering any aspect of the contents of any individual inspection or investigation report.

4.10.11 The Chief Inspector of Prisons should be appointed to serve a fixed 5 year term and should only be subject to dismissal process if the Minister of Justice & Equality believes that the incumbent is not capable of leading the Inspectorate team to deliver against performance targets or has behaved in a manner that can be considered as gross misconduct likely to bring the statutory role into disrepute.

### **Recommendation #44**

**Performance Management of the Chief Inspector of Prisons should be conducted by the Deputy Secretary of the Justice & Equality Division within DJE.**

**This Performance Management regime should be focused on value for money that the Inspectorate provides, illustrated by the frequency and timeliness of published inspection and investigation reports. In order to reflect the independence of the role of the Chief Inspector of Prisons, this performance management regime should exclude any consideration of the nature of Inspectorate reports or inspection and investigation activities.**

In this context, the Chief Inspector of Prisons should only be dismissed by the Minister of Justice & Equality (at the formal request of the Secretary General) for gross misconduct likely to bring the statutory role into disrepute or their inability to perform this role, as reflected in a level of Inspection and Investigation activity that is unacceptable.

## 4.11 Indicative Budget Implications

4.11.1 There are two drivers of costs associated with the establishment of the Preferred Operating Model (POM) of the future Prison Inspectorate in Ireland:

- Transformational i.e. the costs required to establish the new Inspectorate including recruitment of staff, design and implementation of new business processes and supporting technology solutions; and
- Operational i.e. on-going costs associated with the delivery of the Inspectorate's Inspection and Investigation Services.

4.11.2 An initial high-level exploration of each of these cost components is provided below:

### **Transformational Costs** (12-18 months)

Cost Item	Description	Indicative Costs
Recruitment	Two Senior Inspector posts to be recruited externally	€20k
Case Management System (CMS)	Procurement of the design and implementation of new CMS	CMS: €700k plus on-going annual licence and support costs of c20% of up-front cost Data Migration: €50k
Internet	Procurement of the design and implementation of new rebranded website Subject to Business Case	Website: €100k plus on-going annual licence and support costs of c20% of up-front cost
Intranet	Procurement of the design and implementation of new rebranded website Subject to Business Case	Website: €100k Plus on-going annual licence and support costs of c20% of up-front cost
External Support	Transformation delivery and project management Subject to Business Case	€250k for external transformation support

Note:

- Costs above are indicative and there has been no market engagement at this stage. These are based on our experience of projects and programmes of a similar scale and complexity with staff and salary costs based on midpoints in civil service pay scales.
- Costs for CMS, Internet and Intranet solutions are subject to the development of detailed requirements and associated business cases.
- Hosting of Internet and Intranet sites assumed to be provided by Public Sector / DJE IT shared services – no costs currently included.
- External support to include expert inputs to the development of, amongst other things:



- New Inspection and Investigation processes (including templates and tools)
- Detailed requirements and procurement documentation for new technology solutions
- SLAs with IPS and other partner organisations

### **Operational Costs** (annual)

Cost Item	Description	Indicative Costs
Staff	Total cost of employment for core Inspectorate staff	€1,072,800
External Inputs	Total cost of external inputs to inspections from both panel members and resources from delivery partner organisations	€320,000

#### Note

- Operational costs relate to steady-state delivery (i.e. full staff complement in place)
- Operational costs listed above exclude a number of items including:
  - Estates and utilities (including power, gas and telephone)
  - ICT devices including desktop PCs, mobile devices and desk/mobile phones
  - Travel and subsistence for core Inspectorate staff e.g. conducting on-site inspections at prison locations nationally.
  - Sundry payments including stationery, office supplies and other consumables
- Staff costs calculated as follows:

Role	Envisaged Grade (equivalent)	Number	Base Salary	Total Cost of Employment	Number * Cost
Chief Inspector of Prisons	Assistant Secretary	1	€150,000	€ 180,000	€180,000
Senior Inspector of Prisons	Principal Officer	3	€90,000	€ 108,000	€324,000
Head of Resources & Data	Assistant Principal	1	€70,000	€ 84,000	€84,000
Inspector of Prisons	Higher Executive Officer	6	€50,000	€ 60,000	€360,000
Data Analyst	Executive Officer	1	€40,000	€ 48,000	€48,000
Admin Support	Clerical Officer	2	€32,000	€ 38,400	€76,800
				<b>Total</b>	<b>€1,072,800</b>

- Chief Inspector and Senior Inspector are specialist roles.
- Base salary relates to indicative mid-point on grade salary range.
- Total cost of employment includes assumed pensions and employer PRSI payments and reflects a 20% uplift on base salary figure.

iv. Panel and Partnership costs are calculated as follows:

Day Rate for Panel/Partner resources	Number of inspections per annum	Numbers of days per inspection	Total Cost of Resources
€1,000	8	40	€320,000

- 1,000 is an indicative day rate – this is all-inclusive figure including travel, accommodation and subsistence costs.
- Number of day per inspection (across all inspection types) reflects projected average input from individual panel members and individual resources form partner organisations.

