

Draft General Scheme

Inspection of Places of Detention Bill

June 2022

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Long Title

AN ACT TO MAKE PROVISION FOR THE ROLE OF THE CHIEF INSPECTOR OF PLACES OF DETENTION, THE FUNCTIONS OF THAT ROLE, THE APPOINTMENT OF STAFF TO THE INSPECTORATE OF PLACES OF DETENTION, TO MAKE PROVISION RELATING TO THE ROLE OF PRISON VISITING COMMITTEES, AND TO PROVIDE THAT VISITS TO INSPECT PLACES OF DETENTION IN THE STATE PURSUANT TO THE EUROPEAN CONVENTION FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT DONE AT STRASBOURG ON 26TH OF NOVEMBER 1987 AND PURSUANT TO THE OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT ADOPTED ON 18 DECEMBER 2002 AT THE 57TH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS ARE FACILITATED AND ANY OTHER RELEVANT MATTERS.

Head 1 Citation and Commencement

- (1) This Act may be cited as the Inspection of Places of Detention Act 2022.
- (2) This Act shall come into operation on such day or days as the Minister for Justice or relevant Minister may by order or orders appoint either generally or by reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Note on Head 1 Citation and Commencement

This is a standard provision.

Head 2 Interpretation

Provide that:

In this Act—

“Chief Inspector” means the person appointed to the role of Chief Inspector of Places of Detention under Head 5;

“Minister” means the Minister for Justice, unless otherwise stated;

“relevant Minister” means a Minister other than the Minister for Justice responsible for a place of detention as defined in this Act and includes—

- a) The Minister for Health in the case of an approved centre within the meaning assigned to it in the Mental Health Act 2001 and a designated centre within the meaning assigned to it in the Criminal Law (Insanity) Act 2006 as amended by the Criminal Law (Insanity) Act 2010;
- b) The Minister for Children, Equality, Disability, Integration and Youth in the case of a children detention school within the meaning assigned to it by section 3(1) of the Children Act 2001 (as amended by section 122 of the Criminal Justice Act 2006);
- c) The Minister for Defence in the case of any place where a person is held in service custody including a detention barrack, a military prison or a public prison with the meanings assigned to them by the Defence Act 1954;

“the Protocol” means the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted by resolution A/RES/57/199 of the General Assembly of the United Nations on 18 December 2002

Note – Head 2 - Interpretation

“Chief Inspector” is defined as the Chief Inspector of Places of Detention appointed under Head 5. Head 5 is replacing Section 30 of the Prisons Act 2007 (repealed by this Act) which created the role of the Inspector of Prisons as an independent statutory officer to carry out regular inspections of prisons and report on his or her findings to the Minister.

“Minister” means the Minister for Justice unless otherwise stated.

“relevant Minister” means those Ministers other than the Minister for Justice whose remit includes the responsibility for places of detention that are relevant for the purposes of this proposed Act.

Head 3 Expenses

Provide that:

The expenses incurred in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of monies provided by the Oireachtas.

Note – Head 3 - Expenses

This is a standard provision. According to OPCAT, sufficient resources should be provided and these should be independent. 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.

Part 1 – Chief Inspector of Places of Detention

Head 4 Interpretation for Part 1

Provide that:

In this Part—

“Prison” means a place of custody administered by or on behalf of the Minister (other than a Garda Síochána station) and includes—

- (a) a place provided under section 2 of the Prisons Act 1970,
- (b) a place specified under section 3 of the Prisons Act 1972,
- (c) any vehicle used to transport a prisoner from one location to another,
- (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.

“Prisoner” means a person who is detained in a prison and includes a prisoner who is detained-

- (a) on foot of a sentence of imprisonment or a sentence of detention, including a sentence imposed in accordance with the Defence Act 1954 (No. 18 of 1954),
- (b) on committal by a court on remand or awaiting trial,
- (c) on foot of an order of the Special Criminal Court made in accordance with section 43 (1)(c) of the Offences Against the State Act 1939 (No. 13 of 1939),
- (d) on foot of a detention order or warrant under section 5 of the Immigration Act 1999 (No. 22 of 1999) as amended by

section 10 of the Illegal Immigrants Trafficking Act, 2000 (No. 29 of 2000) or under section 5 of the Immigration Act 2003 (No. 26 of 2003),

- (e) in accordance with section 9 of the Refugee Act 1996 (No. 17 of 1996) as amended by section 7 of the Immigration Act 2003 (No. 26 of 2003),
- (f) in accordance with a warrant issued under S.I. No. 656 of 2006,
- (g) in accordance with section 22 of the Refugee Act, 1996,
- (h) in accordance with the Extradition Acts 1965 to 2001 or the European Arrest Warrant Act 2003 (No.45 of 2003),
- (i) in accordance with a warrant under section 7 of the Transfer of Sentenced Persons Act 1995 (No. 16 of 1995) as amended by the Transfer of Sentenced Persons Act 1997 (No. 41 of 1997),
- (j) transferred under section 7 of the Prevention of Crime Act (1908, c 59),
- (k) for default of payment of debt,
- (l) for contempt of court,

and also includes a person when temporarily outside the prison in the custody of a prison officer, a prison custody officer or other person authorised by the Governor

or

when he or she is granted temporary release from prison in accordance with the Criminal Justice (Temporary Release of Prisoners) Act 2003;

“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:

- (a) serious injury to a person in custody;
- (b) a serious injury to a member of staff or a person interacting with the Irish Prison Service;
- (c) escape or significant attempted escape from lawful custody;
- (d) significant breach of security including physical and information security;
- (e) significant operational delivery issues.

Note Head 4 – Interpretation for Part 1

Head 4 is the interpretation section for Part 1 of the Bill.

“Prison” is given the general meaning it has in the Prisons Act 2007 in that it is applicable to those prisons administered by the Irish Prison Service. It is applicable to those prisons administered by the Irish Prison Service on behalf of the Minister. It has been extended to specifically include vehicles such as prison vans to avoid any ambiguity that the Chief Inspector may inspect such vehicles even if they are outside the confines of the prison walls.

“Prisoner” is given the general meaning it has in the Prison Rules 2007 which is a person who is lawfully detained in a prison under the statutory provisions listed in the definition but for the purposes of the definition in this proposed Act includes those persons who are not lawfully detained in prisons. It also includes a person when temporarily outside the prison in the custody of a prison officer, a prison custody officer or other person authorised by the Governor. The

definition also includes prisoners on temporary release. The word “lawfully” has been deleted to ensure for example it covers a person held in custody in error (and therefore not lawfully).

