



Oifig An Chigire Príosún
Office of the Inspector of Prisons

**Submission to the Houses of the Oireachtas
Joint Committee on Justice**

**Draft General Scheme of the Inspection of
Places of Detention Bill
15 August 2022**

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1 INTRODUCTION

About the Office of the Inspector of Prisons

The Office of the Inspector of Prisons (the Inspectorate) is a statutory office, independent in the performance of its statutory functions, established pursuant to Part 5 of the Prisons Act 2007. The key role assigned to the Inspector of Prisons (Chief Inspector) is to carry out regular inspections of prisons in Ireland and to present reports on each prison inspected to the Minister for Justice for laying before the Houses of the Oireachtas and publication.

In addition to inspections, the Chief Inspector is required to carry out investigations into any matter relating to the operation and management of a prison as requested by the Minister. The Chief Inspector may also, of their own volition decide to investigate any matter they consider to be of concern. Since 2012, under Section 31(2) of the Prisons Act 2007, the Inspector of Prisons has been requested by the Minister to investigate the circumstances surrounding the deaths of prisoners in custody and any death of a prisoner on temporary release from custody that occurs within one month of his/her release.

Under the Prisons Act 2007, the Inspector of Prisons must submit an Annual Report to the Minister by March each year. The Office of the Inspector Prisons also carries out statutory duties pertaining to oversight of the Irish Prison Service prisoner complaints system (Rule 57A and 57B of the Prison Rules 2007 - 2020) and correspondence from people in prison custody (Rule 44 of the Prison Rules 2007 - 2020).

Submission on the Draft General Scheme of the Inspection of Places of Detention Bill

The Inspectorate is pleased to have this opportunity to make a submission to the Houses of the Oireachtas Joint Committee on Justice (the Committee) on the Draft General Scheme of the Inspection of Places of Detention Bill 2022. The Inspectorate welcomes the publication of the Draft General Scheme, which it understands proposes to:

- Enable Ireland to ratify the Optional Protocol to the United Nations Convention against Torture (OPCAT) and to designate National Preventive Mechanisms (NPMs) to monitor places of detention.
- Expand and strengthen the statutory role of the Inspector of Prisons to become a Chief Inspector of Prisons, whose office is to be designated as the NPM for prisons, Garda Síochána Stations and other relevant places of detention across the justice sector.
- Empower other Ministers to designate NPMs for places of detention outside the justice sector and within their own remit.
- Establish the IHREC as the co-ordinating NPM, with the responsibility of co-ordinating the activities of the NPMs and maintaining effective liaison with the UN oversight body – the UN Subcommittee on Prevention of Torture (SPT).

The Inspectorate notes that the Draft General Scheme includes four parts and two schedules. Its observations and suggestions on relevant heads in Parts 1 - 3 are set out in section 3 of this submission to assist the Committee in its scrutiny of the Draft General Scheme.

The Chief Inspector would greatly welcome the opportunity to appear before the Joint Committee on Justice in order to further assist the Committee in its scrutiny of this important draft legislation.

2 EXECUTIVE SUMMARY

The General Scheme of the Inspection of Places of Detention Bill represents the first step in a legislative process that will culminate in the designation of a number of National Preventive Mechanisms (NPMs) to monitor places of detention in Ireland, as required by the Optional Protocol Convention against Torture (OPCAT). The Office of the Inspector of Prisons (OIP) welcomes the clear legislative intent to transform the Inspectorate into the Office of the Inspectorate of Places of Detention (OIPD) and to designate it as the NPM for the justice sector, including responsibility for monitoring prisons, Garda Síochána Stations and other places of detention. The Chief Inspector has extensive international and national experience in monitoring detention by the police, in addition to prison conditions, and recruitment processes are underway to expand the Inspectorate's team in order to ensure that it is well positioned to assume this additional responsibility.

Designing an effective and fully-independent NPM is not an easy task and there is no internationally-agreed "one size fits all" solution. Account must be taken of the national legal framework, and it is common, when NPMs are designated, for existing monitoring bodies to be incorporated into new arrangements in order to meet the requirements of the OPCAT. Nonetheless, certain cardinal principles must be respected; in particular, bodies designated as NPMs must have "functional independence" and appropriate powers.

Best practice guidance on the design of NPMs can be found in a variety of authoritative sources including: (i) the text of the OPCAT; (ii) the United Nations Subcommittee on the Prevention of Torture (SPT) Guidelines on National Preventive Mechanisms; (iii) SPT reports issued to OPCAT State Parties; (iv) United Nations' guidance documents on National Preventive Mechanisms; and (v) other relevant legislation.

The approach taken by the Inspectorate in this submission is to provide a "Head-by-Head" benchmarking of the current proposals against the requirements of the OPCAT, in order to assist legislators to develop sufficiently-robust legislation, capable of withstanding the national and international scrutiny that it will undoubtedly attract.

Many positive aspects of the General Scheme are highlighted and welcomed. However, the Inspectorate also expresses reservations about the extent to which certain proposals are consistent with the OPCAT prerequisites for independent and effective NPMs. The Inspectorate wishes to bring to the attention of the Joint Committee on Justice three key areas where it considers that the General Scheme may require amendment in order to meet the requirements of the OPCAT: (i) guarantees of functional independence of the OIPD and other National Preventive Mechanism bodies; (ii) the proposed functions of the OIPD; and (iii) the addition of supplementary provisions on certain matters not currently addressed in the General Scheme.

1. Functional Independence of the OIPD and Other NPM Bodies

Functional independence, which includes legislative, operational and financial independence, is the cardinal requirement for an effective National Preventive Mechanism, as made clear in Article 18(1) of the OPCAT. The SPT has repeatedly emphasised that functional independence requires that National Preventive Mechanisms must not be unduly influenced by Government Departments.

As currently drafted, the General Scheme envisages that the budget for the OIPD would remain within the Department of Justice vote (Head 3) and the Minister for Justice would retain the power to appoint and to dismiss the Chief Inspector (Head 5).

The General Scheme also provides that the OIPD's funds, premises, facilities and services are to be provided by the Minister for Justice (Head 6(2)). These provisions do not appear to be consistent with the OPCAT requirement that a National Preventive Mechanism must enjoy functional independence.

