

Proposals for a Criminal Justice Inspectorate

Introduction

This is a discussion document which provides an overview of the inspection and standards structures for bodies and agencies within the Criminal Justice sector. The potential for the reform and development of the current structures is considered, cogniscent of developments in other jurisdictions, notably Northern Ireland, with regard to an overarching criminal Justice Inspectorate. This model takes an integrated approach to the inspection and monitoring of standards and conditions in relevant criminal justice bodies across the State sector. The document is intended as a catalyst to discussion on the establishment of a comprehensive criminal justice inspectorate in this jurisdiction and the transition to its formation.

The primary purpose of inspection bodies is to improve standards and assist meeting best international practice. In that context this paper considers the role of inspection focusing on three issues:

- The efficiency and effectiveness of particular agencies;
- The efficiency and effectiveness of the criminal justice system and how agencies can best contribute to that;
- Safeguarding the rights of those in custody.
-

The rights of those custody is considered with due regard to developments in the framework of Ireland's ratification of and participation in international conventions, notably the Council of Europe Convention and United Nations instruments which require inspections of places of detention aimed at the prevention of torture. The principal instruments in question are the Council of Europe European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which Ireland has already ratified, and the United Nations Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). While such inspections are not confined solely to the criminal justice environment, it is evident that the majority of detained persons in the state are held within the criminal justice system, particularly in the prison system.

An outline of the options considered for an inspectorate is given, together with the proposed format for the inspectorate, which is set out. The rationale for the proposed option and possible transitional arrangements to be engaged in when moving from the existing inspectorate regimes to a comprehensive



overarching inspectorate for the broader criminal justice sector are provided. A brief account of alternative approaches considered is also provided.

1. Background including Recent Developments

1.1 The Department of Justice and Equality is responsible for a number of agencies in the Criminal Justice sector. Notable among these are the Garda Síochána, the Irish Prison Service, the Probation Service, the Forensic Science Laboratory and the Garda Síochána Ombudsman Commission¹.

1.2 The Courts Service and the office of the Director of Public Prosecutions also have significant roles in the criminal justice system through the prosecution and disposal of criminal cases. The Courts Service comes within the remit of the Department but is by statute independent in the performance of its functions. The Office of the Director of Public Prosecutions falls outside the remit of the Department and is also by statute independent in the performance of its functions.

1.3 *Proposal to Establish Inspectorate*

1.3.1 In February 2015, **the Minister for Justice and Equality** indicated that she was considering the establishment of a Criminal Justice Inspectorate in this jurisdiction. The proposed inspectorate would incorporate aspects of the inspection functions of the Garda Inspectorate and the Inspector of Prisons but its remit may also cover other criminal justice agencies such as the Probation Service.² The Minister pointed to the Criminal Justice Inspectorate, which has operated in Northern Ireland since 2002, as a model that might be followed.

1.3.2 The Minister for Justice and Equality in her February statement suggested that Criminal Justice Inspectorate here would:

(i) carry out inspections and make recommendations concerning the efficiency and effectiveness of individual agencies,

¹ The Garda Síochána Ombudsman Commission (GSOC) is an independent statutory body, established under the Garda Síochána Act 2005 and set up in 2007. It replaced the Garda Síochána Complaints Board. Its mission is to provide efficient, fair and independent oversight of policing in Ireland.

² The treatment of Children/juveniles within the criminal justice system, particularly those detained in Children detention Schools is primarily a function of the Department of Children and Youth Affairs and inspections of these schools are carried out by HIQA – the Health Information and Quality Authority.



(ii) carry out thematic inspections and make recommendations concerning the efficiency and effectiveness of the criminal justice system as a whole including the interaction between the different agencies,

(iii) carry out inspections of places of detention and make recommendations concerning safeguarding the rights of detained persons and protecting against abuse.³

1.3.3 The Minister stated that:

“Such an Inspectorate, I believe, would ensure that all the criminal justice agencies would be measured by the same standard and have to have the same respect for human rights.