Head 5 Chief Inspector of Places of Detention

Provide that:

- (1) The Minister shall appoint a person to be known as the Chief Inspector of Places of Detention to perform the functions conferred on the Chief Inspector of Places of Detention by this Act.
- (2) Subject to subheads (3) and (5), the Minister shall appoint the Chief Inspector on the recommendation of the Public Appointments Service after a competition for that purpose under section 47 of the Public Service Management (Recruitment and Appointments) Act 2004 has been held.
- (3) A person is not eligible for appointment as the Chief Inspector if he or she—
 - (a) is a member of either House of the Oireachtas,
 - (b) is entitled under the rules of procedure of the European Parliament to sit in that Parliament,
 - (c) is a member of a local authority within the meaning of the Local Government Act, 2001,
 - (d) has any commercial relationship or interest with any prison or place of detention as defined in this Act.
- (4) The Chief Inspector of Places of Detention—
 - (a) shall hold office on such terms and conditions, including remuneration, as the Minister may determine with the consent of the Minister for Public Expenditure and Reform;
 - (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

(c) may at any time be removed by the Minister from office for stated misbehaviour or if, in the Minister's opinion, he or she has become incapable through ill health of effectively performing his or her functions.

(5) 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—

- a) for a term of office of twelve months upon commencement of this Head and
- b) subject to the requirement that anything commenced and not yet completed before the appointment may, in so far as it relates to a function of the Chief Inspector of Places of Detention, be carried on or completed on or after the appointment.

(6) Any reference in any enactment to the Inspector of Prisons shall, on the commencement of this Act, be construed as a reference to the Chief Inspector of Places of Detention.

(7) The term of office of a person appointed as Chief Inspector of Places of Detention shall not exceed 5 years.

(8) A person appointed as the Chief Inspector of Places of Detention is eligible for reappointment for a second term but shall not be appointed as Chief Inspector for more than two consecutive terms of office.

(9) Subject to this Act, the Chief Inspector of Places of Detention is independent in the performance of all his or her functions.

Note Head 5 – Chief Inspector of Places of Detention

This Head replaces Section 30 of the Prisons Act 2007. When Part 5 of that Act is repealed in its entirety, this will remove the existing statutory basis for the Inspector of Prisons. Given how this proposed Act will reform and update the current statutory role of the Inspector of Prisons and her Office in its expansion to becoming the role of the Chief Inspector of Places of Detention, it is considered more appropriate to have all the legislative provisions dealing with the functions and powers of the Chief Inspector of Places of Detention in one instrument.

Subhead (1) provides for the appointment of a person as Chief Inspector.

Subheads (2) to (4) set down the terms and conditions of appointment of any future Chief Inspector including the conditions for his or her resignation or removal from office. It specifies (in contrast to the current statutory position) that the Chief Inspector is to be appointed via open competition managed by the Public Appointments Service.

Subhead (5) provides that the Inspector of Prisons shall transition to be appointed as the Chief Inspector of Places of Detention at the time of commencement of this legislation for a term of 12 months upon commencement of this Head and that he or she shall finalise any necessary tasks to be completed in the previous role of Inspector of Prisons.

Subhead (6) provides that references to Inspector of Prisons in other enactments shall be construed as references to Chief Inspector of Places of Detention notwithstanding the intended repeal of Part 5 of the Prisons Act 2007 which gives effect to the statutory role of the Inspector of Prisons.

Subhead (7) sets out the maximum duration of the term of office of the Chief Inspector at 5 years – this corresponds to the existing statutory position in relation to the maximum term of office of the Inspector of Prisons under Section 30(3) of the Prisons Act 2007.

Subhead (8) provides that the Chief Inspector is eligible for re-appointment – this corresponds to the existing statutory position for the Inspector of Prisons provided for in Section 30(4) of the Prisons Act 2007. That said, in contrast to the provision in the 2007 Act, this subhead also stipulates that the Chief Inspector's reappointment is limited to one further term.

Subhead (9) is a standard provision in relation to such roles and provides for the independence of the Chief Inspector in carrying out his or her functions.

Head 6 Provision of Services to the Inspectorate of Places of Detention

Provide that:

- (1) The Office of the Chief Inspector of Places of Detention shall be known as the Inspectorate of Places of Detention.
- (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 with the consent of the Minister for Public Expenditure and Reform.
- (3) With the consent of the Minister and the Minister for Public Expenditure and Reform, the Chief Inspector may appoint persons to be staff of the Inspectorate of Places of Detention, as he or she may determine is necessary to assist in the performance of his or her functions under this Act.
- (4) The terms and conditions of service of a member of the staff of the Inspectorate of Places of Detention and the grade at which he or she serves shall be such as may be determined by the Chief Inspector with the consent of the Minister and the Minister for Public Expenditure and Reform.
- (5) Staff appointed under this section shall be recruited in accordance with the Public Service Management (Recruitment and Appointments) Act 2004.
- (6) A member of staff of the Inspectorate of Places of Detention shall be a civil servant in the Civil Service of the State.
- (7) The Chief Inspector shall be the appropriate authority (within the meaning of the Public Service Management (Recruitment and Appointments) Act 2004 and the Civil Service Regulations Acts 1956 to 2005) in relation to its officers.

- (8) A person is not eligible for appointment to the Inspectorate of Places of Detention, if he or she –
- (a) is a member of either House of the Oireachtas,
 - (b) is entitled under the rules of procedure of the European Parliament to sit in that Parliament, or
 - (c) is a member of a local authority within the meaning of the Local Government Act, 2001,
 - (d) has any commercial relationship or interest in with any prison or place of detention.

Note Head 6 – Provision of services to the Inspectorate of Places of Detention

This Head provides for the provision of services to the Inspectorate and appointment of staff by the Chief Inspector on the recommendation of the Public Appointments Service and with the consent of the Minister and Minister for Public Expenditure and Reform. The provisions in this Head are partly derived from Section 26 of the Health Act 2007 which provides for the appointment of employees to the Health Information and Quality Authority (HIQA).

Subhead (1) provides for the Office of the Chief Inspector to be known as the Inspectorate of Places of Detention.

Subhead (2) allows that the required services and resources are made available to Chief Inspector of Places of Detention from the Minister (with consent of Minister for Public Expenditure and Reform) so that his or her Office can properly discharge its functions.

Subheads (3), (4) and (5) allow the Chief Inspector powers to appoint staff to her Office with the consent of the Minister and the Minister for Public

Expenditure and Reform in accordance with the Public Service Management (Recruitment and Appointments) Act 2004.

Subhead (6) clarifies that staff of the Office are civil servants of the State. In other words, the status of the staff will not be changing as those currently serving in the Office of Inspector of Prisons are civil servants.

Subhead (7) assigns the Chief Inspector as the appropriate authority in relation to officers in her Office.

Subhead (8) is a standard provision regarding restrictions on appointment of employees.

