



Inspecting policing
in the public interest

**MEMORANDUM OF
UNDERSTANDING
ON THE JOINT INSPECTION OF
BORDER FORCE CUSTOMS
CUSTODY PREMISES
IN ENGLAND AND SCOTLAND**



monitoring and improving
policing in Scotland



Border Force

**MEMORANDUM OF UNDERSTANDING
ON THE JOINT INSPECTION OF
BORDER FORCE CUSTOMS CUSTODY PREMISES IN ENGLAND AND
SCOTLAND**

1. This memorandum of understanding (MOU) has been agreed between the Border Force, Her Majesty's Inspectorate of Constabulary (HMIC), Her Majesty's Inspectorate of Prisons (HMI Prisons) and Her Majesty's Inspectorate of Constabulary for Scotland (HMICS).

2. This should be read in conjunction with the Customs (Inspections by Her Majesty's Inspectors of Constabulary and the Scottish Inspectors) Regulations 2012 ('the Regulations') which were laid before Parliament in December 2012.

Background

3. The UN Optional Protocol to The Convention Against Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment (OPCAT - 2003) was ratified by the UK in 2006. Under Article 3, each State Party is required to establish regular, functionally independent, inspection of all places of detention. This obligation includes Border Force customs custody premises.

4. Border Force has requested that inspections of their custody conditions within these customs premises should be carried out jointly by HMIC and HMI Prisons. There are nine designated Border Force customs custody premises in England and one in Scotland. To meet the requirement for 'regular' inspection, while adopting a proportionate approach, all parties have agreed that the programme will ensure that all Border Force customs custody conditions will be inspected every two years.

Inspections with HMCIS

5. In relation to the Scottish customs custody premises, the Scottish inspectors and HMIC shall jointly inspect and report on the efficiency and effectiveness of the conduct.

6. HMIC will delegate their functions of inspections to HMI Prisons, who will lead the joint inspection programme.

Methodology

7. The methodology for inspection will focus on four key issues: strategy; treatment and conditions; individual rights; and healthcare. This reflects both published custodial inspection criteria, the expectations that underpin OPCAT and the core standards for police custody as set out in the *Guidance on the Safer Detention and Handling of Persons in Police Custody*, issued jointly in 2012 by ACPO and the National Policing Improvement Agency.

8. The inspection methodology will include:

- collation of performance data and intelligence;

- analysis of documentation including custody record analysis and where appropriate other sources of evidence including Person Escort Record forms and CCTV;
- fieldwork visits to custody premises;
- interviews with detainees, staff, managers and key individuals, including forensic medical examiners and other healthcare staff, solicitors, and responsible adults;
- interview and hot de-brief to the Border Force strategic lead for custody; and
- production and publication of a report.

9. Initially all inspections will be announced. There are three key phases to each inspection event; pre-visit preparation (up to 8 weeks before the inspection); fieldwork (this will involve visiting every Border Force location relevant to the inspection event over a two week period); and report preparation (with publication within sixteen weeks of completing the fieldwork). The full indicative timetable is attached as **ANNEX A**.

10. Unannounced inspection may be undertaken as the inspection programme develops following consultation with Border Force. Unannounced inspections will exclude the pre-planning of support from the Border Force liaison officer and creates a situation where the operational staff at the relevant Border Force customs premises will not be expecting the team's arrival.

11. Following formal notification to Border Force of intended inspection dates or arrival of an unannounced inspection, a joint inspection team representative will make direct contact with the nominated Border Force liaison officer (and/or any other individual specifically nominated by Border Force) to establish a single point of contact for on-going liaison.

12. The team will use the nominated Border Force liaison officer to make all arrangements for interviews, visits, logistics and access. While it is not necessary for the liaison officer to accompany inspection teams, it is expected that they will have arranged appropriate notice to inspection sites.

Powers of inspections

13. As part of the inspections a designated custom official undertaking customs functions must provide the inspectors with:

- any information, documents and produce all such evidence as specified by the inspectors as required as part of the inspection; and
- access to any premises specified as customs premises within the Regulations and any vehicle used to transport a person to or from those premises.

To note: a request for any information or documentation to be provided may be given electronically.

Reports

14. Representatives from Border Force management will be provided with a verbal 'hot-debrief' on the last day of the field work visit. Any particularly urgent or dangerous issues will be flagged immediately as they emerge. The debrief will be followed up by written confirmation within 5 working days.