Before making a final decision, I want to hear the views of all those concerned and to this end I am initiating a consultative process.”

1.3.4 The paper has been prepared in this context to invite an informed debate on the development of any legislative proposals for the establishment of a criminal justice inspectorate.

1.3.5 An Inspection of Places of Detention Bill was in preparation within the Department of Justice and Equality. The Bill aimed to provide for the legislative requirements necessary to enable the ratification of the OPCAT, to strengthen the Prisons Inspectorate, put the Council of Europe inspection regime on a statutory footing and to address matters relating to Prison Visiting Committees. In the course of preparation of that legislation a number of issues arose. In particular

- The existing inspection services do not cover those in the custody of the Garda Síochána or the Garda Síochána Ombudsman Commission. This has to be addressed in the context of OPCAT ;
- A number of criminal justice agencies are not subject to any form of structured inspection;
- There is no body charged with looking at how the criminal justice system works as a whole.

³ A detained person for this purpose is any person, including those to be deported, held in detention by An Garda Síochána, the Irish Prison Service or other criminal justice agency.



1.3.6 The question is what structure or structures would best

- (a) carry out the existing inspection roles promoting best practice with respect to the Garda Síochána and Irish Prison Services,
- (b) extend the inspection role to bodies such as the Probation Service,
- (c) have a new role in inspecting the interaction between the different agencies operating as part of the criminal justice system, and
- (d) have an extended role in monitoring the conditions of detention for those in the care or custody of Justice agencies.

1.3.7 On the one hand, it can be argued that there should be a specialised inspectorate looking at the effectiveness of each of the agencies, another set of inspectorates monitoring the rights of those in the custody of the different agencies and yet another one looking how they best integrate together as part of the criminal justice system. However, on the other hand, there is always a danger of conflicting views if there is a multiplicity of inspectorates. In addition in considering the best way forward, it is important not to lose sight of the fact that this jurisdiction is relatively small and the expertise required and resources available are limited.

1.4. Recommendation by Oireachtas Committee

1.4.1 In October 2014 the **Joint Oireachtas Committee on Justice Equality and Defence** published the Report of its Review of An Garda Síochána Act 2005.

1.4.2 One of the principle recommendations in the report is for the establishment of Criminal Justice inspectorate. The Joint Committee had flagged this in its interim response where it indicated that it would be recommending that

“a Criminal Justice Inspectorate is established to oversee and supervise the administration of all aspects of the criminal justice system, similar to the body which exists in Northern Ireland. Establishing a similar body could be a long-term objective for the proposed Garda Authority, as it evolves.....”⁴

⁴ Review of Garda Síochána Act 2005 - Interim response, **June 2014**



1.4.3 In the final Report, the Committee set out the proposal for the Criminal Justice Inspectorate in the context of its review of the statutory provisions relating to the current Garda Síochána Inspectorate:

“The Committee recommends the formation of a Criminal Justice Inspectorate to oversee and supervise the administration of all aspects of the criminal justice system.

This organisation would have powers to oversee a number of bodies, which may include An Garda Síochána,..... ..The organisation will only focus on the administration of the system (as opposed to the administration of justice).”⁵

1.4.4 The scope of the inspectorate envisaged by the Joint Committee is a broad overarching body whose remit would encompass the oversight of the wide range of activities conducted by or on behalf of the State within the criminal justice sector and has a much broader compass than the remit of current oversight bodies. This paper explores further how such a system might be developed and how it would be structured and the bodies that would in the first instance be subject to the inspectorate’s oversight.

1.5 Northern Ireland Criminal Justice Inspectorate (CJINI)⁶

1.5.1 A model of a criminal justice inspectorate is already in place in Northern Ireland where following the Good Friday Agreement **Criminal Justice Inspection Northern Ireland** was established. In that jurisdiction, the Criminal Justice Review which reported in 2000 noted *‘the importance of inspection as a tool for holding criminal justice agencies to account for their actions and the proper expenditure of public resources.’* The view expressed is that inspection of criminal justice functions is both necessary and desirable.