Head 7 – Appointment of Senior Inspectors

Provide that:

- (1) Subject to *Head 6*, the Chief Inspector may appoint a person or persons, who shall be known as a “Senior Inspector”, to assist the Chief Inspector in the performance of his or her functions under this Act.
- (2) 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 has in performing his or her functions in relation to carrying out inspections under this Act.
- (3) In carrying out his or her functions under this Act it shall be a duty of a Senior Inspector to have regard to the Protocol.
- (4) In this Section—
“Senior Inspector” means an Inspector who may act on behalf of the Chief Inspector.

Note Head 7 – Appointment of Senior Inspectors

This Head provides for the appointment of Senior Inspectors by the Chief Inspector to assist in the performance of his/her inspection functions subject to the provisions of Head 6. Senior Inspectors are specialist posts. Senior Inspectors shall assume a lead role regarding carrying out inspections and investigations of the Inspectorate.

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

Subhead (2) provides that Senior Inspectors shall act under the Chief Inspector's directions and shall have the same authority and power as the Chief Inspector in carrying out inspection functions.

Subhead (3) makes it clear that any inspection carried out by the Senior Inspector should comply with OPCAT.

Head 8 Functions of the Chief Inspector of Places of Detention in relation to inspection of prisons

Provide that:

- (1) The Chief Inspector shall carry out regular inspection of all prisons in the State.
- (2) An inspection carried out by the Chief Inspector shall have due regard to the rights of prisoners and to existing laws, regulations, policies and procedures relating to the management and operation of prisons.
- (3) 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 including a serious adverse incident under *Head 9* or death in custody of a prisoner under *Head 10* and shall submit to the Minister and to the Director General of the Irish Prison Service a report on any such investigation. A report shall contain the findings of the investigation or results of the inspection and any recommendations arising from the investigation or inspection.
- (4) The Chief Inspector may in the course of an inspection or arising out of an inspection bring any issues of concern to him or her to the notice of the governor of the prison concerned, the Director-General of the Irish Prison Service, or the Minister or of each one of them, as the Chief Inspector considers appropriate.
- (5) The Chief Inspector shall have all such powers as are necessary or expedient for the performance of his or her functions under this Head including but without prejudice to the generality of the foregoing, the following powers:
 - (a) to enter at any time any prison or any part of a prison, and to be accompanied on such visit by such staff as he or she may consider necessary or expedient for the performance of his or her functions,

(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 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,

(c) to examine and take copies in any form of, or of extracts from any record held in a prison, including medical records, that, in the opinion of the Chief Inspector, is relevant to the review or investigation and for those purposes take possession of any such record, remove it from the premises and retain it in his or her possession for a reasonable period.

(6) It shall not be lawful for a person to refuse to cooperate with the Chief Inspector in the exercise of his or her powers under paragraphs (a) to (c) of subhead (5), without due cause.

(7) 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.

(8) The Chief Inspector shall inform the Minister of matters relevant to the accountability of the Government to the Houses of the Oireachtas.

(9) In this Section—

“Medical record” means a written record in relation to a prisoner made by a person whose name is entered in -

- (a) a register of medical practitioners, maintained by the Medical Council of Ireland;
- (b) a register of Nurses maintained by the Nursing and Midwifery Board of Ireland;
- (c) a register maintained by CORU.

Note Head 8 – Functions of the Chief Inspector of Places of Detention in relation to inspection of prisons

Head 8 sets out the functions and powers of the Chief Inspector of Places of Detention in relation to inspection of prisons which include the existing duties of the Inspector of Prisons under section 31 the Prisons Act 2007. This Head replaces much of Part 5 of the Prisons Act 2007 (a Part which shall be repealed by this Act).

Subhead (1) provides for the Chief Inspector of Places of Detention to make regular inspections of all prisons in the State – this replicates the pre-existing legal requirement in Section 31 of the Prisons Act 2007.

Subhead (2) explicitly provides that the objective of the inspections is to ensure that the rights of prisoners are protected and that prisons are managed in accordance with existing laws, regulations, policies and procedures. The focus of such inspections is on preventative measures to mitigate the risk of torture, degrading and ill-treatment occurring.

Subhead (3) corresponds to Section 31(2) of the 2007 Act in allowing the Chief Inspector to pursue investigations at his or her own discretion or at the request of the Minister but additionally clarifies that the Chief Inspector’s investigation

powers include the investigation of deaths in custody of prisoners and of serious adverse incidents in prisons.

Subhead (4) mirrors Section 31(10)(c) of the 2007 Act in providing for the Chief Inspector to bring issues of concern, in the course of an inspection, to the Minister or Director General of the Irish Prison Service or Governor of a relevant prison.

Subhead (5) sets out the powers of the Chief Inspector in the course of carrying out his or her functions in relation to the inspection of prisons to include visiting rights and access to information and persons. The powers set out in this subhead are partly based on the powers to access facilities, information and persons of the Inspector of Mental Health Services in inspecting mental health facilities under Section 51(2) of the Mental Health Act 2001. The Chief Inspector is to have access to records held in prisons. Moreover, it is proposed that the inspector could have access to medical records if it necessary for the performance of his or her functions and not just for the investigation of deaths. Access to medical records would be required if the inspector was inspecting violence or levels of drug abuse

It is considered that it may be an offence not to cooperate with the inspector as it is in the case of Mental Health and HIQA inspections. This will be particularly relevant if the IPS is established as a separate legal entity and the Minister will not have direct control over its staff. A compromise approach, set out here in subhead (6), is to accord with Section 6 of the *Prosecutions of Offences Act 1974* and make it unlawful not to cooperate. Consequently, there would be no criminal sanction but it would open up the possibility of civil action including court injunctions against people who refused to cooperate.

Subhead (7) provides that for the Chief Inspector to furnish to the Minister such information regarding the performance of the Inspectorate's functions as the Minister may from time to time require. 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 purposes of

supporting both the Minister's political accountability for the Inspectorate and indeed the Secretary General's own accountability as Accounting Officer for the Inspectorate. More generally, it will help to enable a workable governance relationship with the Inspectorate.

Subhead (8) provides for an obligation on the Chief Inspector to inform the Minister of matters relevant to the accountability of the Government to the houses. This is a standard provision in other statutes that provide for criminal justice oversight by independent bodies. Section 62H(1) of the *Garda Síochána Act 2005* requires the Policing Authority to provide the Minister with information on “*matters relevant to the accountability of the Government to the Houses of the Oireachtas*”. The General Scheme of the *Policing, Security & Community Safety Bill* contains similar provisions in respect of the Policing & Community Safety Authority and the Office of the Garda Síochána Ombudsman.

Subhead (9) provides a definition for “medical record”.