Moreover, a number of the current Heads foresee a future role for the Minister in directing operational aspects of the OIPD's work. For example, Head 6(3) and (4) require the Chief Inspector to acquire the consent of the Minister for Justice to appoint, and to determine the terms and conditions of service of the OIPD's staff. Head 8(3) permits the Minister to require the Chief Inspector carry out an investigation, and Heads 8(7) and 8(8) place a duty on the Chief Inspector to report to the Minister in order to support what is described as the Minister's "political accountability" for the OIPD. Having regard to OPCAT Article 18(1), it is difficult to understand why a Minister should be expected to assume "political accountability" for a truly independent NPM.

By contrast, in Part 3 of the General Scheme, there is a very welcome recognition that "National Preventive Mechanisms, and the bodies that comprise them, should be accountable directly to Parliament (Oireachtas)" (Note to Head 12). The Inspectorate intends that the entirety of its future inspection functions in relation to places of detention in the justice sector will be performed in its NPM capacity. Consequently, it considers that the General Scheme should be amended to provide for its accountability to the Oireachtas, following the existing statutory model used for the IHREC, rather than to the Minister for Justice.

2. Proposed Functions of the OIPD

The functions of National Preventive Mechanisms are set out in the OPCAT Article 19 and include examining the treatment of persons deprived of liberty in places of detention; issuing recommendations to relevant authorities; and submitting proposals and observations concerning existing or draft legislation. It is not a function of a National Preventive Mechanism to carry out investigations or adjudicate on prisoner complaints.

The General Scheme currently contains a number of provisions that do not appear to be consistent with OPCAT Article 19.

First, Head 11(10)(a) purports to restrict the Chief Inspector from questioning or expressing an opinion on Government policy; this is inconsistent with OPCAT Article 19(c) which – quite to the contrary – foresees a duty for National Preventive Mechanisms to submit observations on existing or draft legislation. Moreover, SPT National Preventive Mechanism Guideline 35 sets out an obligation for a NPM to make proposals and observations to the relevant state authorities regarding existing and draft policy or legislation which it considers to be relevant to its mandate.

Secondly, the draft legislation currently allocates functions to the OIPD which do not appear to align with the functions of a National Preventive Mechanism; namely an investigatory function (Head 8(3), Head 9(3) and Head 10(2) and 10(3)), and a role for the OIPD in establishing/coordinating Prison Visiting Committees (Part 2 - Head 13(1), 13(12) and 13(13)).

The investigative functions currently proposed, including in relation to serious adverse incidents and deaths in custody, would require that the OIPD be provided with the necessary resources to establish an entirely distinct investigative capacity, quite separate from its NPM inspection and monitoring functions. Of course, it should remain open to the Inspectorate in furtherance of its NPM mandate, to review any death in custody.

Part 2 of the General Scheme also proposes a role for the OIPD in establishing Prison Visiting Committees and subsequently compiling and submitting to the Minister a composite Prison Visiting

Committee report. This would fall outside the OIPD's mandate as a National Preventive Mechanism, imposing on the OIPD an entirely new workload, and requiring significant additional human and financial resources.

Thirdly, there appear to be certain inconsistencies between Part 1 (Chief Inspector of Places of Detention and Inspectorate for Places of Detention) and Part 3 (Inspection Mechanisms for the Prevention of Torture and other Cruel Inhuman and Degrading Treatment or Punishment) of the General Scheme. For instance, consistent with OPCAT Article 19(b), National Preventive Mechanisms are afforded the power to make recommendations in Part 3 - Head 17(1)(d). However, similar provision is not included in the functions of the OIPD under Part 1 - Head 8. Relatedly, Part 3 - Head 17(8), in accordance with OPCAT Article 22, sets out that the relevant Minister must consider recommendations made by National Preventive Mechanisms, but no similar provision is provided in Part 1. For the sake of clarity, the Inspectorate reiterates its intention that the entirety of its future inspection functions in relation to places of detention in the justice sector will be performed in its NPM capacity. Consequently, it proposes that certain provisions in Part 1 of the General Scheme be brought into conformity with the approach adopted in Part 3.

It is also noteworthy that there is no express provision in the General Scheme requiring competent authorities, such as the Irish Prison Service, to consider and implement the recommendations made by National Preventive Mechanisms.

3. Proposed Supplementary Provisions

In order that Ireland be placed in a position to designate truly independent and effective National Preventive Mechanisms, the Inspectorate proposes a number of supplementary provisions that it suggests be included in the Inspection of Places of Detention Bill.

a) NPM Expertise and Collaboration

OPCAT Article 18(2) requires that National Preventive Mechanisms take measures to ensure that NPM experts have the requisite capabilities and knowledge. To fully operationalise this, the OIP proposes that the OIPD be afforded the explicit power to appoint external experts, advisers and consultants (Head 6). The Inspectorate suggests that National Preventive Mechanism bodies be empowered to undertake joint inspections (Part 3). In addition, to reinforce the effectiveness of Ireland's future National Preventive Mechanisms, the OIP suggests that provision be made to allow for sharing of information between the National Preventive Mechanisms and with other relevant authorities (Head 8).

b) NPM Protections

OPCAT Article 35 requires that members of National Preventive Mechanisms be accorded such privileges and immunities as are necessary for the independent exercise of their functions. Currently, no such provision is made in the General Scheme; the OIP suggests that National Preventive Mechanism members and staff be afforded the necessary statutory protections and exemptions to enable them independently to exercise their functions (Head 6).

c) Transitional Provisions

Given that the Inspectorate established under the Prisons Act 2007 will become the Office of the Inspectorate of Places of Detention under this new legislation, the OIP indicates that there is a need to make legislative provision for the formal transition from the Office of the Inspector of Prisons to the Office of the Inspectorate of Places of Detention. Suggested supplementary provisions include transition of all OIP staff to the OIPD (Head 6); preservation of existing OIP contracts, agreements and arrangements (Head 6); and transfer of all OIP records to the OIPD (Head 8).

