

MEMORANDUM OF UNDERSTANDING:

HM Chief Inspector of Prosecution in Scotland
Director, Justice
Lord Advocate

June 2018

STATUS, AIM AND FUNCTIONS

Status

- 1.1 The Inspectorate of Prosecution in Scotland (IPS) was created in December 2003. The IPS now sits under the Director, Justice structure within the core Scottish Government. The IPS is headed by the Chief Inspector, who is accountable to the Lord Advocate for its management, performance and future development.
- 1.2 The Inspectorate was put on a statutory footing by the Criminal Proceedings etc (Reform) (Scotland) Act 2007 Sections 78 and 79 which provide for the creation of an officer known as Her Majesty's Chief Inspector of Prosecution in Scotland to be appointed by the Lord Advocate. The principal statutory functions are:
 - To secure the inspection of the operation of COPFS;
 - To submit to the Lord Advocate a report on any particular matter connected with the operation of the service which the Lord Advocate refers to the Inspector, and
 - To submit to the Lord Advocate an Annual Report on the exercise of the Inspector's functions which the Lord Advocate must lay before the Scottish Parliament.

Aim

The overall aim of the IPS is to enhance the quality of the service and public confidence in the Crown Office and Procurator Fiscal Service (COPFS) through independent inspection and evaluation.

Responsibilities

Role of the Scottish Ministers

- 2.1 The Scottish Ministers are responsible for allocating the resources within which the IPS operates.

Role of HM Chief Inspector

- 2.2 The Inspector is to secure the inspection of the operation of the Crown Office and Procurator Fiscal Service and to submit to the Lord Advocate a report on any particular matter connected with the operation of the Service which the Lord Advocate refers to the Inspector.

The Inspector must submit to the Lord Advocate an annual report on the exercise of the Inspector's functions which the Lord Advocate must lay before the Scottish Parliament.

In exercising the function conferred by statute the Inspector is to act independently of any other person.

The principal duties of the Chief Inspector include:

- Leading and managing the IPS and for developing and delivering the work programme of the IPS including -
 - a) Risk assessment based inspection targeted on identified problems, areas for improvement and identification of good practice;
 - b) Harnessing self assessment activity to identify where inspection might usefully focus; and
 - c) Identifying and delivering thematic studies including cross-cutting criminal justice-wide joint inspections;
- Deciding whether, when and how to carry out an inspection of the service delivery of COPFS;
- Appointing any person to assist or advise him/her for the purposes of making inspections and pay such fees or allowances to that person as the Chief Inspector may, with the approval of the Scottish Ministers, fix;
- Requiring any person to give relevant information or produce relevant documents in order to carry out inspections; and
- Reporting the outcome of any inspection to the Lord Advocate and to COPFS.
- Providing advice on any aspect of any particular matter connected with the operation of the Service which the Lord Advocate refers to the Inspector.

2.3 The Chief Inspector shall not be subject to direction on how he/she carries out any inspection.

Role of the Lord Advocate

2.4 The Lord Advocate (in accordance with the provisions of Section 48 (5) of the Scotland Act 1998 which provides that any decision of the Lord Advocate in his capacity as head of the systems of criminal prosecution and investigation of deaths in Scotland shall continue to be taken by him independently of any other person) will:

- Approve this Memorandum of Understanding and any revisions to it;
- Agree the IPS future draft programme

ACCOUNTABILITY

The Lord Advocate

- 3.1 The Lord Advocate will continue to answer to Parliament for the functions of the IPS.
- 3.2 The Chief Inspector will provide the Lord Advocate with any information necessary to answer Parliamentary Questions or deal with any other matters for which he/she is responsible. Replies to Parliamentary Questions will be published in the Official Report of the Scottish Parliament.

The Director, Justice

- 3.3 The Director of Justice is appointed by the Principal Accountable Officer for the Scottish Administration as Accountable Officer for the budget on which the IPS's expenditure is borne. He/she is personally accountable to the Scottish Parliament for the propriety and regularity of relevant public finances and ensuring that resources are used economically, efficiently and effectively. In addition:
 - He/she is responsible for ensuring that the financial and other management controls applied by the IPS are appropriate and sufficient to safeguard public funds, and for monitoring the IPS's compliance with those controls;
 - He/she is responsible for ensuring that there is an annual appraisal of the Chief Inspector;

The responsibilities of a Director General Accountable Officer are set out in more detail in the Scottish Public Finance Manual.

