

MEMORANDUM OF UNDERSTANDING BETWEEN THE LOCAL BETTER REGULATION OFFICE AND HEALTH AND SAFETY EXECUTIVE

1. Introduction and application

1.1 This Memorandum of Understanding (“MOU”) is made between the Health and Safety Executive (“HSE”) and the Local Better Regulation Office (“LBRO”) (together “the Parties”) and entered into pursuant to section 12 of the Regulatory Enforcement and Sanctions Act 2008 (“RESA”) which requires LBRO to enter into a MOU with HSE. This MOU is not legally binding and it does not supersede the statutory duties and powers of the Parties. In particular, this MOU is not intended to affect HSE’s regulatory powers.

2. Strategic aims and purpose

2.1 The purpose of this MOU is to:

- ensure effective co-operation between the Parties where their strategic and regulatory controls and objectives overlap; and
- outline an agreed approach to standard setting and resolving any disagreement on matters relating to local authority health and safety regulatory services.

2.2 The strategic aims of the MOU are to:

- ensure complementary working between the Parties for greater efficiencies, and greater impact for the lowest burden to gain maximum benefit for those at work and or affected by work activities;
- enable effective communication, and sharing of information, best practice and expertise between the Parties to ensure a coordinated approach when advising, directing and working with local authority regulatory services for better outcomes for the workforce, business and the public;
- enable collaborative and partnership working between the Parties to improve the local regulatory services system;
- ensure the principles of better regulation are optimised with regard to health and safety enforcing authority requirements and priorities;
- promote flexible and practical working between the Parties to ensure quick and flexible responses to changes in working arrangements; and
- provide sufficient resources to ensure the working arrangements set out here can operate effectively between the Parties.

3. Status of the Parties to this Memorandum of Understanding

- 3.1 HSE is a non-departmental public body with Crown status and is accountable to the Secretary of State for Work and Pensions and the Parliamentary Under Secretary (for Work and Pensions) (Lords). HSE's primary function is to secure the health, safety and welfare of people at work and protect others from risks to health and safety from work activity. HSE's other responsibilities include providing standards (including information and guidance) and research into occupational health risks in England, Scotland and Wales. HSE's powers and statutory duties in Great Britain are provided for by the Health and Safety at Work etc. Act 1974 ("HSWA") and statutory instruments made under it.
- 3.2 HSE works in partnership with local authority health and safety regulatory services to regulate work related health and safety. The Health and Safety (Enforcing Authority) Regulations 1998 determine whether the enforcement authority is HSE or local authority health and safety regulatory services.
- 3.3 The HSE Board and the senior management team govern HSE and set the strategic direction and arrangements (with reference to the Section 18 Standard¹) for HSE and local authority health and safety regulatory services. Both HSE and local authority health and safety regulatory services have a variety of enforcement tools to secure compliance, including notices and prosecution, and work in accordance with HSE's Enforcement Policy Statement (EPS) and the five principles of better regulation – transparency, targeting, consistency, proportionality and accountability. The EPS is in accordance with the Regulators' Compliance Code and the Legislative and Regulatory Reform Act 2006.
- 3.4 LBRO was established under RESA as a non-departmental public body accountable to the Department of Business, Innovation and Skills through the Better Regulation Executive. LBRO aims to reduce unnecessary red tape for law-abiding businesses to allow greater focus on targeting the rogue traders who harm vulnerable people and damage our communities. LBRO also encourages the provision of local authority regulatory services in a way that accords with the better regulation principles.
- 3.5 LBRO's statutory functions are to:
- Operate the Primary Authority scheme;
 - Advise the Government on local regulation ;
 - Issue guidance to local authorities;
 - Manage the list of national enforcement priorities;
 - Encourage innovation and good practice, and
 - Develop formal partnerships with national regulators.

4. Areas of mutual interest

- 4.1 Through its strategy HSE defines the goals for the health and safety system for Great Britain. The Section 18 Standard requires local authority health and safety regulatory services to follow the guidance set by HSE as regards health and safety regulation. Through their respective business plans, HSE and local authority health and safety regulatory services coordinate their activities to turn HSE's strategic goals into reality.
- 4.2 Under RESA, LBRO is responsible for preparing, publishing and reviewing a list specifying areas of regulation to which a local authority in England or Wales respectively should give

¹ Defined at paragraph (5) in the Glossary of terms at the back of this MoU

priority when allocating their resources (“National Enforcement Priorities²”). In addition HSE sets the:

- national strategy for workplace health and safety enforcement for Great Britain, and
- enforcement priorities for the industry sectors that it regulates.