3 HEAD-BY-HEAD OBSERVATIONS AND SUGGESTIONS

Head	Content / Issue	OPCAT	Observations and Suggestions
<p>Head 3</p>	<p>Expenses - Note</p> <p>“It has been recommended by the review commissioned by the Inspector of Prisons that her office should remain within the Department. It is proposed that the Chief Inspector will have a dedicated budget, within the Department of Justice vote.”</p>	<p>Article 18(1)</p> <p>The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.</p>	<p>Notwithstanding that a <u>2018 consultancy report</u> did not recommend that OIPD become an “arms-length body”, OPCAT Article 18(1) clearly requires that National Preventive Mechanisms (NPMs) be guaranteed functional (legislative, operational and financial) independence.</p> <p>The Subcommittee on Prevention of Torture and Other Cruel Inhuman or Degrading Treatment of Punishment (SPT) has consistently raised concerns in relation to NPM legislation that does not ensure functional independence in alignment with the <u>Paris Principles</u>. In particular, the SPT has reported on the need to ensure links between NPMs and Government Departments are severed. (<u>SPT Report to Netherlands, CAT/OP/NLD/1 (2016)</u>, paras. 36 and 39, and <u>SPT Report to Switzerland, CAT/OP/CHE/ROSP/1 (2021)</u>, para. 24).</p> <p>The <u>SPT National Preventive Mechanism Guidelines (2010)</u> Guideline 12 establishes “The NPM should enjoy complete financial and operational autonomy when carrying out its functions under the Optional Protocol.”</p> <p>The <u>OHCHR Practical Guide on the Role of National Preventive Mechanisms (2018)</u> identifies financial autonomy as a fundamental prerequisite for independence. It notes that “the legislation providing for the establishment of NPMs should also include provisions regarding the source and nature of their funding, and specify the process for the allocation of annual funding to the NPMs.”</p> <p>Consequently, it would not be consistent with the requirements of the OPCAT that funding for the OIPD remain within the Department of Justice vote.</p>

Part 1 - Chief Inspector of Places of Detention and Inspectorate for Places of Detention

Head	Content / Issue	OPCAT	Observations and Suggestions
Head 4	<p>Interpretation for Part 1</p> <p>“Prison” means a place of custody administered by or on behalf of the Minister (other than a Garda Síochána station) and includes—</p> <p>(a) a place provided under section 2 of the Prisons Act 1970,</p> <p>(b) a place specified under section 3 of the Prisons Act 1972,</p> <p>(c) any vehicle used to transport a prisoner from one location to another,</p> <p>(d) a holding area other than a court where a prisoner is being held immediately prior to or immediately after his or her production in court.</p>	<p>Article 20(a), 20(b), 20(c)</p> <p>In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them:</p> <p>(a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;</p> <p>(b) Access to all information referring to the treatment of those persons as well as their conditions of detention;</p> <p>(c) Access to all places of detention and their installations and facilities.</p>	<p>The definitions given in Head 4 do not include definitions of the “<u>Irish Prison Service</u>” and the “<u>Director General of the Irish Prison Service</u>”, notwithstanding that it is these entities that will be the OPCAT Article 20 duty bearers under other Heads in the General Scheme, including Heads 9 and 10.</p> <p>It is suggested that the “Irish Prison Service” and the “Director General of the Irish Prison Service” be included as defined terms in Head 4. The definition of “Director General” is provided for in Article 2 of the <u>Prison Rules 2007-2020</u> and could be adopted in Head 4. The definition of “Irish Prison Service” is not provided for in primary legislation; therefore the definition included in Head 4 could be in alignment with <u>forthcoming legislation</u> to establish the Irish Prison Service as a statutory body.</p>
Head 4	<p>“Serious adverse incident” that occurs within a prison or involves prison staff when carrying out their duties, or prisoners, may include any of the following:</p> <p>(a) serious injury to a person in custody;</p> <p>(b) serious injury to a member of staff or a person interacting with the Irish Prison Service;</p> <p>(c) escape or significant attempted escape from lawful custody;</p> <p>(d) significant breach of security including physical and information security;</p> <p>(e) significant operational delivery issues.</p>		<p>It would be advisable for the definition of “Serious Adverse Incident” provided in Head 4 to be aligned with other similar definitions, such as that set out in Head 164 of the <u>General Scheme for Policing, Security and Community Safety Bill</u> in relation to “serious harm”.</p> <p>Specifically, the definition of “Serious Adverse Incident” could include incidents where a person is the victim of a sexual offence, or the victim of an abuse of power for sexual gain.</p>

<p>Heads 5(1), 5(2), 5(4)</p>	<p>Chief Inspector of Places of Detention</p> <p>5(1): “The Minister shall appoint the Chief Inspector of Places of Detention [...]”</p> <p>5(2) ... “the Minister shall appoint the Chief Inspector [...]”</p> <p>5(4) The Chief Inspector of Places of Detention –</p> <p>(a) shall hold office on such terms and conditions, including remuneration, as the Minister may determine</p> <p>(b) may at any time resign the office by letter addressed to the Minister, the resignation to take effect on and from a date agreed with the Minister, and</p> <p>(c) may at any time be removed by the Minister from office [...]</p>	<p>Article 18(1)</p> <p>The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.</p>	<p>As noted above in relation to Head 3, OPCAT Article 18 requires NPMs be guaranteed functional independence. The proposed subsections of Head 5 which would enable the Minister to appoint and remove the Chief Inspector do not appear to be consistent with the requirements of the OPCAT.</p> <p>The SPT has raised concerns about ministerial appointments of NPM members. With respect to the United Kingdom, the SPT noted in 2021 that “appointment by the executive branch creates a loophole that calls for further reflection and strengthening of safeguards for independence.” (SPT Report to UK, CAT/OP/GBR/ROSP/1, para. 42)</p> <p>Under Head 12 of this General Scheme, the note acknowledges that the “Subcommittee on Prevention of Torture (SPT) is clear that National Preventive Mechanisms, and the bodies that comprise them, should be accountable directly to Parliament (Oireachtas).”</p> <p>In the view of the Inspectorate, this should apply not only to publication of OIPD reports, but also to the appointment and removal of the Chief Inspector of Places of Detention, in line with the <u>model</u> for appointing and removing Commissioners of the Irish Human Rights and Equality Commission (IHREC). (See sections 13 and 14 of the Irish Human Rights and Equality Commission Act 2014).</p>
<p>Head 5(5)</p>	<p>Chief Inspector of Places of Detention</p> <p>Subject to subhead (4), the person, who immediately prior to the commencement of this Head held the office of Inspector of Prisons under section 30 of the Prisons Act 2007, shall be deemed to have been appointed as the Chief Inspector –</p> <p>a) for a term of office of twelve months upon commencement of this Head and</p>	<p>Article 18(1)</p> <p>The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.</p>	<p>In order to guarantee the security of tenure (and hence strengthen the independence) of the Chief Inspector, it is suggested that provision be made for the Chief Inspector of Prisons to become the Chief Inspector of Places of Detention for the remainder of the 5-year term to which she or he was originally appointed under the Prisons Act 2007, rather than for a period of 12 months.</p>
<p>Heads 6(2), 6(3), 6(4), 6(6) and 6(7)</p>	<p>Provision of Services to the Inspectorate of Places of Detention</p> <p>(2) Such funds, premises, facilities, services and staff as may be necessary for the proper functioning of the Inspectorate of Places of Detention shall be provided to it by the Minister....</p>	<p>Article 18(1)</p> <p>The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.</p>	<p>The designation of members of staff of the Inspectorate as civil servants “in the Civil Service of the State” (rather than as civil servants of a Department of Government, as at present) is welcome, as is their proposed accountability to the Chief Inspector as the “appropriate authority”.</p> <p>Nonetheless, the proposals that facilities, services and staff shall be “provided by the Minister” and that recruitment of staff should require the “consent” of the Minister do not</p>