1.5.2 The Northern Ireland Criminal Justice Inspectorate comprises a core team of Inspectors who have a wide range of experience and in-depth knowledge relating to the agencies that make up the criminal justice system in

⁵ Joint Committee on Justice Defence and Equality Report on the Review of the Garda Síochána Act 2005, October 2014.

⁶ Criminal Justice Inspection Northern Ireland (CJINI) is an independent statutory inspectorate, established under the Justice (Northern Ireland) Act 2002, constituted as a non-departmental public body in the person of the Chief Inspector. The CJINI was established in accordance with Recommendation 263 of the *Review of the Criminal Justice System in Northern Ireland* of March, 2000.



Northern Ireland. In the case of prisons, all Northern Ireland's three prisons are regularly inspected jointly by CJINI and HMIP⁷. In addition, as in England and Wales, each prison has its own IMB⁸ and regular visits are undertaken. CJINI also inspects places of Police Custody, where visits are being undertaken by CJINI, together with RQIA⁹. The Northern Ireland Policing Board independent custody visitors also carry out unannounced visits to custody suites. Court custody is also regularly inspected by CJINI. In the case of Children in Secure Accommodation, the only regional secure care centres are inspected by CJINI and RQIA.

1.5.3 Under the Justice (Northern Ireland) Act 2002 CJINI was originally given the power to inspect nine named organisations. Further additions were later made. A full list of the organisations currently subject to inspection by CJINI is shown below.¹⁰

1.5.4 By law, CJINI is not allowed to investigate individual cases but it can, when asked by the Minister for Justice in Northern Ireland, undertake specific pieces of work including investigations and reviews. This is similar to the role that the Inspector of Prisons would have in this jurisdiction in respect of prisons. CJINI has published extensively on its work since its establishment including inspection reports and thematic studies and investigations.

⁷ Her Majesty's Inspectorate of Prisons

⁸ Independent Monitoring Board

⁹ The Regulation and Quality Improvement Authority (RQIA) is Northern Ireland's independent health and social care regulator.

¹⁰ The bodies subject to inspection by the Northern Ireland Criminal Justice Inspectorate are set out below

<i>Key Criminal Justice organisations</i>	<i>Other organisations inspected by CJINI</i>
The Police Service of Northern Ireland (PSNI);	The Northern Ireland Social Security Agency;
The Public Prosecution Service for Northern Ireland (PPS);	The Compensation Agency;
The Youth Justice Agency for Northern Ireland (YJA);	Health and Social Services Boards and Trusts;
The Northern Ireland Prison Service (NIPS);	The Northern Ireland Child Support Agency;
The Probation Board for Northern Ireland (PBNI);	The Department of Enterprise, Trade and Investment (DETI);
Forensic Science Northern Ireland (FSNI);	The Department of the Environment (DoE);
The Police Ombudsman's Office for Northern Ireland (OPONI);	The Health and Safety Executive for Northern Ireland (HSENI);
The State Pathologist's Department for Northern Ireland (SPD);	The Royal Mail Group (RMG);
The Northern Ireland Courts and Tribunals Service (NICTS);	Belfast Harbour Commissioners;
The Parole Commissioners (formerly the Life Sentence Review Commissioners);	Larne Harbour Ltd;
The Legal Services Commission (LSC);	Belfast International Airport Ltd (BIA);
	The Northern Ireland Tourist Board (NITB).
	Community Restorative Justice schemes; and
	Probation and bail hostels (Approved Premises).



2. Justice bodies and Existing Justice related Inspectorates

2.1 Garda Síochána

2.1.1 The Garda Síochána is both the police force and the security service of the State. The statutory underpinning for the Garda Síochána is set down in the Garda Síochána Act of 2005.