Head 9 –Serious Adverse Incidents

Provide that:

- (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.
- (2) The Director General of the Irish Prison Service shall provide any information or documentation in relation to such an incident, on request from the Chief Inspector.
- (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.

Note Head 9 - Serious Adverse Incidents

This Head deals with the Chief Inspector's function in investigating what are termed as "serious adverse incidents" which may occur in a prison. The Inspector of Prisons already investigates deaths of prisoners in custody (Head 10) but it is proposed, arising from the recommendations of the 2018 PA Consulting Report on the Office of the Inspector of Prisons, to expand the scope of these investigations to include serious adverse incidents e.g. attempted murders, attempted suicides, serious assaults.

It is not suggested that the Inspectorate necessarily directly take on the investigation of all such incidents but rather that they have an initial role in the triage of all such incidents and decide on who is best placed to investigate - the assumption that following this triage IPS will continue to progress the majority

of matters internally. 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.

Subhead (1) provides that the Chief Inspector is notified of 'serious adverse incidents' that may arise in a prison by the Director General of the Irish Prison Service.

Subhead (2) requires the Director General to provide information, on request to the Chief Inspector concerning a 'serious adverse incident'.

Subhead (3) allows the Chief Inspector the discretion to consider whether he or she may require to fully investigate the matter or refer the matter back to the Irish Prison Service or a separate authority such as An Garda Síochána for example.

Head 10 –Investigation of Deaths in Custody of Prisoners

Provide that:

- (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 temporary release or otherwise.
- (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.
- (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*.

Note Head 10 - Investigation of Deaths in Custody of Prisoners

Head 10 refers to the Chief Inspector's role in investigating deaths in custody of prisoners. This duty is already carried out by the Inspector of Prisons but it is proposed to underpin this arrangement on a statutory basis.

Article 2 of the European Convention on Human Rights, which guarantees the rights to life, has been interpreted by the European Court of Human Rights as requiring states to conduct effective investigations into deaths in a range of circumstances including the death of a person detained by/in the custody of the state. Under the European Convention on Human Rights, Ireland is therefore

under an obligation to provide an effective system for the investigation of deaths in prison.

The Office of the Inspector of Prisons has investigated deaths in custody since January 2012. These investigations are not and do not purport to answer all questions surrounding a death. The Inspector of Prisons' investigations are part of a potentially three-pronged process – the other elements being a criminal investigation by An Garda Síochána and the investigation/inquest led by the Coroner.

Subheads (1) allows for the Chief Inspector to be notified of deaths in custody. The 4 weeks after release condition is included to account for a situation where the cause of death related back to treatment in prison. This is in line with the current practice regarding investigation of deaths in custody.

Subhead (2) allows the Chief Inspector the discretion to investigate the nature of a death in custody or to refer it back to the Irish Prison Service or to another authority.

Subhead (3) provides for information sharing with the Coroner arising from the investigation of a death in custody where the Inspector considers it appropriate. The Inspector of Prisons has indicated that increased information sharing with the coroner arising from his investigation of a death in custody may be helpful and that the inclusion of a provision would facilitate such co-operation.

Head 11 – Accountability to Oireachtas Committees

Provide that –

(1) In this head “committee” means—

(a) a committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the Committee of Public Accounts, the Committee on Members’ Interests of Dáil Éireann or the Committee on Members’ Interests of Seanad Éireann), or

(b) a sub-committee of a committee as defined in paragraph (a).

(2) Subject to subhead (3), the Chief Inspector shall, at the written request of a committee, attend before it to give account for the general administration of the Inspectorate of Places of Detention.

(3) The Chief Inspector shall not be required to give account before a committee for any matter that is or is likely to be, the subject of proceedings before a court or tribunal in the State, including a tribunal of inquiry established under the Tribunals of Inquiry (Evidence) Acts 1921 to 2011 and a Commission of investigation established under the Commission of Investigation Act 2004.

(4) The Chief Inspector shall, if of the opinion that subhead (3) applies to a matter about which he or she is requested to give an account before a committee, inform the committee of that opinion and the reasons for the opinion.

(5) The information required under subhead (4) must be given to the committee in writing unless it is given when the Chief Inspector is before the committee.

(6) If, on being informed of the Chief Inspector’s opinion about the matter, the committee decides not to withdraw its request relating to the matter, the

High Court may, on application under subhead (7), determine whether subhead (3) applies to the matter.

- (7) Either the Chief Inspector or the committee may apply in a summary manner to the High Court for a determination under subhead (6), but only if the application is made within 21 days after the date on which the Chief Inspector is informed of the committee's decision not to withdraw its request.
- (8) Pending the determination of an application under subhead (7), the Chief Inspector shall not attend before the committee to give account for the matter that is the subject of the application.
- (9) If the High Court determines that subhead (3) applies to the matter, the committee shall withdraw its request in so far as it relates to the matter, but if the Court determines that subhead (3) does not apply, the Chief Inspector shall attend before the committee to give account for the matter.
- (10) In carrying out duties under this head, the Chief inspector shall not —
 - (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, or
 - (b) provide information that might facilitate the commission of an offence, prejudice a criminal investigation or prosecution or jeopardise the safety of a person.

Note Head 11 - Accountability to Oireachtas Committees

Head 11 deals with the obligation for the Chief Inspector to appear before Oireachtas committees to account for the general administration of his or her Inspectorate.

Subhead (1) defines 'Committee' as an Oireachtas Committee to be a committee of the Houses of the Oireachtas that is not the Public Accounts Committee or one of the Member's interests committees.

Subheads (2) to (5) are standard provisions within a Head of this type which provide that the Chief Inspector shall attend, on request at relevant Oireachtas Committees but shall not be required to account for specified matters that are subject to legal proceedings and shall inform the Committee of the reasons if the Chief Inspector is of the view that any such matters should be excluded from scrutiny.

Subheads (6) to (9) are standard provisions in a Head of this nature which refer to the process of possible high court referral and involvement in determining whether matters are to be excluded from the Committee's scrutiny.

Subhead (10) provides that, in appearing before an Oireachtas committee, the Chief Inspector shall not question government policy and shall not provide information that may be harmful in terms of jeopardising safety or prejudicing active criminal proceedings.