	<p>(3) With the consent of the Minister [...] the Chief Inspector may appoint persons to be staff of the Inspectorate of Places of Detention...</p> <p>(4) The terms and conditions of service of a member of staff of the Inspectorate of Places of Detention and the grade at which he or she serves shall be such as determined by the Chief Inspector with the consent of the Minister [...]</p> <p>(6) A member of staff of the Inspectorate of Places of Detention shall be a civil servant in the Civil Service of the State.</p> <p>(7) The Chief Inspector shall be the appropriate authority [...] in relation to its officers.</p>		<p>appear to be consistent with the functional independence requirements of OPCAT.</p>
<p>Head 6 - Suggested Supplementary Provisions</p>	<p>a. Supplementary Provision - Protections and Exemptions</p>	<p>Article 35</p> <p>Members of the Subcommittee on Prevention of Torture and of the national preventive mechanisms shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions.</p>	<p>OPCAT Article 35 and <u>SPT National Preventive Mechanism Guidelines (2010) Guideline 26</u> require that members of the SPT and <i>all NPM members and staff</i> should be accorded in legislation the protections and exemptions necessary for the independent exercise of their NPM functions.</p> <p>Protections and exemptions for NPM members should be modelled on those provided to members of the SPT (<u>Optional Protocol to the UN Convention against Torture Implementation Manual</u>, APT 2010, pgs.123-127). These should include: exemption from personal arrest; detention and seizure of personal baggage; and from seizure or surveillance of papers and documents. NPM members should also be exempt from legal actions in respect of words spoken or written, or acts performed, in the proper conduct of their NPM duties. Further, protections should include a guarantee that there is no interference with communications in relation to the exercise of NPM functions.</p> <p>Article 36 requires that SPT members do not exploit their position in order to avoid compliance with national laws and regulations; the same applies to NPM members.</p> <p>For example, the Australian Inspector of Correctional Services Act 2017, which was enacted in 2021, sets out a "<u>Protection of (the) Inspector from Liability</u>" (Section 36):</p> <p>(1) The inspector is not civilly liable for conduct engaged in honestly and without recklessness—</p>

		<p>(a) in the exercise of a function under this Act or another territory law; or</p> <p>(b) in the reasonable belief that the conduct was in the exercise of a function under this Act or another territory law.</p> <p>(2) Any liability that would, apart from this section, attach to the inspector attaches instead to the Territory.</p> <p>(3) In this section: <i>conduct</i> means an act or an omission to do an act.</p> <p>Protections and exemptions should also be extended to Experts, Advisers and Consultants working with the OIPD, with the provision that, on cause shown, these may be waived by the Chief Inspector.</p>
b. Supplementary Provision - Power to Appoint Experts, Advisers, Consultants, etc and to enter into Contracts	<p>Article 18(1), 18(2)</p> <p>1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.</p> <p>2. The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge.</p>	<p>The <u>OHCHR Practical Guide on the Role of National Preventive Mechanisms (2018)</u> notes that “NPMs should be able to engage external expertise.”</p> <p>In order to properly discharge its mandate, the OIPD will need to be able to engage external expertise, including, in particular, medical expertise. Consequently, provision should be made for this in the General Scheme.</p> <p>Head 108 of the <u>General Scheme for Policing, Security and Community Safety Bill</u>, which sets out that the Policing and Community Safety Authority may enter into contracts with persons and appoint consultants or advisers, could serve as a model in this regard.</p>
c. Supplementary Provision - Transition		<p>Head 6 makes no provision for the transition of existing OIP staff to the NPM (OIPD), as is provided for with respect to the Chief Inspector under Head 5(5).</p> <p>A model for the transition of staff can be found in Head 135(1) of the <u>General Scheme for Policing, Security and Community Safety Bill</u>. Head 135(1) establishes that any member of staff of the Department of Justice who on the establishment day is engaged in duties of the Garda Inspectorate will be transferred to and become a member of the staff of the authority.</p>
d. Supplementary Provision - Preservation of Contracts, Agreements or Arrangements		<p>The <u>General Scheme for Policing, Security and Community Safety Bill</u> Head 136 sets out that contracts, agreements and arrangements made between the Inspectorate and any other person and which are in force immediately before the establishment day of the Authority shall continue in force and have effect as if the name of the Authority were substituted for that of the Garda Inspectorate and shall be enforceable by or against the Authority.</p>