2.1.2 The current Inspectorate function for the Garda Síochána is provided for in Section 117 of the Garda Síochána Act 2005. The Garda Síochána Inspectorate was established pursuant to that Act in 2006. The Inspectorate which currently consists of a Chief Inspector and 2 Deputy Chief Inspectors each with wide-ranging backgrounds in policing in other jurisdictions, function to ensure the resources available to the Garda Síochána are used to achieve and maintain the highest levels of efficiency and effectiveness in the force's operation and administration, as measured by reference to the best standards of comparable police services. The inspectorate has published a number of themed reports on particular aspects of Irish policing to date. The most recent of these is the Report on Crime Investigation published in October 2014.

2.1.3 With regard to the matters under discussion herein, the current inspectorate's statutory remit does not provide for it to inspect places of Garda detention for the purpose of fulfilling the State's mandated inspection obligations under international instruments, aimed at the prevention of torture and other inhuman and degrading treatment of punishment. A mechanism for the conduct of such inspections will need to be put in place in order for Ireland to fully ratify the OPCAT. The establishment of a Criminal Justice Inspectorate could provide for this mechanism across the entire sector including Garda controlled places of detention.

2.1.4 In the course of its work persons can be detained by the Garda Síochána in accordance with various statutory time limits for up to 7 days. Any such detention is subject to the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987. These regulations provide protection for the detained person and for records to be kept by the Garda Síochána of the person's time in custody.



2.2 Prisons

2.2.1 The statutory office of Inspector of Prisons established pursuant to Part 5 of the Prisons Act 2007 carries out inspections of Prisons within the State and conducts related functions pursuant to the provisions of the Act and at the request of the Minister for Justice and Equality. This is in line with international best practice.¹¹

The main role of the Inspector of Prisons is to examine each individual prison and report on:

- (a) its general management, including the level of its effectiveness and efficiency,
- (b) the conditions and general health and welfare of prisoners detained there,
- (c) the general conduct and effectiveness of persons working there,
- (d) compliance with national and international standards, including in particular the prison rules,
- (e) programmes and other facilities available and the extent to which prisoners participate in them,
- (f) security, and
- (g) discipline.

2.2.2 The Inspector of Prisons has also conducted independent investigations of deaths of prisoners in custody and makes recommendations to both the Irish Prison Service and the Minister arising from his conclusions. These reports and recommendations are published.

¹¹ e.g. REC (2006)2 of the Committee of Ministers of the Council of Europe on the European Prison Rules - Rule 92 .



2.2.3 The Inspector of Prisons is also undertaking a review of the Irish Prison Service.¹²

2.3 Probation

2.3.1 The Probation Service is an integral part of the Criminal Justice System and it works with offenders and others to reduce offending and to make communities safer places. The service works closely, in its interface with other criminal justice agencies such as the Courts Service, the Irish Prisons Service, An Garda Síochána and the many varied organisations in the community that work to achieve those aims.

2.3.2 The work of the Probation Service is primarily focused on public safety. While offenders must be held accountable for their actions and in a context where crime must be met by an effective sanction, community sanctions are preferable to custodial ones, wherever possible. In the majority of cases there is one to one engagement between the service (probation officer) and the offender.

2.3.3 Probation officers provide professional assessments (including assessments of risk) on offenders for a range of authorities, including the Courts, the Irish Prison Service and the Department of Justice & Equality.

2.3.4 Direct engagement with offenders, their families and others to facilitate positive change in offenders' lives and to reduce offending and make communities safer is a significant part of the service's work.

2.3.5 There is currently no inspectorate for the Probation Service in this jurisdiction although international best practice calls for such inspection.¹³ It is envisaged that the inspection of probation services would fall within the ambit of a criminal justice inspectorate thus ensuring the monitoring of standards and efficiency in this important area of criminal justice. The work of the inspectorate would contribute to the maintenance of high standards of service and to the continuous improvement process within probation work both administratively and at the community level.