Note that these external inputs (and day rates) may be minimised through the development of mutual aid arrangements with delivery partner organisations.

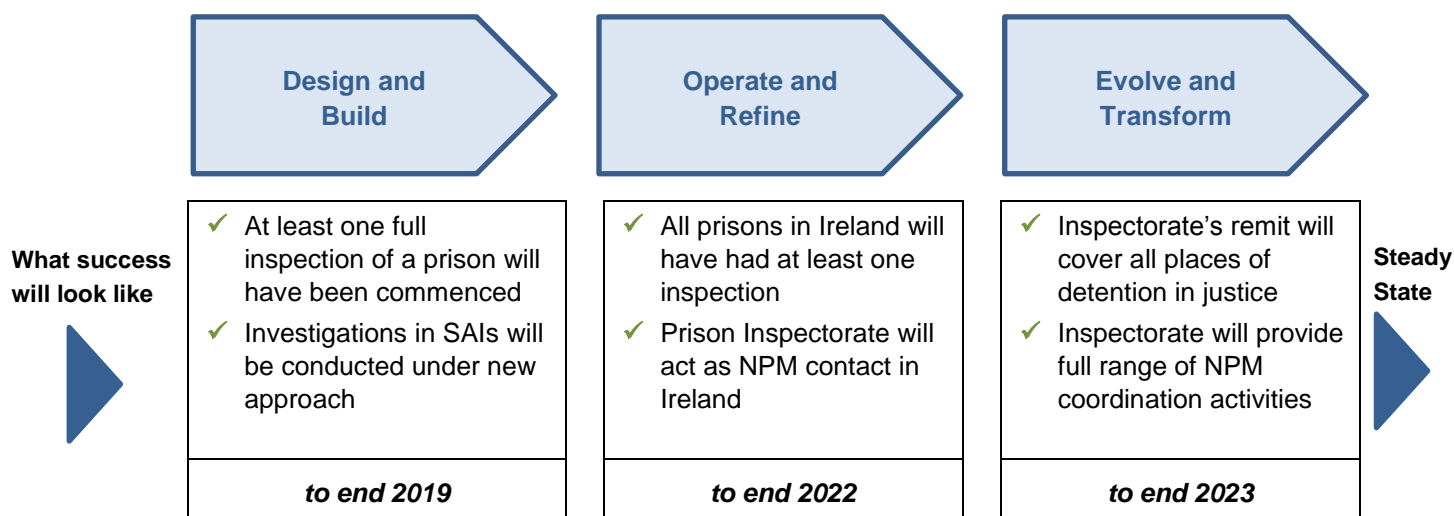
#### **Recommendation #45**

**Sufficient budget should be made available to the Chief Inspector of Prisons to enable the full and quality delivery of services required in order to fulfil its statutory obligations.**

## 5 ROADMAP

### 5.1 Phased Implementation Plan

- 5.1.1 There is a considerable programme of work required in order to fully implement the future Prison Inspectorate in Ireland. There is no requirement for immediate implementation of the full future Inspectorate's Preferred Operating Model (POM). Therefore, a phased implementation over the next 5 years (up to end of 2023) is proposed:



#### Recommendation #46

A phased implementation plan (over the next five years) should be adopted in order to deliver the future Preferred Operating Model for the Prison Inspectorate. The ambitions for the Inspectorate should be:

#### By the end of 2019

- At least one full inspection of a prison will have been commenced
- Investigations in SAIs will be conducted under new approach

#### By the end of 2022

- All prisons in Ireland will have had at least one inspection
- Prison Inspectorate will act as NPM contact in Ireland

#### By the end of 2023

- Inspectorate's remit will cover all places of detention in justice
- Inspectorate may provide full range of NPM coordination activities

Full resourcing of the Inspectorate (i.e. all posts in recommended future staffing complement filled) should be complete by 2021 i.e. by end of Year 3.

- 5.1.2 The initial Design & Build Phase is described in further detail below.