15. The full findings of the inspection will be made available to Border Force within 8 weeks of the visit, as a draft report. This is presented to Border Force at this stage to resolve any challenges to factual accuracy prior to subsequent publication, normally within 16 weeks of the inspection.

16. It is the responsibility of HMI Prisons, HMIC, and where relevant HMICS to arrange for the inspection report to be published. A copy of the published report will be sent to the Secretary of State and Director of Border Revenue.

17. All reports will be published and placed on the websites of relevant inspectorates. A joint HMI Prisons, HMIC, media statement will be issued to cover publication. Media handling will ultimately be a matter for the relevant Chief Inspectors. Border Force will receive advance copies, embargoed to an agreed publication time and date.

Follow-up action

18. The Secretary of State and Director of Border Revenue will comment on the published reports and shall arrange for those comments to be published. It is expected that this response will include an action plan to address any recommendations from the report and that it will be published within two months of the publication date of the inspection report.

19. A follow-up inspection may be considered but would not normally be undertaken within twelve months of the original inspection dates.

Payment

20. Border Force has agreed for the cost of the eight year period of the inspection programme to be annualised. This amounts to £22,568.25 per annum plus VAT on the HMI Prisons element and is set out as follows:-

<u>Inspectorate</u>	<u>£ Annualised</u>	<u>£ VAT</u>	<u>£Total</u>
HMI Prisons	13,260.00	2,652.00	15,912.00
HMIC	9,308.25	Nil	9,308.25
Total	22,568.25	2,652.00	<u>25,220.25</u>

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Signed:



Nick Hardwick CBE
HM Chief Inspector of Prisons

Date: 10/4/13

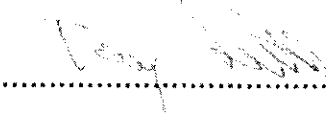
Signed:



Drusilla Sharpling
HM Inspector of Constabulary

Date: 18/4/2013

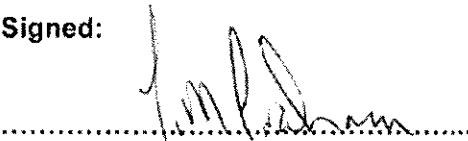
Signed:



Tony Smith
Director General of Border Force

Date:

Signed:



~~Andrew Laing~~ GEORGE M BRENNAN
HM Chief Inspector of Constabulary
Scotland

Date:

ANNEXES

A – Indicative timetable for the inspection

B – Standard notice of details of inspection

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ANNEX A

INDICATIVE TIMETABLE FOR INSPECTIONS

<i>When</i>	<i>What</i>	<i>Who</i>	<i>How</i>
8 weeks before inspection	Identify team, inform HMIC LSO of names and contact details.	HMI Prisons Team leader	E-mail
	For announced inspections write to Border Force Director General. Request any advance information or data.	HMIC LSO	Template letters
	For unannounced inspections compile a file of relevant research on the force.	HMIC LSO	E-mail
	Contact local IPCC to obtain any relevant intelligence (the week prior to inspection for unannounced).	HMI Prisons Team leader	E-mail
Up to 2 weeks before inspection	Arrange accommodation.	HMIC LSO	Telephone E-mail
	Collate and send out advance information in preliminary pack with benchmarking report and contact details for key providers.	HMIC LSO	
Field work	For unannounced inspections telephone the duty officer 30 minutes prior to deploying the team.	HMIC LSO	
	Carry out fieldwork, team feedback in evenings. Agree findings.	All	Use expectations
	Provide hot debrief on last day.	Team leader/HMIC LSO Inspector/healthcare lead inspector	Verbal briefing to force senior accountable manager and PA lead.
Within 5 working days	Send hot de-brief notes to Border Force senior accountable manager or their representative.	HMIC LSO	
Within 1 week of inspection	Send all findings and inspection background and summary to the coordinating HMIP Inspector Write up findings including any questionnaire data.	All Coordinating Inspector	E-mail
Within 2 weeks of inspection	Send draft report to editor	Coordinating Inspector	E-mail
Within 3 weeks	Send second draft to HMIC LSO for comment. Return to the team leader.	Coordinating inspector/team leader.	
Within 3 weeks of inspection	Return draft report to the team leader to agree edit	Editor	E-mail
Within 4 weeks of inspection	Send report to Chief Inspectors or their representatives for approval.	Team leader/Editor	E-mail