2.3.6 For comparison, in the UK, HM Inspectorate of Probation an independent Inspectorate, funded by the Ministry of Justice, reports on the

¹² Since this paper was originally drafted the Inspector of Prisons has published his report on "Culture and Organisation in the Irish Prison Service - A Road Map for the Future"

¹³ Recommendation CM/Rec (2010)1 of the Committee of Ministers on the Council of European Probation Rules (Rule 103)



effectiveness of probation work with adults, children and young people who have offended, aimed at reducing reoffending and protecting the public. The aim is to be an independent and authoritative source of fair comment on both adult and youth offending work, and on what can be expected of that work. It emphasises, among other things, assessing the effectiveness of work to keep to a minimum risk of harm to the public and to children. HM Inspectorate of Probation is a constituent element of Criminal Justice Joint Inspection a cooperative approach to inspection involving the 4 main inspectorates of the criminal justice sector in the UK¹⁴.

2.4 Forensic Science Ireland

2.4.1 Forensic Science Ireland (Eolaíocht Fhóirínseach Éireann) was established as the Forensic Science Laboratory in 1975 and is accredited by the Irish National Accreditation Board (INAB), a statutory body, to ISO 17025. This standard is applicable to all laboratories regardless of the number of personnel or the extent of the scope of testing and/or calibration activities. It requires laboratories to establish and maintain a quality system to manage aspects such as document control, complaint handling, contract review, purchasing, audits and investigation into non-conforming testing/calibrations. In addition, the laboratory is required to have policies and procedures to describe training, test/calibration methods, quality assurance, reporting and measurement. The inspections for this purpose are based on general laboratory practice and standard operating procedures. They are not inspections carried out for the purpose of criminal justice monitoring.

2.4.2 Laboratory staff in Forensic Science Ireland are made up of scientists, analysts and support personnel who are all civil servants. They provide scientific assistance to agencies involved in criminal investigation, mainly An Garda Síochána and also give assistance to other agencies e.g. the Garda Ombudsman (GSOC), Military Police, Customs & Excise and the Department of Agriculture.

The centrality of focus in the work of Forensic Science Ireland is on the investigation of serious crime and the provision of evidence in the prosecution of offenders.

¹⁴ These are the Inspectorates of Constabulary; the Crown Prosecution Service; Prisons; and Probation. The arrangement was given a statutory underpinning by the Police and Justice Act 2006 (2006 C 48).



2.5 Garda Síochána Ombudsman Commission

2.5.1 The Garda Síochána Ombudsman Commission was established under Part 3 of the Garda Síochána Act 2005. The Commission investigates complaints about members of the Garda Síochána and for this purpose has the same investigative powers as a member of the force itself. This includes the power to detain and question persons.¹⁵

2.5.2 No regular independent inspections of the operation of the commission are undertaken in the absence of an inspectorate to conduct inspections of the ombudsman commission. Given the relative size of the commission compared to other criminal Justice bodies, a dedicated inspectorate solely for the Garda Síochána Ombudsman Commission would be impractical and inspection under the remit of a broader criminal justice inspectorate entity would appear to be more feasible for this and other smaller in scale bodies in the sector.

3. Other Criminal Justice Related Bodies

3.1 Any extension of the remit of a criminal justice inspectorate to cover criminal justice bodies which are not under the management of the Department of Justice and Equality is not being considered at this time but could take place at a later point in time subject to the agreement of appropriate protocols with the bodies concerned.

3.2 Independent Statutory inspectorates also exist in other sectors, notably Health¹⁶ where hospitals, psychiatric care services and residential care centres are inspected on a regular basis and reports and recommendations are published. International obligations with respect to inspections for the prevention of torture require the cooperation of all these agencies in the international dimension of the inspection process and engagement between them, at the national level.

¹⁵ Section 98 (1)(f)

¹⁶ HIQA and the Mental Health Commission carry out inspections of a number of clinical and health related settings as well as HIQA inspecting residential units (including Children Detention Centres).



4. International Inspection Obligations

4.1 A significant strand of this debate is consultation with civil society in relation to the development of Ireland's engagement with inspections of places of detention in fulfilment of its present and future obligations under Council of Europe and United Nations instruments.