## 5.2 Phase 1 – Design and Build

5.2.1 The key activities that need to be completed (and those activities that should at least be commenced) over the next 12 months in order to achieve the “success” targets in Phase 1 are set out below.

POM Area	Phase 1 Activities
<b>Legislation</b>	<ul style="list-style-type: none"> <li>• Ideally the new and enhanced statutory basis for Inspections and Investigations should be in place. However, we recognise the limited slots for legislative approvals that are available.</li> <li>• A minimum for Phase 1 is that there should be clarity on the Inspectorate’s access to records and data.</li> </ul>
<b>Services</b>	<ul style="list-style-type: none"> <li>• Definition of services should be developed and included in the Inspectorate’s Services Catalogue</li> </ul>
<b>Capabilities sourced externally</b>	<ul style="list-style-type: none"> <li>• Inspectorate should conduct the development of business cases and potentially the procurement of the following services: <ul style="list-style-type: none"> <li>→ Public Relations</li> <li>→ Report design and (hardcopy) production</li> </ul> </li> </ul>
<b>Processes</b>	<ul style="list-style-type: none"> <li>• General Inspection process and standards fully defined, including all templates and tools (including consultation with IPS and key stakeholders)</li> <li>• Investigation process fully defined, including all templates and tools (including consultation with IPS and key stakeholders)</li> <li>• Definition of SAIs developed and confirmed with IPS – SAI reporting commenced</li> </ul>
<b>People</b>	<ul style="list-style-type: none"> <li>• The following resources will be recruited into Inspectorate: <ul style="list-style-type: none"> <li>→ Chief Inspector (in place already)</li> <li>→ Two Senior Inspectors (one in place already)</li> <li>→ One Inspector</li> <li>→ One admin support</li> </ul> <p>These resources should be put in place as soon as possible.</p> </li> <li>• The Expert Panel scheme should be defined and established (in terms of desired capabilities, governance and remuneration). Initial tranche of Panel members (circa 4 individuals) should be recruited.</li> </ul>
<b>Technology</b>	<ul style="list-style-type: none"> <li>• Inspectorate’s new (and rebranded) website should be “live” <ul style="list-style-type: none"> <li>→ New Inspection and Investigation Processes and standards should be published on website</li> </ul> </li> </ul>
<b>Partnerships</b>	<ul style="list-style-type: none"> <li>• Initial SLA should be agreed with DJE (including services from shared service functions)</li> <li>• Initial SLAs should be agreed with the following external organisations: <ul style="list-style-type: none"> <li>→ IPS</li> <li>→ HIQA</li> <li>→ MHC</li> </ul> </li> </ul>

POM Area	Phase 1 Activities
	→ DES / ETB inspectorate → IHREC → Office of the Ombudsman

#### Recommendation #47

A detailed Phase 1 implementation Plan should be developed setting out the necessary actions to be progressed in all component areas of the Preferred Operating Model i.e. the actions required to support the outcome objectives for Phase 1.

This plan should set out, inter alia:

- Actions with descriptions and durations
- Start and end dates with dependencies
- Roles and responsibilities

Phase 1 progress should be tracked against this baselined plan. A Risk and Issue Log (setting out agreed mitigation actions) should be developed and maintained.

5.2.2 In preparation for the **commencement of the first General Inspection** (by end of 2019) under the new inspection regime, the following specific elements should be in place:

- Prison to be inspected should be identified and inspection dates agreed – this first General Inspection will be an announced inspection.
- An initial data collection exercise should be conducted in relation to this prison e.g. complaints, incidents, etc.
- Education and awareness exercise into IPS should be completed by Inspectorate

5.2.3 Ideally, IPS should have completed the development of their Operational Policies and associated SOPs and have trained staff (at least in the prison selected for the first General Inspection). However, the first General Inspection will commence before the end of 2019 irrespective of the status of the IPS policy and procedure programme.