			E-mail
Within 8 weeks of inspection	Send draft report to Border Force for factual accuracy checks	HMIP	E-mail
Within 10 weeks of inspection	Receive back draft report with any proposed amendments. To Team leader for amendments and final edit.	HMIP	E-mail
		Team leader and Editor	E-mail
Within 16 weeks of inspection	Agree publication date and media statement. Send submission. Publish report on websites with media statement.	HMIC and HMIP	E-mail E-mail to communications teams

STANDARD NOTICE OF DETAILS OF INSPECTION

To be handed to the senior officer on duty at a Border Force customs premises that is subject to an unannounced joint inspection by HM Inspectorate of Constabulary and HM Inspectorate of Prisons.

Border Force: [details]

Location: [details]

Lead Inspector: [name and position/organisation]

1. Purpose of this document

- 1.1. To explain the reason for this unannounced inspection of your customs premises;
- 1.2. To set out the procedure to be followed during the inspection;
- 1.3. To explain how you might seek to delay or defer the inspection; and
- 1.4. To provide contact details for senior HMIC representatives, should you require to check the validity of the inspection or discuss any substantial reasons for deferral or delay.

2. The reason for inspection

- 2.1. The UN Optional Protocol to the Convention Against Torture and other cruel, inhuman or degrading treatment or punishment (OPCAT) was ratified by the UK in 2003. Under Article 3, each State Party is required to establish regular, functionally independent inspection of all places of detention. This obligation includes Border Force customs premises.
- 2.2. The Immigration Ministers agreed that this inspection of Border Force customs premises custody conditions should be carried out jointly by HMIC and HMI Prisons. To facilitate this joint working, HM Chief Inspector of Constabulary has formally delegated powers to HM Chief Inspector of Prisons, giving all the inspection team the powers of HM Inspectors of Constabulary. To meet the requirement for 'regular' inspection, while adopting a proportionate approach a programme will ensure that all custody conditions in Border Force customs premises are inspected every four years.
- 2.3. The selection of specific locations for unannounced inspection should not be taken as indicating that the inspectorates have identified any particular risk, vulnerability or poor performance in that customs premises

3. The inspection format and scope

3.1. The inspection will be undertaken against the published framework of expectations (a copy of which can be made available if requested) that focuses on:

- Strategy;
- Treatment and conditions;
- Healthcare; and
- Individual rights.

3.2. The team members will not examine operationally sensitive issues - such as sufficiency of evidence - nor interfere with any on-going investigation or interviews. However, the team will require to:

- Visit and examine the custody facility, including cells, exercise yard, medical examination room, interview rooms, storage areas or vehicles used to transport detainees;
- Check records, CCTV, procedures, equipment, maintenance and security;
- Speak with any detainees (subject to their consent and certain conditions) and complete questionnaires regarding the physical conditions of their detention;
- Interview custody manager(s) and staff;
- Interview investigating/operational officers who deal with detainees;
- Interview the force senior accountable manager for custody;
- Interview the PA and ICVs at a time that is mutually convenient to both parties.

3.3. Everything will be done to reduce as far as possible the additional administrative impact of the inspection but it is accepted that unannounced visits do not, by their nature, allow arrangements for staff to be allocated to escort or service the inspection team's requests.

4. Request for delay or deferral

4.1. While an unannounced inspection will always be inconvenient, it will require a very substantial reason for this inspection to be delayed or deferred – such as posing a significant threat to highly sensitive operational activity or major risk to personal safety.

4.2. If you believe that such exceptional circumstances are indeed evident and wish to request a delay or deferral, the detail of these circumstances must be explained in full to the team leader, who will either:

- accept that the inspection should be delayed or deferred; or
- reassert the request for access to carry out the inspection, explaining why the reason given does not constitute a substantial cause for deferral or delay.

4.3. Where any difference of opinion cannot be resolved between the team leader and the local senior officer, arrangements should be made for your Director to speak directly with the Regional HM Inspector or other nominated senior member of HMIC (see contacts).

5. Contact details

5.1. In the event that no agreement can be reached, the following person should be contacted:

- 1. HMI Drusilla Sharpling**
(HMI lead for joint Inspection)
HM Inspectorate of Constabulary