4.2 Inspections of places of detention within, inter alia, the criminal justice sector are mandated by certain international agreements to which Ireland is a party. The Council of Europe Prison Rules and Probation Rules (referred to above) both recommend a role for inspection. In addition to the normal inspection role aimed at promoting best practice, there are other international instruments focussed specifically at preventing abuse of those in detention. For a number of years Ireland has been subject to inspections by international authorities through its ratification of the European Convention for the Prevention of Torture¹⁷. Such inspections are often informed by submissions of NGO's working in the field of human rights. Liaison with these bodies during the visit is also a feature of the inspection process. The inspections have to date been facilitated by the Department of Justice and Equality, co-ordinating with other relevant departments to enable the independent inspectors have free and unfettered access to the places a people they wish to visit. The observations and recommendations of the Committee are presented to the Government following the visit and are then published.

4.3 It is planned that Ireland will become a ratifying State to the Optional Protocol to the UN Convention against Torture (OPCAT)¹⁸ and for this purpose, in addition to inspections of places of detention by international delegations; a mechanism for the purpose of the protocol to enable inspection on the national level will need to be put in place. Although the structure of these national mechanisms (NPM) is not set down in the protocol, conditions on the independence of their operation are stipulated. In the justice sector these inspections will cover all places where a person can be detained by a justice agency (e.g. Garda station, prisons, transport, court holding cells etc.).

¹⁷ European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. A delegation of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carried out a visit to Ireland from 16 to 26 September 2014. It was the CPT's sixth periodic visit to Ireland.

¹⁸ Optional Protocol to the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment. Ireland is already a signatory to the protocol.



4.4 In other sectors, mental hospitals, children detention schools, places of military detention and children's residential units will be liable to inspection by the appropriate inspection body for that sector.

4.5 In order for effective implementation of the OPCAT in Ireland all categories of places of detention will need to be inspected by a national body or bodies for the prevention of Torture. While the majority of such places already have effective independent inspection mechanisms in situ that can be adapted to incorporate OPCAT inspections, the key Garda sector is currently lacking in this regard. A functionally independent Criminal Justice Inspectorate may provide the most effective structure within which to administer the OPCAT national inspection process within the criminal justice sector. The experience gained through the work of the Inspector of prisons in relation to detained persons within the justice system could inform the work of a criminal justice inspectorate and the development of inspection mechanisms, including those occurring within Garda stations.

4.6 One of the principal prerequisites for the ratification of the OPCAT is effective consultation with civic society as part of the process of the development of effective legislative proposals establishing national preventative mechanisms. The open policy debate which follows from this discussion paper provides an opportunity to engage with interested parties in an environment of consultation where their views can be shared and considered.

4.7 It is noted that in Northern Ireland for OPCAT, the Criminal Justice Inspectorate is one of a number of existing inspection bodies directed to carry out a system of regular visits to places of detention in order to prevent the torture and other cruel, inhuman or degrading treatment or punishment of detained persons. In 2014 a memorandum of understanding (MOU) was drawn up between CJINI and Her Majesty's Chief Inspector of Prisons regarding the carrying out of OPCAT inspections of Prisons.

4.8 The essential component of any inspection mechanism for the purposes of the OPCAT is that it is functionally independent of the Government. Independent inspection mechanisms exist for many of the categories of detention mentioned above already and it is proposed that within the justice sector the scope of the independent criminal justice inspectorate could encompass an inspection function for all of the Justice bodies for OPCAT purposes. A single inspection body with access to the range of specialist expertise necessary to enable effective independent inspections to



occur could provide the mechanism for the effective implementation of the OPCAT.

4.9 Given the proposed scope of a criminal justice inspectorate, it may also have the resources to play a co-ordinating role for the bodies conducting inspections in line with OPCAT requirements in all other places where persons may be deprived of their liberty, for example, mental hospitals. If this were to occur that element of the inspectorates role would be carried out in a manner that fully acknowledges and respects the independence of the various inspection bodies in other sectors.