			Similar provision should be set out for the Office of the Inspector of Prisons / Office of the Inspectorate of Places of Detention.
Head 7(2)	<p>Appointment of Senior Inspectors</p> <p>A Senior Inspector shall perform the functions of the Chief Inspector, to the extent the Chief Inspector may determine in relation to carrying out inspections, and, in performing those functions, the Senior Inspector has the same powers and duties as the Chief Inspector [...]</p>		<p>Under the General Scheme, it is proposed that the OIPD take on functions additional to those of a NPM (Head 9, Head 10 and Head 13). If these functions are retained in the legislation enacted, Senior Inspectors assigned to these functions will not be limited to inspection activities.</p> <p>It is suggested that Head 7(2) could be amended to read: “A Senior Inspector shall perform the functions of the Chief Inspector, to the extent the Chief Inspector may determine, and in performing those functions [...]”</p>
Head 8(3)	<p>Functions of the Chief Inspector of Places of Detention in relation to inspection of prisons</p> <p>The Chief Inspector may, and shall if so requested by the Minister, investigate any matter arising out of the management or operation of a prison [...]</p>	<p>Article 18(1)</p> <p>The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.</p> <p>Article 19</p> <p>The national preventive mechanisms shall be granted at a minimum the power:</p> <p>(a) To regularly examine the treatment of the persons deprived of their liberty in places of detention [...]</p> <p>(b) To make recommendations to the relevant authorities [...]</p> <p>(c) To submit proposals and observations concerning existing or draft legislation.</p>	<p>The proposed retention of a ministerial power to direct the Chief Inspector to carry out and report on an investigation does not align with OPCAT Article 18(1), which requires that NPMs have functional independence.</p> <p>The functions of an NPM do not include investigations, but rather, as is set out in OPCAT Article 19 and explained in the <u>OHCHR Guide on the Role of National Preventive Mechanisms</u> (2018), should be limited to:</p> <ul style="list-style-type: none"> • <i>visiting</i> places of detention, • providing an <i>advisory</i> role to state and prison officials, • participation in <i>educational</i>, training and • awareness-raising programmes and <i>cooperation and engagement</i> with State party authorities and other stakeholders. <p>The <u>OHCHR Guide on the Role of National Preventive Mechanisms</u> notes that “NPMs do not undertake investigations or adjudicate on complaints concerning torture or ill-treatment, even if they encounter such cases while carrying out their visiting function.” (pg 5)</p> <p>Head 8(3) should be amended to reflect the mandate and functional independence required of a NPM:</p> <p>“The Chief Inspector may, and shall if so requested by the Minister, investigate review, examine and report on any matter arising out of the management or operation of a prison’.”</p> <p>If Head 8(3) retains an investigative function for the OIPD, this function should be distinct (resourced and staffed separately) from the OPCAT/NPM functions of the OIPD.</p> <p>The <u>SPT National Preventive Mechanism Guidelines (2010)</u> Guideline 32 makes explicit that “(w)here the body designated as the NPM performs other functions in addition to those under the Optional Protocol, its NPM functions should be located within a separate</p>

			unit or department, with its own staff and budget.”
Head 8(5)(b)	<p>(5) The Chief Inspector shall have all such powers but without prejudice to the generality of the foregoing, the following powers:</p> <p>(b) to require any person employed in a prison or in the administration of prisons to furnish him or her with such information in possession of the person as he or she may reasonably require for the purposes of his or her functions and</p> <p>to make available to the Chief Inspector any record or other document held in a prison in his or her power or control that in the opinion of the Chief Inspector, is relevant to his or her functions, and, where appropriate, require the person to attend before him or her for that purpose,</p>	<p>Article 20(a) and 20(b)</p> <p>In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them:</p> <p>(a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;</p> <p>(b) Access to all information referring to the treatment of those persons as well as their conditions of detention;</p>	<p>OPCAT Article 20(b) requires that NPMs be granted “access to all information referring to the treatment of those persons (deprived of their liberty in places of detention) as well as their conditions of detention.”</p> <p>As Head 8(5) is currently formulated, it could be read as more limiting in regard to access to information than the provisions in Part 3 - Head 17(5) (The Functions of a National Preventive Mechanism) of the General Scheme, namely that:</p> <p>(5) The competent authority referred to in subhead (3) [the body charged with the management of each place of detention] must, at the request of a National Preventive Mechanism, provide the following information and access to same on:</p> <p>(a) the number of detainees in the place of detention;</p> <p>(b) the treatment of detainees at the place of detention;</p> <p>(c) the conditions of detention applying to detainees in the place of detention.</p> <p>It is suggested that the wording of Head 8(5)(b) be aligned with Head 17(5).</p>
Head 8(7)	<p>The Chief Inspector shall furnish to the Minister such information regarding the performance of his or her functions as the Minister may from time to time request,</p> <p><i>Note - Functions of the Chief Inspector of Places of Detention in relation to inspection of prisons</i></p> <p>[...] The purpose of this is to place an onus on the new Inspectorate to provide the Department with whatever governance and performance information that may be necessary for the purpose of supporting both the Minister’s political accountability for the Inspectorate and indeed the Secretary General’s own accountability as Accounting Office for the Inspectorate.</p>	<p>Article 18(1)</p> <p>The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.</p>	<p>As noted above in relation to Head 3, and subsequently, it is a cardinal requirement of OPCAT that NPMs be guaranteed functional independence. Head 8(7) and its accompanying note do not appear to be consistent with this requirement.</p> <p>Having regard to OPCAT Article 18(1), it is difficult to understand why a Minister should be expected to assume “political accountability” for a truly independent NPM.</p> <p>The independence of the OIPD would also be bolstered if it were to have its own Accounting Officer, as is already the case for the proposed coordinating NPM, the IHREC. See section 21(5) of the <u>Irish Human Rights and Equality Commission Act 2014</u>.</p>

