

Memorandum of Understanding between Healthcare Inspectorate Wales (HIW) and the Health and Safety Executive (HSE)

1st July 2019

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1 Introduction

1.1 This Agreement refers to NHS and independent healthcare provision in Wales. It comes into effect on 1st July 2019.

1.2 The purpose of this Agreement is to set out a framework to support the working relationship between the Healthcare Inspectorate Wales (HIW) and the Health and Safety Executive (HSE) to help ensure that there is effective, co-ordinated and comprehensive regulation of risks to care and the health and safety of patients, service users, workers and members of the public visiting relevant healthcare premises. It outlines the respective responsibilities of HIW and HSE for investigations in the healthcare sector. It describes the principles for effective liaison and for sharing information more generally.

1.3 This Agreement does not override the statutory responsibilities and functions of HIW and HSE and is not enforceable in law. However, HIW and HSE agree to adhere to the principles of the Agreement.

2 Principles of co-operation

2.1 HIW and HSE are committed to the principles of transparency, accountability, proportionality, consistency, and targeting when regulating healthcare in Wales.

2.2 HIW and HSE intend that their working relationship will be characterised by the following principles:

- Drive improvement in the delivery of safe healthcare.
- Respect for each organisation's independent status.
- The need to maintain public confidence in the two organisations and the regulatory process.
- Openness and transparency between the two organisations as to when cooperation is and is not considered necessary or appropriate.
- The need to use resources effectively and efficiently.

2.3 HIW and HSE will work together to ensure that the best placed organisation leads any collaborative work. Where serious harm occurs or a serious concern arises which may lead to significant harm in a healthcare setting, both organisations will liaise with each other at an early stage to ensure that there is one lead organisation. Both organisations will aim to co-ordinate any follow-up so that the right people and organisations are approached to support improvement. **Annex A** sets out the role and functions of each organisation. **Annex B** sets out a flowchart for the organisations to follow.

3 Areas of co-operation

3.1 The working relationship between HIW and HSE involves co-operation in the following areas:

- Information sharing
- Incident investigation
- Strategic collaboration and supporting improvement

3.2 Contact details for each organisation are provided in **Appendix 1**.

Information sharing

3.3 HIW and HSE will share information arising from their activities that may assist the other in its remit subject to any applicable statutory exemption or under any other restriction or prohibition under any enactment, rule of law or order of the court preventing release.

3.4 Each organisation will work collaboratively by:

- notifying and liaising with the appropriate organisation as soon as appropriate about information they receive about incidents that may be in their jurisdiction;
- sharing relevant intelligence and data related to regulated providers; and
- meeting periodically to discuss information sharing and to review procedures and working arrangements as part of continuous improvement and an opportunity to feedback and share issues / concerns.

3.5 Both HSE and HIW are subject to the Freedom of Information Act 2000, Data Protection Act 2018 and General Data Protection Regulation (GDPR). If one organisation receives a request for information that originated from the other, the receiving organisation will discuss the request with the other before responding. Each organisation will handle information in accordance with their respective data sharing protocols.

3.6 For matters relating to Ionising Radiation (Medical Exposure) Regulations 2017 and Ionising Radiation Regulations 2017, see **Appendix 2**.

Incident investigation

3.7 Where a work-related death occurs, the police take primacy initially in the investigation in accordance with the [Work Related Deaths Protocol \(WRDP\)](#) and the associated [Practical Guide](#). The police / Crown Prosecution Service (CPS) are responsible for the investigation and prosecution of certain offences. This includes individual or corporate manslaughter, ill treatment or wilful neglect and extends to cases of theft in an abuse case. HIW or HSE will notify them of such incidents and work with them in accordance with the WRDP and this MoU.

3.8 Where primacy for investigation into work-related death or serious harm needs to be passed from the police, a decision will be made as to whether HIW or HSE assumes

primacy for the investigation (see **Annex A** for Responsibilities and functions of HIW and HSE). The flowchart in **Annex B** is provided to assist in making such decisions. **Annex C** sets out the partnership working arrangements between HIW and HSE which service to facilitate effective information sharing and collaboration.