Head 12 – Publication of Annual and other Reports

Provide that:

- (1) The Chief Inspector shall, not later than 30 June in any year, or before a date as may be specified by the Minister, submit to the Minister a report on the performance of the Chief Inspector's functions and on such other related matters during the previous year.
- (2) A report pursuant to *subhead (1)* shall, in respect of each prison inspected during the year in question, deal with, in particular—
 - (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.
- (3) The Chief Inspector, shall, subject to subheads (5) and (6), cause a copy of a report pursuant to subhead (1) to be laid before each House of the Oireachtas.
- (4) The Chief Inspector—

- (a) shall, subject to subheads (5) and (6), cause a copy of a report of his or her investigation into a serious adverse incident pursuant to Head 9 or death in custody of a prisoner pursuant to Head 10 to be laid before each House of the Oireachtas;
- (b) may, subject to subheads (5) and (6), cause a copy of a report of an investigation [*that is not an investigation into a serious adverse incident pursuant to Head 9 or death in custody of a prisoner pursuant to Head 10*] pursuant to Head 8(3) (other than a report requested by the Minister) to be laid before each House of the Oireachtas;
- (c) shall, subject to subheads (5) and (6), in the case of a report requested by the Minister pursuant to Head 8(3), and if so requested by the Minister, cause a copy of the report to be laid before each House of the Oireachtas.

(5) Any part of a report to be laid by the Chief Inspector before each House of the Oireachtas pursuant to this Act that would—

- (a) prejudice the security of a place of detention;
 - (b) be prejudicial to the interests of national security, the Chief Inspector having consulted with the Minister or relevant Minister in this regard;
 - (c) purport to assign criminal or civil liability, not determined by a court, tribunal or commission of investigation, to an individual identifiable to the public;
- or
- (d) prejudice the rights of an individual identifiable to the public to vindicate their good name

shall be amended or redacted by the Chief Inspector so as not to do so.

(6) In any report of the Chief Inspector where matters are so omitted under *subhead (5)*, a statement to that effect shall be attached to the report concerned, when it is being laid before each House of the Oireachtas.

Note Head 12 - Publication of Annual and other Reports

Head 12 sets out the reporting and publication requirements for annual reports and other reports prepared by the Chief Inspector.

Subhead (2) and (3) largely mirror Sections 32(2) and (3) of the 2007 Act albeit it is proposed that the Chief Inspector will now have the power to lay his or her annual reports and other reports directly before the Oireachtas rather than the Minister laying the report as is the case in the 2007 Act.

The Subcommittee on Prevention Torture (SPT) is clear that National Preventive Mechanisms, and the bodies that comprise them, should be accountable directly to Parliament (Oireachtas).

The SPT notes that presentation of NPM findings to parliamentary bodies “by representatives of the executive is contrary to the mechanism’s line of public accountability, which is to assess independently and impartially how the Government complies with domestic and international human rights obligations to prevent torture”.

As recently as December 2020, the SPT recommended to the United Kingdom that NPM reports be presented to Parliament directly and that the NPM should be accountable to Parliament for the implementation of its mandate.

Subhead (4) sets out, the separate reporting requirements of the Chief Inspector in relation to serious adverse incidents, deaths in custody of prisoners and investigations the Chief Inspector has the discretion to pursue or is directed to pursue by the Minister under Head 8(3) of this proposed Act.

Subhead (5) provides that a legal onus is placed on the Chief Inspector not to prejudice security or a person’s good name in the reports which are going to the Oireachtas and are published. The Minister will be able to receive such information as she may require to decide how to act on such reports (such

reports made public through being laid before the houses attract qualified privilege under Section 18 of the Defamation Act).

Subhead (6) reflects Section 31(5) of the 2007 Act in providing for a notification of the fact where omissions are made to a Report on their being laid before the Houses of the Oireachtas.

Part 2 – Prison Visiting Committees

Head 13 – Prison Visiting Committees

Provide that:

- (1) The Chief Inspector shall establish a Prison Visiting Committee for each prison in the State.
- (2) This Prison Visiting Committees shall consist of at least 6 members and no more than 12 members. The Prison Visiting Committees shall act independently of the Chief Inspector.
- (3) Prison Visiting Committees shall carry out regular visits to their related prison of at least one visit every three months.
- (4) Members shall be appointed to Prison Visiting Committees on the recommendation of the Public Appointments Service following a public advertisement for expressions of interest.
- (5) Recommendations for appointments to Prison Visiting Committees should be based on criteria agreed by the Public Appointments Service with the Chief Inspector. The Chief Inspector shall consult the Minister, the Irish Prisons Service, and the Probation Services in relation to these criteria.
- (6) Before appointment to a Prison Visiting Committee, each member is required to be vetted by An Garda Síochána. Any person recommended for appointment must provide information on any previous convictions or cautions in the State or in any other jurisdiction and if appointed, is obliged to inform the Chief Inspector of any new criminal convictions or cautions in the future.
- (7) Membership of a prison visiting committee shall be on a voluntary basis and on the terms and conditions laid out in their appointment by the Chief

Inspector. The reimbursement of any travel and subsistence shall be paid in accordance with public sector guidelines as determined by the Minister for Public Expenditure.

- (8) Each Prison Visiting Committee shall elect from their members a Chair. The Chair shall be responsible for co-ordinating their visits to their assigned Prison, and for the management of the reporting obligations of their Prison Visiting Committee are completed.
- (9) In carrying out visits, members of the Prison Visiting Committees may carry out announced or unannounced visits to their assigned prison and in doing so, shall have full access to all prison service staff, prisoners and facilities.
- (10) The Irish Prison Service shall facilitate private interviews for Prison Visiting Committee members with prisons service staff and prisoners subject to the safety of the Prison Visiting Committee members, prison service staff and prisoners.
- (11) At least two Prison Visiting Committee members shall carry out each visit and all Prison Visiting Committee members when conducting a visit should have regard to the rights of prisoners, the Protocol, existing laws, policies and procedures relating to the management and operation of a prison.
- (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.
- (13) The Chief Inspector shall submit a composite report on the activities of Prison Visiting Committees to the Minister on an annual basis.

Note on Head 13 – Prison Visiting Committees

It may be noted that the Department of Justice is currently reviewing the existing functions, powers, appointment procedures and reporting processes for prison visiting committees in accordance with the Programme for Government commitment on the matter. The existing statutory basis for Prison Visiting Committees dates back to 1925 – Prisons (Visiting Committees) Act 1925 – and is to be updated with more detailed drafting of this Head when the recommendations of the review are finalised.

The Department is in the process of undertaking a stakeholder consultation regarding the role of Prison Visiting Committees and the outcome of this consultation will inform further the drafting of this Head.

This Head provides for the following:

- Changes in relation to how Prison Visiting Committees (PVCs) are appointed and subjects the appointment process to open and public competition administered by the Public Appointments Service. That said, the Minister for Justice should retain the ultimate power of appointment of members to PVCs with a role for PAS to vet suitable appointees;
- This Head provides that responsibility for the monitoring and oversight of the Prison Visiting Committees is with the Chief Inspector;
- Visits by members of PVCs shall be independent and regular and they shall be OPCAT compliant;
- The Prison Visiting Committees shall report on these visits annually to the Chief Inspector. The Chief Inspector shall provide a composite report on the activities of all Prison Visiting Committees to the Minister. The Minister shall publish the composite report.