Head 8(8)	The Chief Inspector shall inform the Minister of matters relevant to the accountability of the Government to the Houses of the Oireachtas.	Article 18(1) The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.	As noted above in relation to Head 3, and subsequently, OPCAT Article 18(1) requires NPMs be guaranteed functional independence. The reporting requirement proposed in Head 8(8) appears to be inconsistent with that requirement.
Head 8 - Suggested Supplementary Provisions	a. Supplementary Provision - Oversight of Complaints		<p>The Prisons Act 2007 grants an oversight role on the Inspector of Prisons in relation to the Irish Prison Service complaints system. This role is further defined in Rule 57(b) of the Prison Rules 2007 - 2020.</p> <p>Given that it is not a function of a NPM to oversee complaints, no equivalent function has been included in the General Scheme.</p> <p>While the Inspectorate does not seek to maintain a role in the oversight of complaints, it wishes to take this opportunity to remind the Joint Committee that it has frequently documented the deficiencies of the current Irish Prison Service Prisoner Complaints System (see, for example, the OIP 2016 Report on the IPS Prison Complaints System).</p> <p>In the view of the Inspectorate, legislative provision should be made, other than in the General Scheme, for the creation of an independent prison complaints system.</p>
	b. Supplementary Provision - Sharing of Information	Article 20(a), 20(b) In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them: (a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location; (b) Access to all information referring to the treatment of those persons as well as their conditions of detention;	<p>OPCAT Article 20 requires that NPMs have access to all information referring to the treatment of persons in custody.</p> <p>SPT National Preventive Mechanism Guidelines (2010) Guideline 39 sets out that “NPMs should seek to establish and maintain contacts with other NPMs with a view to sharing experience and reinforcing its effectiveness.”</p> <p>Head 8(5) should include further provision to ensure that the Chief Inspector function includes the requesting and sharing of information and data, as is reasonable and legitimate, with all other relevant authorities.</p> <p>The relevant authorities concerned could include, all other duly-established NPMs; An Garda Síochána; and the Garda Síochána Ombudsman Commission (GSOC).</p> <p>Including such a list of authorities in a schedule would facilitate future amendments.</p>
	c. Supplementary Provision - Recommendations and	Article 19(b) To make recommendations to	OPCAT Article 19(b) establishes that NPMs are to make recommendations to relevant authorities.

	<p>Consideration by State Authorities</p>	<p>the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations.</p> <p>Article 22 The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.</p>	<p>Part 3 - Head 17(1)(d) of this General Scheme enacts this requirement for NPMs, but this is not similarly included under Part 1- Head 8 Functions of the Chief Inspector of Places of Detention in Relation to Inspection of Prisons.</p> <p>Part 1 – It is suggested that Head 8 be amended to include a recommendations function, as is provided for under Part 3 - Head 17(1)(d).</p> <p>--</p> <p>OPCAT Article 22 and <u>SPT National Preventive Mechanism Guidelines (2010)</u> Guidelines 13 and 38 set out the requirement for State authorities to consider recommendations made by NPMs.</p> <p>Part 3 - Head 15(7) and Head 17(8) of this General Scheme enact this requirement for inspections by international bodies and NPMs, but this is not similarly included under Part 1 - Head 8 Functions of the Chief Inspector of Places of Detention in Relation to Inspection of Prisons.</p> <p>Part 1 – It is suggested that Head 8 be amended to include a requirement for State authorities to consider recommendations made by the OIPD, as is provided for in relation to international inspection bodies under Part 3 - Head 15(7) and in relation to NPMs under Part 3 - Head 17(8).</p>
	<p>d. Supplementary Provision - Records of the Inspector of Prisons</p>		<p>The <u>General Scheme for Policing, Security and Community Safety Bill</u> Head 137(1) sets out that records held by the Inspectorate immediately before the establishment day of the Authority shall, on that day, stand transferred to the Authority, and shall on and after that day, be the property of the Authority and be regarded as being held by the Authority.</p> <p>Similar provision should be set out for the Office of the Inspector of Prisons / Office of the Inspectorate of Places of Detention.</p>
<p>Head 9(1) and 9(2)</p>	<p>Serious Adverse Incidents</p> <p>(1) The Director General of the Irish Prison Service shall notify the Chief Inspector of any ‘serious adverse incidents’ that occur within a prison or that which involve prison staff when carrying out their duties.</p> <p>(2) The Director General of the Irish Prison Service shall provide any information or</p>		<p>Heads 9(1) and 9(2) would more appropriately be placed under the powers of the Chief Inspector to request information. As such, Heads 9(1) and 9(2) could be moved to Head 8(5) to become Head 8(5)(d).</p> <p>Head 8(5)(d) could then read as:</p> <p>“to require the Director General of the Irish Prison Service to notify the Chief Inspector of any ‘serious adverse incidents’ and to provide any information or documentation in relation to such an incident, on request from the Chief Inspector.”</p> <p>In addition, given the monitoring function of the NPM, the Director General of the Irish Prison Service could also be required to</p>

	documentation in relation to such an incident, on request from the Chief Inspector.		provide information on incidents involving allegations of racism, sexism and discrimination based on gender, sexuality or disability that occur within a prison or that which involve prison staff when carrying out their duties. This provision could be incorporated under Head 8 to become Head 8(5)(e). All information required to be provided to the Chief Inspector by the Director General should be provided as soon as practicable.
Head 9(3)	<p>Serious Adverse Incidents</p> <p>(3) The Chief Inspector may, if he or she considers appropriate, investigate an incident brought to his or her attention under subhead (1) or refer the matter back to the Director General of Irish Prison Service or to another authority for the attention of that authority.</p> <p><i>Note Head 9 - Serious Adverse Incidents</i></p> <p>[...] In effect, the Inspectorate would take on responsibility for the investigation into all Serious Adverse Incidents 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.</p>	<p>Article 19</p> <p>The national preventive mechanisms shall be granted at a minimum the power:</p> <p>(a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;</p> <p>(b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;</p> <p>(c) To submit proposals and observations concerning existing or draft legislation.</p>	<p>Head 9(3) and the accompanying note envisage an investigatory function of the OIPD that is not in alignment with the functions of a NPM.</p> <p>The functions of a NPM are set out in OPCAT Article 19, and are explained in the <u>OHCHR Guide on the Role of National Preventive Mechanisms</u> (2018) as:</p> <ul style="list-style-type: none"> • <i>visiting</i> places of detention, • providing an <i>advisory</i> role to state and prison officials, • participation in <i>educational</i>, training and • awareness-raising programmes and <i>cooperation and engagement</i> with State party authorities and other stakeholders. <p>The <u>OHCHR Guide on the Role of National Preventive Mechanisms</u> notes that “NPMs do not undertake investigations or adjudicate on complaints concerning torture or ill-treatment, even if they encounter such cases while carrying out their visiting function.” (pg 5)</p> <p>Head 9(3) could be amended to read: “The Chief Inspector may, if he or she considers appropriate, review, examine and report on investigate an incident brought to his or her attention under subhead (1) [or, Head 8(5)(d) / Head 8(5)(e) as proposed in Head 9(1) and (2) observations above]. or refer the matter back to the Director General of Irish Prison Service or to another authority for the attention of that authority.”</p>
Head 10(1)	The Director General of the Irish Prison Service shall notify the Chief Inspector of all deaths of prisoners in detention or who have died within 4 weeks of release from detention whether on		<p>Head 10(1) could more appropriately be placed under the function of the Chief Inspector to request information. As such, Head 10(1) should be moved to Head 8(5) to become Head 8(5)(f).</p> <p>Head 8(5)(f) could read as:</p>

