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HM Inspectorate of Constabulary in Scotland &  
HM Inspectorate of Prosecution in Scotland

## **Joint inspection of emergency criminal justice provisions**

### **Terms of Reference**

July 2020

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***HM Inspectorate of Prosecution in Scotland***



## About HM Inspectorate of Constabulary in Scotland

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HM Inspectorate of Constabulary in Scotland (HMICS) is established under the Police and Fire Reform (Scotland) Act 2012<sup>1</sup> and has wide ranging powers to look into the 'state, effectiveness and efficiency' of both the Police Service of Scotland (Police Scotland) and the Scottish Police Authority (SPA).

HMICS has a statutory duty to ensure that the Chief Constable and the SPA meet their obligations in terms of best value and continuous improvement. If necessary, it can be directed by Scottish Ministers to look into anything relating to the SPA or Police Scotland as they consider appropriate. HMICS also has an established role in providing professional advice and guidance on policing in Scotland. Its approach is to support Police Scotland and the SPA to deliver services that are high quality, continually improving, effective and responsive to local needs.

## About HM Inspectorate of Prosecution in Scotland

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HM Inspectorate of Prosecution in Scotland (IPS) is led by HM Chief Inspector of Prosecution who is appointed by the Lord Advocate to inspect the operation of the Crown Office and Procurator Fiscal Service. The functions of HM Chief Inspector are set out in the Criminal Proceedings etc. (Reform) (Scotland) Act 2007. The 2007 Act makes clear that in the exercise of any of the functions conferred by the Act, HM Chief Inspector is independent of any other person.

This joint inspection will be undertaken by HM Inspectorate of Prosecution in Scotland under section 79 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007; and by HMICS under section 74(2)(a) of the Police and Fire Reform (Scotland) Act 2012. A report will be laid before the Scottish Parliament under section 79(3) of the 2012 Act.

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<sup>1</sup> Chapter 11, Police and Fire Reform (Scotland) Act 2012.

### Aim

1. The aim of this joint inspection is to assess the implementation of the emergency criminal justice provisions that were introduced to enable the criminal justice system in Scotland to continue to operate during the Covid-19 pandemic.
2. The inspection will consider the extent to which the emergency provisions have been used and the subsequent impact on the efficiency and effectiveness of the administration of criminal justice in Scotland as it relates to Police Scotland and to the Crown Office and Procurator Fiscal Service (COPFS).
3. It will consider whether any elements of the emergency provisions could result in more effective and efficient ways of working in the long term.
4. It will highlight any areas of good practice as well as those in need of further development or improvement.
5. This joint approach may also provide a foundation for further joint scrutiny of wider aspects of the administration of criminal justice in Scotland.

### Background

6. The Coronavirus (Scotland) Act 2020 (the '2020 Act') was passed in April 2020 to respond to the emergency situation caused by the Covid-19 pandemic. Schedule 4 of the 2020 Act contains temporary modifications to the law in relation to the justice system.
7. On 2 June 2020, HM Chief Inspector of Constabulary provided an update on HMICS position on undertaking inspections during the Covid-19 pandemic. This acknowledged that significant operational changes had been made to criminal justice processes and procedures in response to the emergency provisions and stated the intention to examine the implementation and impact of these.
8. On 10 June 2020, HM Chief Inspector of Prosecution wrote to the Lord Advocate indicating her intention to review the inspectorate's work programme for 2020-21 and setting out potential areas of scrutiny activity related to the Covid-19 pandemic and the response of COPFS. On 7 July 2020, the Lord Advocate responded, asking HM Chief Inspector of Prosecution to provide an independent assessment of the

emergency criminal justice provisions relating to (1) the electronic signature and transmission of documents and (2) the remote, electronic attendance of parties at court. The Lord Advocate referred these matters to HM Chief Inspector under section 79 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 and requested a report by 28 September 2020.

9. Given the impact of these provisions on the wider criminal justice system, HM Chief Inspector of Prosecution and HM Chief Inspector of Constabulary agreed to collaborate on this work and undertake a joint inspection. They also agreed to assess the use of two further measures, in addition to the provisions referred by the Lord Advocate.

## Scope

10. The specific measures we will review are those related to:

- **(1) Electronic signatures and the transmission of documents**

The relevant provisions are found in Schedule 4, Part 1, Paragraphs 1 & 1A of the 2020 Act and Schedule 4, Part 3, Paragraph 3 of the Coronavirus (Scotland) (No.2) Act 2020.

- **(2) Remote, electronic attendance of parties at court**

The relevant provisions are those found in Schedule 4, Part 1, Paragraphs 2-4 of the 2020 Act.

- **(3) The ability to take a case beginning with an appearance from custody in any sheriff court**

The relevant provisions are those found in Schedule 4, Part 3 of the 2020 Act.

- **(4) The Lord Advocate's Guidelines on liberation by the police during Covid-19**

This has been a policy rather than a legislative change in response to the Covid-19 pandemic.

## Outcomes

11. Our intended outcomes are to:

- Provide independent assurance regarding the operation, efficiency and effectiveness of the use of the emergency provisions
- Provide independent assurance on the impact of the use of the emergency provisions
- Identify any elements of the emergency provisions which could result in more effective and efficient ways of working in the long term
- Highlight areas of good practice and any areas for further development or improvement.

## Stakeholder engagement

12. As set out in the Public Services Reform (Scotland) Act 2010, both inspectorates have a duty to demonstrate continuous improvement in user focus i.e. involving service users in the scrutiny process. In this joint inspection, we will engage directly with and gather evidence from:
  - Police Scotland officers and staff
  - COPFS staff
  - Staff of other criminal justice bodies, such as the Scottish Courts and Tribunals Service, as well as criminal justice officials within the Scottish Government
  - Key stakeholders including the Law Society of Scotland, local and national criminal bar associations and third sector organisations, such as those providing support to victims and witnesses
13. The inspection team will also engage with key governance groups and the SPA.

## Methodology

14. It is our intention to conduct the majority of our fieldwork activity during August 2020.

In accordance with current restrictions put in place in response to the Covid-19 pandemic, planned interviews and meetings will be undertaken via telephone or video conferencing. During this stage we will:

- Engage with key contacts from Police Scotland and COPFS to support the inspection process and to facilitate appropriate access to people and information
- Examine relevant documentation including policies, procedures and performance and management information. Where possible, we will access these documents from open sources to minimise our scrutiny footprint, but this phase may require Police Scotland and/or COPFS to provide information directly to us
- Conduct a survey of key stakeholders
- Conduct interviews as appropriate
- Observe 'virtual' court proceeding
- Observe relevant meetings
- Draw on research evidence and lessons learned from other jurisdictions, where information is available.

## Publication and reporting timescales

15. The legislative emergency criminal justice provisions are currently due to expire on 30 September 2020. HMICS and HM Inspectorate of Prosecution are working to examine the powers before they expire at the end of September. As noted above at paragraph 8, our findings on measures (1) and (2) will be published on 28 September, and those on (3) and (4) will be published thereafter.

16. Our report will be provided to the Lord Advocate in terms of section 79 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 and published in terms of section 79(3) of the Police and Fire Reform (Scotland) Act 2012. A copy of the report will be provided to the Chief Constable, the Scottish Police Authority and the Cabinet Secretary for Justice and will be laid before the Scottish Parliament. A copy will also be made publicly available on our respective websites.

17. For further information about the inspection, please contact:

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HM Chief Inspector of Prosecution in Scotland

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