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

Head 14 Interpretation for Part 3

Provide that:

In this Part—

“Approved centre” means a hospital or other in-patient facility for the care and treatment of persons suffering from mental illness or mental disorder which is registered on the Register of Approved Centres established in accordance with Section 64 of the Mental Health Act 2001;

“Competent Authority” means the authority responsible for State oversight and management of a place of detention and includes-

- (a) [the Irish Prison Service] Governors of prisons in the State;
- (b) the Health Service Executive;
- (c) Oberstown Children Detention Campus;
- (d) An Garda Síochána;
- (e) The Defence Forces;
- (f) Registered Proprietors

“Co-ordinating National Preventive Mechanism” means the body – the Irish Human Rights and Equality Commission established under section 9 of Irish Human Rights and Equality Commission Act 2014 – that is the co-ordinating body for National Preventive Mechanisms in Head 16 of this Act;

“Designated Centre” has the meaning it has in the Criminal Law (Insanity) Act 2006;

“detainee” means a person in a place of detention who is deprived of his or her liberty;

“international body” means

- a. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment established pursuant to European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment done at Strasbourg on 26 November 1987;

and

- b. The Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture established pursuant to Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted by resolution A/RES/57/199 of the General Assembly of the United Nations on 18 December 2002.

“International instrument” to which the State is a party means—

- (a) The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment done at Strasbourg on 26 November 1987;
- (b) The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted by resolution A/RES/57/199 of the General Assembly of the United Nations on 18 December 2002.

“National Preventive Mechanism” means a body designated in the State under Head 18 or 19;

“Place of detention” means any place where a person or persons may be detained by a court or under any enactment and includes —

- (a) A prison within the meaning assigned to it in Part 1 of this Act;
- (b) Any place where a person is held in service custody including a detention barrack, a military prison or a public prison with the meanings assigned to them by the Defence Act 1954;
- (c) An approved centre within the meaning assigned to it in the Mental Health Act 2001;
- (d) A designated centre within the meaning assigned to it in the Criminal Law (Insanity) Act 2006 as amended by the Criminal Law (Insanity) Act 2010;
- (e) Any place used for the time being for immigration related detention by An Garda Síochána;
- (f) A children detention school within the meaning assigned to it by section 3(1) of the Children Act 2001 (as amended by section 122 of the Criminal Justice Act 2006);
- (g) a Garda Síochána Station or a vehicle used by An Garda Síochána or the Irish Prison Service to transport a person from one location to another.
- (h) Any place or vehicle where a person is detained in custody immediately before and after the production of the person to a court (including a place within the environs of the court concerned).

- (i) any place of detention to which a National Preventive Mechanism may be designated by order in *Head 18*.

“Registered Proprietor” has the same meaning as it has in the Mental Health Act 2001;

Note on Head 14 – Interpretation for Part 3

This is a standard provision providing definitions for words or phrases specifically used in this Part of the Act.

Head 15 - Inspections of places of detention by International bodies

Provide that:

- (1) Any place of detention to which representatives of an international body request access may be visited and inspected by the international body.
- (2) Where a member or members of an international body, acting under an international instrument to which the State is a party, visit the State to carry out their functions as a member or members of such an international body, the members concerned shall be issued with a written authorisation by the Minister confirming that the person or persons in question are representatives of an international body and pursuant to this Bill are permitted unrestricted access to the places of detention to be visited.
- (3) The competent authority responsible for the management of each place of detention to be visited shall facilitate unrestricted access to places of detention by representatives of an international body, together with any experts accompanying them.
- (4) The Minister or relevant Minister shall, at the request of the international body, provide the body with the following information and unrestricted access to same on:
 - (a) the number of places of detention; and
 - (b) the location of the places of detention.
- (5) The competent authority referred to in subhead (3) must, at the request of the international body, provide the body with the following information, and unrestricted access to same on:
 - (a) the number of detainees in the place of detention;
 - (b) the treatment of detainees at the place of detention;
 - (c) the conditions of detention applying to detainees in the place of

detention.

(6) The Minister or relevant Minister and competent authority for a place of detention to which the international body requests access must ensure that the body and any accompanying experts are provided with all reasonable assistance to interview, without witnesses, either personally or through an interpreter, any detainee the body chooses to interview and any other person at the place of detention who the body chooses to interview.

(7) Where an international body makes recommendations aimed at improving the treatment and conditions of detained persons to the Minister or relevant Minister, that Minister or relevant Minister shall consider these recommendations and respond to the international body as soon as may be after receipt of the recommendations.

Note on Head 15 – Inspections of Places of Detention by International Bodies

The Head provides for inspection visits from the two international bodies defined under this proposed Act in respect of obligations flowing from the ratification of international instruments. The aim of these visits is to improve the circumstances of detained persons, particularly with respect to torture and other inhuman and degrading treatment and punishment. To-date, the Committee on the Prevention of Torture (CPT) has conducted a number of inspections in Ireland and subject to ratification of the Protocol, similar inspection visits from the relevant UN international body – the Subcommittee on the Prevention of Torture (SPT) – shall take place under the mandate of OPCAT (Article 11 of OPCAT refers).

Both the CPT and the SPT provide for their members to pay visits to participating States for the purpose of examining various categories of places where persons are detained with the acquiescence of the State. The aim of the

visits is to improve the circumstances of detained persons, particularly with respect to torture and other inhuman and degrading treatment and punishment. To date the CPT has conducted a number of inspections in Ireland and subject to ratification of the protocol similar inspection visits will take place under the mandate of the OPCAT.

Article 4 of the OPCAT describes a place of detention as “*any place under the jurisdiction of the State where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence.*” Article 11. 1 (a) provides that the Subcommittee on Prevention established under the Protocol shall inter alia visit places of detention and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment.

Subhead (1) confers the right on the international body to inspect places of detention in the State.

Subhead (2) provides that the Minister shall grant authorisation – in confirming the identity – to the representatives of an international body to have unrestricted access to such places of detention in accordance with Article 14 of OPCAT. Subhead (3) provides that the competent authority managing the relevant place of detention allows the international body and accompanying experts access to that place of detention.

Subheads (4) and (5) correlate to the requirements of Article 14(1)(a) and (b) of OPCAT in providing that the required access to information of the international body is facilitated. In this connection, the Minister or relevant Minister will provide assistance regarding categories of information that are appropriate to be provided at a national or aggregate level and the competent authorities will provide assistance regarding categories of information that are appropriate to be provided at a localised level in respect of the specific place of detention.

Subhead (6) correlates to the requirement of Article 14(1)(d) of OPCAT in providing that the international body is granted the opportunity to have private interviews with detainees.