	<p>temporary release or otherwise.</p>		<p>“to require the Director General of the Irish Prison Service to notify the Chief Inspector of all deaths of prisoners in detention or who have died within 14 days of release from detention whether on temporary release or otherwise.”</p> <p>The purpose of a review into the circumstances surrounding a death of a person on Temporary Release is to ensure that the obligations owed to prisoners by the management of prisons were observed. These include: proper assessments were carried out, appropriate risk assessments were conducted prior to release, vulnerable prisoners were linked to appropriate services in the community and that accommodation upon release had been organised. In the experience of the Inspectorate, it is within the first 14 days after release that these issues are most likely to emerge. Consequently, the Inspectorate suggests that the period of four weeks set out in the General Scheme could be reduced to two, without adversely affecting the Inspectorate’s capacity to gather information that may help to prevent future deaths.</p> <p>All information required to be provided to the Chief Inspector by the Director General should be provided as soon as practicable.</p>
<p>Head 10(2) and 10(3)</p>	<p>Investigation of Deaths in Custody of Prisoners</p> <p>(2) The Chief Inspector may decide whether the matter of a death of a prisoner in custody requires investigation by his or her Office or needs to be referred back to the Director General of Irish Prison Service or to another authority for the attention of that authority.</p> <p>(3) The Chief Inspector may provide to the relevant coroner for the district, any information arising from an investigation that the Chief Inspector considers may be of assistance to the relevant coroner in the conduct of any inquest under the Coroners Acts 1962 and 2005.</p>		<p>Head 10(2) provides that the Chief Inspector may decide to investigate the death of a person in custody.</p> <p>The functions of a NPM are set out in OPCAT Article 19, and are explained in the <u>OHCHR Guide on the Role of National Preventive Mechanisms</u> (2018) as:</p> <ul style="list-style-type: none"> • <i>visiting</i> places of detention, • providing an <i>advisory</i> role to state and prison officials, • participation in <i>educational</i>, training and • awareness-raising programmes and <i>cooperation and engagement</i> with State party authorities and other stakeholders. <p>The <u>OHCHR Guide on the Role of National Preventive Mechanisms</u> notes that “NPMs do not undertake investigations or adjudicate on complaints concerning torture or ill-treatment, even if they encounter such cases while carrying out their visiting function.” (pg 5)</p> <p>The OIP recognises the need for an independent examination and review into all deaths of persons in custody, as is required by the procedural limb of the case law of the European Court of Human Rights under Article 2 of the European Convention of Human Rights (see, for example, <u>Edwards v UK, European Court of Human Rights, 2002</u>) In the event that the OIPD does not in future investigate every death in prison, it is imperative that every such death be</p>

			<p>independently investigated by an appropriate authority.</p> <p>Although it would not be consistent with the OIPD's future NPM role for it to investigate deaths in custody, it is axiomatic that all deaths in custody, including in prisons and Garda stations, must be thoroughly and independently investigated. The OIP intends to develop further guidance on this subject, based on its experience to date. For the purposes of this submission, it is suggested that the General Scheme could provide that the Chief Inspector may decide to review and report upon (rather than "investigate") the circumstances surrounding any death in custody, in order to identify shortcomings that would assist the Inspectorate to develop future-focused preventive recommendations.</p> <p>Head 10(2) and 10(3) should be amended to account for the mandate and functions of a NPM. In particular, referrals of the type suggested in Head 10(2) are not functions of a NPM.</p>
Head 11(10)(a)	<p>Accountability to Oireachtas Committees</p> <p>In carrying out duties under this head, the Chief Inspector shall not –</p> <p>(a) question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such policy [...]</p>	<p>Article 19(c)</p> <p>The national preventive mechanisms shall be granted at a minimum the power:</p> <p>(c) to submit proposals and observations concerning existing or draft legislation</p>	<p>OPCAT Article 19(c) requires that NPMs be permitted to submit proposals and observations on draft legislation.</p> <p>Moreover, <u>SPT National Preventive Mechanism Guidelines (2010)</u> Guideline 28 provides that the State should inform the NPM on draft legislation that may be under consideration which is relevant to its mandate and allow the NPM to make proposals and observations on any existing or draft legislation. Guideline 35 further places a duty on NPMs to make proposals and observations to the relevant state authorities regarding existing and draft policy or legislation [emphasis added] which it considers to be relevant to its mandate.</p> <p>The Prisons Act 2007 contains no restriction on the Inspector of Prisons expressing opinions on the merits of policy. Arguably, such a provision could, in future, impede the Inspectorate from providing the Joint Committee with its observations on proposed legislation directly related to its mandate.</p> <p>As presently drafted, Head 11(10)(a) is inconsistent with OPCAT Article 19(c), and could deprive the OIPD of one of its core functions under the OPCAT. In the view of the Inspectorate, it should be deleted.</p>
Head 12	<p>Publication of Annual and Other Reports</p> <p>[...] the Chief Inspector will now have the power to lay his or her annual reports and other reports directly before the Oireachtas</p>	<p>Article 18(1)</p> <p>The States Parties shall guarantee the functional independence of the national preventive mechanisms as well</p>	<p>The new power for the OIP itself to make public reports is welcome, and is in compliance with OPCAT Article 18(1).</p> <p>The Head 12 note provides that the "Subcommittee on Prevention of Torture (SPT) is clear that National Preventive Mechanisms, and the bodies that comprise</p>

		as the independence of their personnel.	them, should be accountable directly to Parliament (Oireachtas).” This level of independence, in that the NPM is accountable to the Oireachtas, should apply not only to report publication, but also to the financial and operational functions of the OIPD, and all NPMs. This would ensure full compliance of the legislation with OPCAT Article 18(1).
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Part 2 - Prison Visiting Committees