4.3 LBRO helps local authorities to improve the way they implement environmental health, fire safety, licensing and trading standards regulations. It is LBRO’s responsibility to ensure that these local regulatory services are consistent, targeted, accountable, transparent and proportionate to risk.

4.4. LBRO has statutory duties to advise central government on local regulation and to provide statutory guidance and best practice to local authorities. LBRO also has a statutory responsibility to administer Primary Authority³, established under RESA which enables a business to form a partnership with a local authority which will provide robust and reliable advice that other local authorities must take into account when carrying out inspections or dealing with non-compliance.

4.5 Both Parties agree to consult and cooperate, as appropriate, on matters of mutual interest that are of significance or benefit to either party.

5. Strategic statements of intended ambition

Commitment to Work Together

5.1 HSE and LBRO will work together for the purposes of better regulation and health and safety benefits by building on existing good practice and taking forward lessons learned from best practice, pilots and innovative projects. HSE will participate in any relevant initiatives or working groups to achieve the mutual strategic aims set out in this MOU. Both Parties aim to work together to achieve a complementary working arrangement to maximise the benefit of local authority health and safety regulatory services with respect to the intended strategic aims of both Parties set out in Section 2.

5.2 In working together under Clause 5.1 above, HSE and LBRO will have regard to the Statement of Commitment.⁴

5.3 LBRO will continue to attend the HSE\LA Enforcement Liaison Group (HELA) and actively contribute to relevant HELA task and finish groups that meet the strategic aims of this MOU. HSE will continue using existing HSE\LA partnership principles in line with LBRO objectives. HSE will consider any other involvement in relevant groups that work towards better regulation.

6. Detailed Arrangements

Primary Authority scheme

6.1 Primary Authority is designed to promote consistency in the application of relevant functions as defined in RESA.⁵

² Defined at paragraph (3) in the Glossary of terms

³ Defined in paragraph (4) in the Glossary of terms

⁴ Defined in paragraph (6) of the Glossary of terms

⁵ Section 24, RESA

- 6.2 LBRO will provide HSE with access to its secure Primary Authority database to enable it to view the register of partnerships, inspection plans and other partnership details. HSE will be responsible for ensuring that access to the secure IT system is undertaken only in relation to carrying out its relevant functions, which for the avoidance of doubt, include ensuring that the terms of any such partnerships are appropriate and in compliance with all relevant legislation and that all other terms and conditions of use for the system are complied with.
- 6.3 In circumstances where HSE shares significant enforcement responsibility for a business with local authority regulators then the primary authority is required to consult HSE in respect of any proposed inspection plan. Where a primary authority consults HSE in respect of an inspection plan then HSE agrees to use its best endeavours to respond to the primary authority within 28 days.
- 6.4 In considering its decision to consent to any inspection plan proposed by a primary authority LBRO will consult with HSE and have regard to advice and guidance issued by HSE.
- 6.5 Primary Authority is based around the concept of respect for advice provided by the primary authority. Where HSE is responsible for an aspect of health and safety regulation of a business which is otherwise subject to Primary Authority⁶, HSE will use its best endeavours to consider the views of the primary authority when:
- developing strategic approaches to the company, or
 - considering enforcement action against the company.
- 6.6 Where appropriate LBRO will consult with HSE, in accordance with RESA, in connection with an application for determination⁷. When considering its determination decision LBRO will have regard to advice received from HSE. HSE agrees to use its best endeavours to provide relevant information and guidance within 14 days of receipt of the request.

7. Providing advice to Government

- 7.1 Both LBRO and HSE provide advice to Ministers and other government departments.
- 7.2 HSE is responsible for all health and safety law policy, this includes the power to advise on any aspect of health and safety policy including better regulation.
- 7.3 LBRO has a responsibility to advise the UK Government and Welsh Assembly Government on better regulation aspects of local authority work and this includes work areas of HSE.
- 7.4 HSE will use its best endeavours to consult with LBRO and have regard to its comments before providing formal advice to Ministers of the UK Government or Welsh Assembly Government on health and safety law where this would impact significantly on local authority regulators.
- 7.5 Similarly, LBRO will use its best endeavours to consult with HSE and have regard to its comments before providing formal advice to Ministers of the UK Government or Welsh Assembly Government on better regulation and health and safety law where this would impact significantly on local authorities.

⁶ An example of HSE and LAs having parallel, but not overlapping, enforcement responsibilities would be a multi site retailer with a programme of store development. LAs would be responsible for health and safety standards in the retail premises, HSE would have responsibility for standards on any major construction operation to build a store where the retailer may have duties as a construction client.