5. Scope of an Inspectorate

5.1 It is envisaged that at the outset a criminal justice inspectorate could be responsible for the inspection of An Garda Síochána, the Irish Prison Service and the Probation Service as well as their role in the criminal justice system and including their interaction with one another. A question that arises and will need further consideration is whether monitoring the rights of those in custody should be included in a broad Inspectorate, or whether there should be two separate inspectorates, possibly sharing resources. Is the role of monitoring efficiencies and effectiveness of criminal justice necessarily separate from the protection of the rights of those in custody and the prevention of torture in those criminal justice bodies that have custody as part of their remit?

5.2 Consideration of what other bodies and agencies might be the subject of inspection by the inspectorate needs consideration. Other justice agencies such as Forensic Science Ireland and the Garda Síochána Ombudsman Commission could be brought within its scope.

5.3 In the future following the establishment of the inspectorate consideration may be given to identifying other bodies that might come within the scope of the Criminal justice inspectorate as happened in Northern Ireland.

6.1 Unified Criminal Justice Inspectorate

6.1.1 A new inspection regime building upon the structures already established in the Garda Síochána Inspectorate and the Office of the Inspector of Prisons has been identified as a model that is both appropriate



and robust for the evaluation of all the criminal justice agencies by the same standard; and ensuring a similar regard for the rights of those served by or catered for by the range of agencies in the criminal justice sector.

6.1.2 In this structure, it is envisaged that a criminal Justice inspectorate would be headed by a [Chief] Inspector, who would be resourced with personnel representing expertise and experience in the various elements of criminal justice encompassed by the inspectorate, but with no direct connection with the national agencies in the criminal justice sector.

6.1.3 The inspectorate would be enabled where necessary, to call upon additional external experts and expertise to assist him or her in carrying out the inspection functions where the circumstances required it. This would be aimed at ensuring all the necessary expertise for an efficient and effective inspection could be available to the inspectorate on an ongoing basis for the less common tasks undertaken by the inspectorate or where certain professionals or persons with particular expertise may need to be involved in the process. The main inspection body would incorporate the functions of both the Garda Síochána Inspectorate and the Office of Inspector of Prisons and have a full inspectorate function for other bodies in the criminal justice sector such as probation. The primary function of the Inspectorate would be to ensure that individual agencies meet best international practice and that they work together to ensure the best possible outcome for the criminal justice system as a whole.

6.1.4 This Inspectorate or perhaps a separate dedicated inspectorate would have a role that relates to OPCAT for national preventive mechanisms, having the appropriate resources available to enable them to function and equip the inspectorate with the skills necessary to carry out the functions of a national preventative mechanism for the justice sector and to engage with the Secretariat of the OPCAT.¹⁹

6.1.4.1 In a similar manner to the Criminal Justice Inspectorate in Northern Ireland, it is envisaged that the inspectorate could work in cooperation and in tandem with relevant inspectorates from the health, education and other sectors where it would be appropriate to have joint inspections, or one or other inspection body could undertake the required inspections on behalf of both.²⁰ This proposal is for a specific inspectorate overseeing the range of

¹⁹ Article 18 para. 3.

²⁰ The CJINI Inspectorate will often work in partnership with Her Majesty's Inspectorate of Prisons (HMCIP); Her Majesty's Inspectorate of Constabulary (HMIC), Her Majesty's Crown Prosecution



statutory bodies and agencies across the criminal justice sector and measuring them against a set of high standards to be achieved within the sector.

6.1.4.2 A beneficial consequence of this approach also, could be a speedier progression towards full ratification and implementation of the OPCAT in this jurisdiction.

6.2 Transitional arrangements

6.2.1 In the normal course of events in the legislative process, once a Bill has been drafted there will be a time interval between the drafting and the passage of the Bill through the Houses of the Oireachtas to the final enactment of the legislation. In addition it would be expected that the establishment of the new body would also require an establishment period before it would be fully functional.

6.2.2 It is proposed that in the interim period the existing inspectorates in the criminal justice sector would be co-located to enable a streamlining of administration and the development of a single operational culture within the sector. During this period the initial steps towards a unitary administration could be explored with the aim of ironing out any potential problems that might delay the efficient progress to the new body once the required legislation was in place.