Head	Content / Issue	OPCAT	Observations and Suggestions
Head 13(1)	The Chief Inspector shall establish a Prison Visiting Committee for each prison in the State.		This is a suggested new role for the OIPD, in addition to its new NPM functions, which has not been sought by the OIP. This would impose on the OIPD an entirely new workload, requiring significant additional human and financial resources. The Inspectorate is not convinced that it is appropriate or necessary for the OIPD to be accorded this role.
Head 13(12)	The Prison Visiting Committees shall, on an annual basis, submit a report on their activities to the Chief Inspector in relation to all their visits and any matter which impacts on the management and operation of a prison.		In line with the observation on Head 13(1), the Inspectorate doubts that it is appropriate or necessary for the OIPD to be accorded this role.
Head 13(13)	The Chief Inspector shall submit a composite report on the activities of Prison Visiting Committees to the Minister on an annual basis.		In line with the observation on Head 13(1), the Inspectorate doubts that it is appropriate or necessary for the OIPD to be accorded this role.

Part 3 - Inspection Mechanisms for the Prevention of Torture and other Cruel Inhuman Degrading Treatment or Punishment

Head	Content / Issue	OPCAT	Observations and Suggestions
Head 15	Inspection of places of detention by international bodies	Article 35 Members of the Subcommittee on Prevention of Torture and of the national preventive mechanisms shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions.	Head 15 does not provide for privileges and immunities of members of international bodies, as required by OPCAT Article 35 and the UN Convention on Privileges and Immunities (Sections 22 and 23). It is suggested that these be included in the Inspection of Places of Detention Bill.
Heads 17(1) and 17(9)	(1) A National Preventive Mechanism has the following functions under this Act in respect of the places of detention for which it is designated: [...] c. prepare a report, each year, on the exercise of its functions under this Part; [...] e. arrange for the laying of inspection reports before the Houses of the Oireachtas and the submission of copies of such reports to Minister or relevant Minister responsible for the place of detention concerned. [...] (9) A copy of a report under subhead (1) shall, as soon as practicable, be submitted to the co-ordinating body for National Preventive Mechanisms.	Article 18(1) The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.	The additional reporting obligation on the OIPD as the NPM for the justice sector is noted. It is positive that OIPD reports can also be published directly by the OIPD, as well as be submitted directly to IHREC as the coordinating body for NPMs.
Head 21(1)(b)	(b) Paragraph (a) shall not apply to a person who is employed in a place of detention who, in the course of his or her official duties and in response to a request from a national preventive mechanism or an international body, supplies false information deliberately and with intent to delay, obstruct or undermine the work of that national preventive	Article 21(1) 1. No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be	It is suggested that Head 21(1)(b) should make clear, in alignment with Part 1 - Head 8(6), that “it shall not be lawful for a person to refuse to cooperate with the Chief Inspector in the exercise of his or her powers [...]”

	mechanism or international body.	otherwise prejudiced in any way.	
Suggested Supplementary Head	Supplementary Provision - Joint Inspections	<p>Article 18(1) and 18(2)</p> <p>1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.</p> <p>2. The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. [...]</p>	<p>To ensure NPMs are able to engage with the necessary expertise to effectively carry out their functions, a provision for joint inspections could be set out for the National Preventive Mechanism bodies.</p> <p><u>SPT National Preventive Mechanism Guidelines (2010)</u> Guideline 39 sets out that “NPMs should seek to establish and maintain contacts with other NPMs with a view to sharing experience and reinforcing its effectiveness.”</p> <p>The <u>General Scheme for Policing, Security and Community Safety Bill</u> Head 115(1) sets out that the Authority may undertake a joint inspection with one or more prescribed inspection bodies where it is appropriate to do so for the efficient and effective discharge of its function [...]</p>

4 CONCLUSION

It is fifteen years since Ireland signed the Optional Protocol to the United Nations Convention against Torture. Once enacted, the provisions currently set out in the Inspection of Places of Detention Bill 2022 will pave the way for Ireland to ratify the OPCAT and to designate National Preventive Mechanisms. The Inspectorate welcomes the clear legislative intent to designate the Office of the Inspectorate of Places of Detention as the National Preventive Mechanism for the criminal justice sector, including responsibility for monitoring prisons, Garda Síochána Stations and other places of detention.

This submission acknowledges that there is much to be welcomed in the General Scheme. Nonetheless, the Inspectorate expresses reservations about a number of the current Heads, which do not appear to fully respect the cardinal principles that bodies designated as NPMs must have “functional independence” from Government Departments and enjoy a full range of appropriate powers.

Ratification by Ireland of the OPCAT is keenly awaited. The Inspectorate’s proposals in this submission are designed to assist legislators to produce legislation that will withstand the robust scrutiny to which it will certainly be subject at both national and international levels. This is an opportunity for Ireland to create a world class National Preventive Mechanism which will not only provide high quality independent monitoring of places of detention in Ireland, but also serve as an example of best practice.

There is a clear legislative model that could be adopted to ensure that the new law will pass muster. The body to be allocated the function of coordinating Ireland’s NPMs – the Irish Human Rights and Equality Commission – already enjoys the necessary functional independence and is directly accountable to the Oireachtas, not to a Minister. In order to ensure that the Inspection of Places of Detention Bill will equip Ireland fully to meet its obligations under the OPCAT, a similar model should be adopted for each and every operational monitoring body to be designated as a NPM, including the Inspectorate of Places of Detention.

The Inspectorate trusts that these observations will be of assistance to the Joint Committee on Justice and stands ready to further assist the Committee in any way it may require, including by appearing before it.