#### Recommendation #48

**The detailed preparations for the first General Inspection of a prison should be completed. This first inspection will be announced and will be supported by an education and awareness campaign by the Inspectorate working with the IPS.**

5.2.4 In addition to the above “must be completed” actions, during Phase 1 there are a number of priority tasks that should be progressed during this period in parallel to preparation for the first General Inspection:

- Chief Inspector should continue her outreach to international expert networks and individual peer organisations in other jurisdictions.
- User requirements and business case should be developed for a new Case Management System
- User requirements and business case should be developed for a new Intranet/Knowledge sharing solution

#### **Recommendation #49**

**The Inspectorate should continue, through Phase 1, to progress a number of the necessary long-term enablers of the POM, including design, build and implementation of suitable technology solutions and its on-going engagement internationally.**

5.2.5 A Gantt Chart summarising key Year 1 activity is provided overleaf.

## Year 1 Key Activities

ID	Task Name	Q1 19			Q2 19			Q3 19			Q4 19		
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1	<b>Services</b>												
2	Define Service Catalogue												
3	<b>Processes</b>												
4	Define Core Processes & Standards (draft)												
5	Consult on Processes & Standards												
6	Confirm & Publish												
7	New processes confirmed												
8	<b>People / Staffing</b>												
9	Define Job & Person Descriptions												
10	Conduct Recruitment Campaign												
11	Interview & Appoint												
12	Notice Period												
13	Staff In Post												
14	<b>Panel</b>												
15	Define Panel Scheme												
16	Conduct Recruitment Campaign												
17	Interview & appoint												
18	Panel in post												
19	<b>Partnerships</b>												
20	Develop SLA with IPS												
21	Develop SLA with HIQA, MHC, DES												
22	Develop ecosystem												
23	<b>Technology &amp; Data</b>												
24	Launch new Internet site												
25	Commence CMS project												
26	<b>Estate</b>												
27	Move to new premises												
28	<b>Initial Inspection</b>												
29	Select Prison to be inspected												
30	Conduct Education Campaign												
31	Preparation Phase												
32	Engagement Phase												
33	Reporting Phase												



# APPENDICES

## Appendix A – Indicative Outcome Matrix

Indicative only – a full set of expected outcomes and associated indicators need to be developed

Outcome Area	Expected Outcomes	Outcome Indicators (examples)
Security & Safety	<p>Prisoners are held securely</p> <p>Prisoners are held safely</p> <p>Staff and delivery partners are safe.</p> <p>Visitors and other persons coming into contact with IPS are safe.</p>	<p><i>Policies and SOPs exist and are adhered to:</i></p> <ul style="list-style-type: none"> <li>• <i>Safe supervision in cells and during movement around the prison</i></li> <li>• <i>Promotion of positive and supportive relationships, identifying and challenging problematic behaviour and model pro-social behaviour.</i></li> <li>• <i>Investigations of allegations of violence and antisocial behaviour in a prompt and thorough manner with action taken where required.</i></li> </ul>
Respect & Dignity	<p>Prisoners are treated with respect for their human dignity</p>	<p><i>Policies and SOPs exist and are adhered to:</i></p> <ul style="list-style-type: none"> <li>• <i>The needs of newly arrived prisoners are promptly assessed to ensure their safety, with particular attention to the risk of suicide and self-harm.</i></li> <li>• <i>Engagement with prisoners to seek to know prisoners as individuals.</i></li> <li>• <i>Equality and diversity needs of all groups within the prison identified and addressed.</i></li> </ul>
Health & well-being	<p>Prisoners can access quality health services</p> <p>Prisoners are supported to maintain and develop relationships with their family and friends.</p>	<p><i>Policies and SOPs exist and are adhered to:</i></p> <ul style="list-style-type: none"> <li>• <i>Health, social care and substance use services meet the assessed needs of the prison population.</i></li> <li>• <i>Equal access to health, well-being and social care services regardless of location, regime, disabilities or language barriers.</i></li> <li>• <i>Prisoners know how to access help and support from staff, family and peer supporters.</i></li> </ul>
Rehabilitation & Development	<p>Prisoners can gain / maintain employability skills</p> <p>Prisoners are able to engage in purposeful activities</p>	<p><i>Policies and SOPs exist and are adhered to:</i></p> <ul style="list-style-type: none"> <li>• <i>Prisoners encouraged to engage in creative activities to promote more formal learning and boost employability.</i></li> <li>• <i>Prisoners have access to creative opportunities that improve health and well-being.</i></li> </ul>
Resettlement	<p>Prisoners are helped to reduce their likelihood of reoffending and their risk of harm is managed effectively.</p>	<p><i>Policies and SOPs exist and are adhered to:</i></p> <ul style="list-style-type: none"> <li>• <i>Impartial guidance and advice is provided to prisoners to help them make informed decisions in planning their learning and activities while in prison so that they can improve their progression and resettlement planning.</i></li> </ul>

	Prisoners are prepared for their release back into the community.	<ul style="list-style-type: none"> <li>• <i>Prisoners' learning plans are linked with and take good account of prisoners' sentence plans.</i></li> </ul>
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