7. Other Inspectorate Options Considered

7.1 Oversight body for existing Inspectorates with additional functions for inspection of other agencies

7.1.1 One of the alternative approaches to a criminal justice inspectorate considered was to maintain the existing inspectorates, i.e. the Inspector of Prisons and the Garda Inspectorate, which would keep their existing functions

Service Inspectorate (HMCPSI); and Her Majesty's Inspectorate of Probation (HMIP) (*see footnote 1*). It has also worked with the Northern Ireland Regulatory and Quality Improvement Authority (RQIA); Northern Ireland's Education and Training Inspectorate (ETI); the Office of the Northern Ireland Commissioner for Children and Young People (NICCY); the Northern Ireland Human Rights Commission (NIHRC); and the Northern Ireland Audit Office (NIAO).



and in addition to have an oversight/ coordination role for these bodies assigned to a new criminal justice inspectorate.

7.1.2 In this model the criminal justice inspectorate would, in addition to oversight of the existing inspection bodies, have a specific responsibility for the conduct of inspections in Garda stations including the parts thereof where persons are detained. This would be in line with international obligations. The new inspectorate would also be responsible for the inspection of the remaining criminal justice agencies such as the Probation Service and the Forensic Science service.

7.1.3 The approach while having the merit of encompassing existing structures may be difficult to manage in terms of the number of bodies performing related functions. The recent progress towards the establishment of the Garda Síochána Authority provides another layer of oversight functions for the Garda Síochána.

7.1.4 The purpose of introducing a criminal justice inspectorate is to build upon and improve upon the existing inspectorates and to provide for a unified high standard of inspection across the entire sector. The existing inspectorates while providing for the maintenance of excellent standards in their operation and under their existing statutory remits take different approaches to their tasks and the emphasis in their operations are different. The approach would require considerable reform of the roles of the existing inspectorates both on the practical and statutory bases.

7.1.5 While there may be some merit in oversight of the existing inspectorates it is considered that this approach would not achieve the gains that could be generated in terms of efficiency and consistency of inspections that a unified inspectorate could provide. The differences in approach between the existing inspectorates would remain with a diversity of emphases being placed in inspecting different elements of the criminal justice infrastructure.

7.1.6 This approach may not lend itself to the inspectorate taking up a coordination/ liaison role for international inspections.

7.2 A Single Office holder of Inspector of Criminal Justice

7.2.1 Another alternative considered was the appointment of a single inspector to the office of Criminal Justice Inspector. This would be a new body



requiring the office holder to inspect and report on a wide range of functions across the criminal justice sector. The Office holder would at a minimum need to have powers to call upon expertise on the different areas under inspection as required, to enable a comprehensive inspection programme to occur.

7.2.2 If such a model were to be followed, the ability of a single office holder to provide an inspectorate for the various statutory bodies within the criminal justice sector is uncertain. It is felt that the approach may pose challenges in terms of capacity in the context of the broad scope and functions of the range of criminal justice bodies. Accordingly it is not the preferred approach.

8. Views and Observations

8.1 The consultation process aims to encourage and build upon informed debate on the issues relating to the establishment of a Criminal Justice Inspectorate. The involvement of groups and bodies with an established interest in these issues is important. The Department would very much welcome observations and contributions on this document from any interested parties. The open policy debate to be held on 23rd November 2015 is primarily aimed at facilitating a discussion that will allow the views of those attending to be teased out and taken into consideration in the development of legislative proposals. The suggested approach to the discussions is:

8.2 In debating the ideas around the establishment of a criminal justice inspectorate, the central focus might be –

- *What should the role and nature of independent scrutiny (for example by an inspectorate or inspectorates) be?*
- *In this context is there a case for new comprehensive and broader arrangements for inspecting the various elements of the criminal justice system?*
- *What structure is best suited to ensuring best standards in criminal justice agencies, in the criminal justice as a whole and in monitoring the rights of those in custody?*
- *What agencies should be included in the remit of a criminal justice inspectorate?*