Subhead (7) provides that the Minister or relevant Minister is statutorily mandated to respond to the international body on that body's recommendations arising from a visit. This accords with Article 12(d) of OPCAT.

Head 16 – Co-ordinating National Preventive Mechanism

Provide that:

(1) The Irish Human Rights and Equality Commission shall be the co-ordinating body for National Preventive Mechanisms.

(2) The functions of IHREC under this Act are-

- (a) to liaise with international bodies in relation to visits to places of detention;
- (b) to consult and liaise with National Preventive Mechanisms;
- (c) to review the reports prepared by the National Preventive Mechanisms under *Head 17(1)* and advise the National Preventive Mechanisms of any systemic issues arising from those reports;
- (d) coordinate the submission of the reports prepared by the National Preventive Mechanisms under *Head 17(1)* to the international body;
- (e) to provide guidance to NPMs in the carrying out of their obligations under OPCAT;
- (f) to make, in consultation with all relevant NPMs, any recommendations to the Minister or relevant Minister that it considers appropriate on any matter relating to the prevention of torture and other cruel, inhuman or degrading treatment or punishment in places of detention in the State.

(3) Any function, power or duty conferred on the IHREC in accordance with this Act shall apply only to the carrying out of its functions in accordance with this Act.

Note on Head 16 – Co-ordinating National Preventive Mechanism

While there is no requirement under the OPCAT for this role to be created, in practice, many States in their implementation of the OPCAT, have employed this device to facilitate the effectiveness of the operation of the OPCAT inspections and reporting, particularly in the context of several NPM bodies conducting OPCAT inspections in different categories of place of detention.

This Head provides for the IHREC to carry out the role of a co-ordinating NPM in co-ordinating the activities of NPMs in Ireland's intended multiple NPM model and in liaising with the international bodies with a view to improving service delivery and outcomes in accordance with OPCAT. The role of co-ordinating NPM for IHREC is largely modelled on the New Zealand legislation – Crimes of Torture Act 1989 – which also provides for a multiple NPM model with a central or co-ordinating NPM carrying out necessary co-ordinating functions.

The Head also provides that IHREC assumes an over-arching co-ordinating role of national NPMs in terms of reviewing their reports prior to submission to the SPT and providing any relevant guidance to the NPMs on obligations that flow from the Protocol.

The Department of Justice has consulted with IHREC on this Head who have indicated their general support for the proposal.

Subhead (1) provides that IHREC is the co-ordinating NPM for the purposes of implementing the State's obligations arising from the ratification of OPCAT.

Subhead (2) sets out the functions of IHREC as the co-ordinating NPM for OPCAT. New Zealand operate a similar multiple institution NPM model with a co-ordinating or central NPM established to co-ordinate the activities of their NPMs. The functions set out in this subhead are largely derived from the description of similar functions of the central NPM as provided for in the New Zealand legislation. (Crimes of Torture Act 1989, Section 32). IHREC has been consulted with in this regard and have expressed their willingness and satisfaction to assume this role with the functions as described.

Head 17 – The functions of a National Preventive Mechanism (NPM)

Provide that:

- (1) A National Preventive Mechanism has the following functions under this Act in respect of the places of detention for which it is designated:
 - a. visit and inspect relevant place(s) of detention;
 - b. examine and monitor the treatment and conditions of those persons detained in such places of detention;
 - c. prepare a report, each year, on the exercise of its functions under this Part;
 - d. make any recommendations it considers appropriate regarding the prevention of torture and other cruel, inhuman or degrading treatment or punishment in places of detention;
 - 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.
- (2) A person or persons acting on behalf of a national preventive mechanism shall receive a written authorisation from the Minister or relevant Minister confirming that the person or persons in question are representatives of the national preventive mechanism and pursuant to this Bill are permitted unrestricted access to the places of detention to be visited.
- (3) Access to places of detention by representatives of a National Preventive Mechanism, shall be facilitated by the competent authority charged with the management of each place of detention.
- (4) The Minister or relevant Minister shall, at the request of a National

Preventive Mechanism, provide information and access to same on:

(a) the number of places of detention; and

(b) the location of the places of detention.

(5) The competent authority referred to in subhead (3) must, at the request of a National Preventive Mechanism, provide the following information and access to same on:

(a) the number of detainees in the place of detention;

(b) the treatment of detainees at the place of detention;

(c) the conditions of detention applying to detainees in the place of detention.

(6) The Minister or relevant Minister and competent authority for a place of detention to which a National Preventive Mechanism requests access must ensure that the National Preventive Mechanism is provided with all reasonable assistance to interview, without witnesses, either personally or through an interpreter, any detainee the National Preventive Mechanism chooses to interview and any other person at the place of detention who the National Preventive Mechanism chooses to interview.

(7) A national preventive mechanism designated under Head 18 or Head 19, may, for the purpose of carrying out its functions under this Act, liaise with an international body, in meeting with or exchanging information with that body.

(8) Where a national preventive mechanism designated under Head 18 or Head 19 makes recommendations aimed at improving the treatment and conditions of detained persons to the Minister or relevant Minister, that Minister or relevant Minister shall consider these recommendations

and respond to the national preventive mechanism as soon as may be after receipt of the recommendations.

- (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.

Note Head 17 – Functions of a National Preventive Mechanism (NPM)

This Head provides for the setting out of the functions of NPMs which may be designated for relevant places of detention.

Subhead (1) sets out the functions of a National Preventive Mechanism in this State in accordance with Article 19 of OPCAT which refers to granting of powers to NPMs.

Subheads (2) and (3) provide that NPMs are to be provided with authorisation from the Minister or relevant Minister to enter places of detention and that competent authorities managing such places of detention facilitate access to them.

Subheads (4) and (5) give effect to Article 20(a) and (b) of OPCAT in providing that NPMs have access to the specified information.

Subhead (6) gives effect to Article 20(d) of OPCAT in allowing NPMs the right to have private interviews with detainees.

Subhead (7) gives effect to Article 20(f) of OPCAT in setting out the right of a NPM to liaise with the international body.

Subhead (8) gives effect to Article 22 of OPCAT in providing that the Minister or relevant Minister is mandated to respond to the NPM on any of that body's recommendations arising from a visit.

Subhead (9) provides that NPMs share copies of their inspection reports with the co-ordinating NPM.