⁷ Defined in paragraph (1) of the Glossary of terms and see also Schedule 4, RESA

8. Arrangements for issuing statutory guidance to Local Authorities

- 8.1 HSE will conduct policy activities, issue legislative standards and local authority guidance on matters relating to health and safety in accordance with its powers and provisions under HSWA and other relevant legislation and consult LBRO where necessary.
- 8.2 LBRO can give guidance to local authorities as to how to exercise their relevant functions under RESA. LBRO will consult with HSE where the guidance is relevant to health and safety.

9. Arrangements for a collaborative approach to the development of health and safety National Enforcement Priorities⁸

- 9.1 LBRO will consult HSE before providing advice to local authorities on implementing any National Enforcement Priorities on health and safety.
- 9.2 LBRO will consult HSE and take a collaborative approach in the review of any Enforcement Priorities for health and safety.
- 9.3 HSE will work with LBRO and where applicable, local authority regulators, to ensure that any National Enforcement Priorities for health and safety are in accordance with Hampton principles⁹.

10 Arrangements for review and in the case of disagreement

Amendments to this MOU may be made at any time by agreement between the Board of HSE and LBRO. In addition, HSE and LBRO will review the contents of the MOU at the expiry of the 12 month period from and including the date of the MOU. Thereafter reviews will take place as deemed appropriate by both Parties, taking into account the changing regulatory landscape.

11 Mechanism for resolving difficulties or areas of conflict

The HSE and LBRO are committed to resolving any disagreement under this MOU bilaterally by way of discussion between the Head of the Local Authority Unit within HSE and the Director of Engagement and Strategy within LBRO.

⁸ Defined in paragraph (3) of the Glossary of terms

⁹ Defined in paragraph (2) of the Glossary of terms

12. Contacts and signatories

12.1 Named Contacts for

Health and Safety Executive

Local Better Regulation Office

**Head of LAU
Health and Safety Executive**

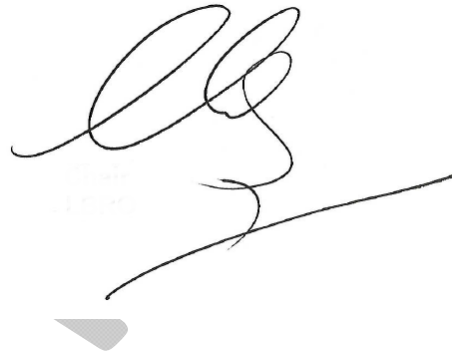
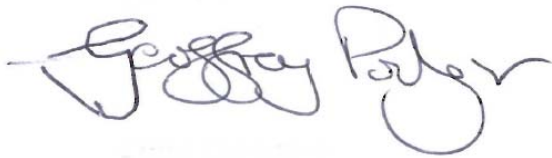
**Director Engagement & Strategy
Local Better Regulation Office**

13. Signatures of relevant parties

Signed by:

**Chair
HSE**

**Chair
LBRO**



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14. Glossary of terms used in this MOU

- (1) **Application for determination** means an application under Schedule 4 of RESA to LBRO to determine a reference relating to proposed enforcement action within the Primary Authority scheme.
- (2) **Hampton Principles** means the principles set out in Sir Philip Hampton's 2005 review "Reducing administrative burdens: effective inspection and enforcement".
- (3) **National Enforcement Priorities** refers to the priorities set by LBRO in accordance with its duty under section 11 of RESA to prepare, publish and review a list specifying those matters to which a local authority in England or Wales should give priority when allocating their resources.
- (4) **Primary Authority** scheme was established under RESA and administered by LBRO, providing the opportunity for a business to receive advice and to agree their approach to compliance with a single local authority, and be able to rely on all local authorities respecting that advice.
 - i. NOTE: 'Primary Authority' (capitals) is used to denote the overall statutory scheme, 'primary authority' (lower case) is used to denote a particular local authority acting as the lead authority with the overall statutory scheme.
- (5) **Section 18 Standard** refers to section 18 of HSWA which requires HSE and local authorities to make adequate arrangements for the enforcement of the relevant statutory provisions for which they are responsible. The standard sets out the arrangements that local authorities and HSE's Field Operations Directorate should put in place to meet this duty.

Details of the standard can be found at www.hse.gov.uk/section18/ .

- (6) **Statement of Commitment** refers to the agreement between HSE and local authority representative bodies in June 2009, which sets out the commitment to improved standards of partnership working. The commitment has one overriding aim – to prevent the death, injury and ill health of those at work and those affected by work activities.

Details can be found at www.hse.gov.uk/lau/statement.htm .