RESOURCE PLANNING AND MANAGEMENT

Financial Provision

- 4.1 The expenditure of the IPS is met from relevant Scottish Government budgets approved by the Scottish Parliament.

Financial Delegation

- 4.2 The financial delegations to the Chief Inspector are set out in Annex A. The Chief Inspector will review these limits regularly and propose amendments where these would assist the IPS in discharging its functions.
- 4.3 The Chief Inspector will be responsible for ensuring that relevant financial procedures are followed and may delegate functions in writing in accordance with the SG Scheme of Delegation.

Annual Report

The Annual Report will set out the main objectives, tasks and priorities of the IPS over a two to three year period. It will assess the external factors which influence its strategy and put forward its planned strategy, output and resource requirements for the period.

- 4.4 Once agreed by the Lord Advocate the Annual Report will form the basis for judging the performance of the IPS.
- 4.5 Should policy or circumstances change significantly in the course of the year, the Lord Advocate or the Chief Inspector may propose revisions to the proposed programme, including changes to targets and financial resources. Any revisions will be subject to approval by the Lord Advocate after consultation with the Chief Inspector.

Internal Audit

- 4.6 The Scottish Government Internal Audit Division will be responsible for the internal audit of the IPS.

Risk Management

- 4.8 The Chief Inspector will ensure that a formal assessment of business risks is undertaken and is periodically reviewed in accordance with the Scottish Government's approach to risk management.

PERSONNEL

Staffing

- 5.1 The Chief Inspector will ensure that IPS staff work within flexible management structure and have the skills necessary to meet users' needs.

Status of Staff and Condition of Service

- 5.1 The Chief Inspector and IPS staff are Civil Servants within the Scottish Government and are employed on the same general terms and conditions of service as other staff of the core Scottish Government. They are also covered by the Principal Civil Service Pension Scheme unless they decide otherwise.
- 5.2 Within the arrangements approved by the Scottish Ministers, the Chief Inspector, with the support of the Scottish Government Directorate for People, will have responsibility for the recruitment, retention, and motivation of the IPS's staff. To the end, the Chief Inspector and Directorate for People shall ensure that:
 - The recruitment of IPS staff is based on fair and open competition and equal opportunities;

- The level and structure of IPS staffing, including grading and numbers of staff, are appropriate to its functions and the requirements of efficiency, effectiveness and economy;
- The performance of IPS staff at all levels is managed effectively and efficiently, through satisfactory appraisal and promotion systems that are reviewed from time to time;
- IPS staff are encouraged to acquire the appropriate professional, management and other expertise necessary to achieve the IPS's objectives;
- Proper consultation with staff takes place on key issues affecting them; and
- Adequate grievance procedures consistent with the Public Interest Disclosure Act 1998 are in place.

REVIEW AND DEVELOPMENT

Amendment and Review of Framework Document

- 6.1 This Memorandum of Understanding will be kept under review. Changes to the Memorandum may however be proposed earlier in the light of experience or changed circumstances.

ANNEX A

FINANCIAL DELEGATIONS FROM SCOTTISH MINISTERS AS AT June 2018

1. Introduction

Following written notification of the budgetary provision, the Inspectorate may incur planned expenditure subject to any restrictions imposed by this Memorandum, written delegated authorities and compliance with relevant guidance in the Scottish Public Finance Manual (SPFM). The relevant Scottish Government Finance Business Partner should be consulted where there is any doubt over whether guidance in the SPFM is applicable. However, as a general rule of thumb, if there is no obvious reason why the guidance should not apply then it should be reasonably safe to assume that it does.

The Inspectorate must notify the Director, Justice and the relevant Finance Business Partner immediately if it becomes clear at any time that an excess budget is likely to occur. Notification should also be provided as soon as it becomes apparent that the approved budget will be not be used in full.

2. Expenditure not proposed in the budget

The Inspectorate shall not, without the prior approval of the Director for Justice, enter into any undertaking to incur any expenditure not provided for in the approved budget.

3. Purchasing and tendering

The Inspectorate is required to comply with the Scottish Government and EU rules on procurement – set out in guidance within the SPFM.

4. Novel, contentious or repercussive proposals

The Inspectorate must obtain the approval of the Director for Justice before incurring any expenditure for any purpose which is or might be considered novel or contentious, or which has or could have significant future cost implications.