Head 18 - Designation of National Preventive Mechanisms (NPMs)

Provide that:

- (1) The Minister or relevant Minister may, by order, designate one or more than one national preventive mechanism, for the purposes of this Part. This designation shall set out the places of detention to which the remit of the national preventive mechanism applies.
- (2) The Minister or a relevant Minister shall make an order under *subsection (1)* only where he or she is of the opinion that it is appropriate to do so having regard to the—
 - (a) nature of the body or person concerned,
 - (b) the manner of appointment of persons to such bodies,
 - (c) the qualifications necessary for members of such bodies,
 - (d) the promotion and protection of human rights pursuant to Principles relating to the Status of National Institutions adopted by resolution 48/134 of the General Assembly of the United Nations on 20 December 1993.
- (3) Where the Minister or relevant Minister considers it appropriate, an existing body may be designated as a national preventive mechanism.
- (4) A body designated under this Section shall be independent in the performance of its functions under this Part of this Act.

Note on Head 18 – Designation of National Preventive Mechanisms

Article 17 of the OPCAT requires that “each State Party shall maintain, designate or establish....one or several independent national preventive mechanisms for the prevention of torture at the domestic level.”

A number of different bodies already exist that have inspection functions for different categories of places of the detention, although the prevention of torture is not specifically mandated in their current remit.

Unlike the European Convention, the OPCAT specifically mandates national bodies (national preventive mechanisms) to carry out inspections for the purposes of the prevention of torture and to report on same.

Subhead (1) provides that each Minister may designate one or more NPMs in relation to those places of detention under their remit. The Department of Justice has consulted with the Departments of Health, Defence and Children in this regard and those Departments have indicated their support for such an enabling mechanism to allow those Ministers to designate NPMs in relevant settings that amount to places of detention.

Given that the majority of places of detention in the State are already inspected by national regulatory authorities, on the basis of consultation with stakeholders, agencies and other Departments, the consensus is that these existing regulatory or inspection bodies are most suited to carry out the NPM role for relevant places of detention under OPCAT and the above-named Departments (they having places of detention under their remit) have advised that they are continuing to consider the matter of designating and consulting with suitable bodies to carry out the NPM role under OPCAT.

Subhead (4) provides that the NPM shall be independent of the Minister or relevant Minister in carrying out its functions under this part of the proposed Act and subhead (2) provides the Minister or relevant Minister must have cognisance of Article 18 of OPCAT in the matter of considering the designation of NPMs.

Head 19 - Chief Inspector of Places of Detention as National Preventive Mechanism in the Justice Sector

Provide that:

- (1) Notwithstanding Head 18, the Chief Inspector of Places of Detention shall be the National Preventive Mechanism for the following places of detention—
 - (a) Prisons;
 - (b) Garda Síochána Stations;
 - (c) any vehicle used by An Garda Síochána or the Irish Prison Service to transport a detainee from one location to another;
 - (d) Any place where a person is detained in custody immediately before and after the production of the person to a court (including a place within the environs of the court concerned).
- (2) The functions of the Chief Inspector under this Part is his or her role as NPM for places of detention referred to in subhead (1) are set out in Head 17 and are in addition to his or her functions under Part 1 of this Act.

Note Head 19 – Designation of Chief Inspector of Places of Detention as NPM in the Justice Sector

This Head provides for the appointment of the Chief Inspector as the National Preventive Mechanism in relation to relevant places of detention in the justice sector. This policy approach in both designating the Chief Inspector as the NPM in the criminal justice sector and identifying the related relevant places of detention within the sector was approved by the Minister for Justice in May 2020 and builds on the extensive policy consultation that the Department undertook in the 2015-2020 period.

Subhead (2) also clarifies that the Chief Inspector's functions as an NPM (Head 16) are in addition to his or her role in Part 1 of this Act in relation to the inspection of prisons.

Head 20 - Personal Data

Provide that:

Personal information or data gathered by a National Preventive Mechanism or by an international body conducting an inspection In accordance with OPCAT is confidential information and is subject to the provisions of the Data Protection Acts 1988 to 2018.

Note on Head 20 Personal Data

Head 20 is provided to ensure that bodies conducting inspections of places of detention treat information that is gathered in an appropriate manner, to protect the persons who are the subjects of that information. Article 11 of the European Convention and Article 21 of the OPCAT provide for the confidentiality and attaching to personal data coming into the possession of those conducting an inspection of a place of detention.

Head 21 - Protection from sanctions

Provide that:

1. (a) Subject to (b) Where information, whether true or false, is provided to either a national preventive mechanism or to an international body in relation to an inspection of a place of detention, the person who provides the information shall not be subject to a sanction or other disciplinary procedure.

(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 mechanism or international body
2. For the purpose of this section, sanction or disciplinary procedures include—
 - (a) an alteration in detention conditions which adversely affects a detained person;
 - (b) sanction or disciplinary procedures including an alteration which adversely affects an employee;
 - or
 - (c) prejudice of any kind towards a detained person, an employee or an organisation.

Note on Head 21 – Protection from sanctions

Head 21 aims to give effect to the provisions in Articles 15 and 21 of the OPCAT which provide that a person or organisation that provides information [whether true or false] to the Subcommittee on Prevention or a national preventive mechanism respectively, in the course of an inspection shall not be subjected to any sanction or disciplinary action for doing so.

Subhead (1) provides that a person who provides information to those inspecting a place of detention shall not be sanctioned regardless of whether the information provided is true or false. This is a protection which will facilitate the visiting delegations and preventive mechanisms in accessing information. A new paragraph (b) has been inserted. The purpose of Article 15 of OPCAT is clearly to ensure that officials cannot penalise whistle-blowers, however (b) has been included so that any attempt by officials to obstruct the work of these bodies may be penalised otherwise no sanction could be taken against officials deliberately giving false information.

Subhead (2) includes adverse alteration of detention conditions and the application of prejudice of any kind, within the meaning of sanctions for the purpose of subhead (1).

Part 4 Miscellaneous

Head 22 Repeals and revocations.

Provide that:

(1) Each Act specified in *columns (1) and (2) of Part 1 of Schedule 1* is repealed to the extent specified in *column (3) of that Part*.

(2) Each statutory instrument specified in *columns (1) and (2) of Part 2 of Schedule 1* is revoked to the extent specified in *column (3) of that Part*.

Note on Head 22

Head 22 provides that certain legislative provisions and statutory instruments are repealed or revoked as scheduled. This includes Part 5 of the Prisons Act 2007 which currently provides the statutory basis for the Inspector of Prisons.

Other repeals and consequential amendments will be finalised during the drafting of the Bill likely including changes to the Prison (Visiting Committees Act) 1925 pending the outcome of work underway in the Department of Justice in reviewing the statutory position in relation to the Prison Visiting Committees.

SCHEDULE 1

Repeals and revocations

Part 1

Enactments repealed

Number and Year	Short Title or Subject	Extent of Repeal
(1)	(2)	(3)
No. 10/2007	Prisons Act 2007	Part 5

Part 2

Statutory Instruments Revoked

Number and Year	Short Title or Subject	Extent of Revocation
(1)	(2)	(3)