Strategic collaboration and supporting improvement

3.9 HIW and HSE will have regard to the circumstances in which their objectives may be best served by collaboration. Each organisation will seek to give consideration to the other when planning their work programmes and identify any possibilities for joint working.

3.10 They may, by agreement, undertake joint inspection, investigation or other work. Throughout such work HIW and HSE will retain and act in accordance with their own statutory powers. This work may include joint reviews, site visits, and coordination of any follow up action planning to address any recommendations.

Liaison for individual incidents

3.11 Where there is uncertainty about jurisdiction the relevant organisations will:

- determine who should have primacy for any action and whether joint or parallel action will be conducted;
- keep a record of this decision and agree criteria for review, if appropriate;
- designate appropriate contacts within each organisation to establish and maintain any necessary dialogue throughout the course of the action; and,
- keep dutyholders / providers, injured parties and appropriate relatives informed accordingly.

Referral of concerns to professional bodies

3.12 HSE and HIW have Memoranda of Understanding (MoU) with some professional bodies. Where HSE does not have a MoU in place, HSE will liaise, where appropriate, with HIW to get advice on a relevant contact within the relevant professional body.

Cross border issues (e.g. commissioning)

3.13 HSE is a GB regulator and is not confined to border constraints between Wales and the rest of GB. HIW's remit relates to Wales. In England, CQC has powers in respect of patient safety so where care is commissioned from England into services in Wales, HSE/HIW will need to liaise with CQC to address any commissioning issues. Likewise, where care is commissioned from Wales into England and HSE or HIW have intelligence of poor compliance or standards, each organisation will need to liaise with CQC to share intelligence where appropriate.

4 Resolution of issues

4.1 Any disagreement between HIW and HSE will normally be resolved at a working level. If this is not possible, it may be escalated through those responsible for the management of this MoU to ensure a mutually satisfactory resolution.

5 Duration and review of this Agreement

5.1 This agreement will be regularly reviewed every two years or more frequently if required, to reflect feedback from operational staff, lessons learnt from implementation and the impact of any changes in legislation.



Dr Kate Chamberlain
Chief Executive
Healthcare Inspectorate Wales



Samantha Peace
Director of Field Operations
Health & Safety Executive

Annex A

Responsibilities and functions of HIW and HSE

- 1 Healthcare Inspectorate Wales (HIW) and the Health and Safety Executive (HSE) acknowledge the responsibilities and functions of each other and will take account of these when working together.

Role of Healthcare Inspectorate Wales (HIW)

- 2 HIW is the independent inspectorate and regulator of healthcare in Wales.
- 3 HIW carries out its functions on behalf of Welsh Ministers and, although part of the Welsh Government, protocols have been established to safeguard its operational autonomy. HIW's main functions and responsibilities are drawn from the following legislation:
 - Health and Social Care (Community Health and Standards) Act 2003;
 - Care Standards Act 2000 and associated regulations
 - Mental Health Act 1983 and the Mental Health Act 2007
 - Statutory Supervision of Midwives as set out in Articles 42 and 43 of the Nursing and Midwifery Order 2001
 - Ionising Radiation (Medical Exposure) Regulations 2017 and Amendment Regulations 2018.
- 4 HIW's primary focus is on:
 - Making a significant contribution to improving the safety and quality of healthcare services in Wales
 - Improving citizens' experience of healthcare in Wales whether as a patient, service user, carer, relative or employee
 - Strengthening the voice of patients and the public in the way health services are reviewed
 - Ensuring that timely, useful, accessible and relevant information about the safety and quality of healthcare in Wales is made available to all.
- 5 HIW's core role is to review and inspect NHS and independent healthcare organisations in Wales to provide independent assurance for patients, the public and others that services are safe and of good quality. Health services are reviewed against a range of published standards, policies, guidance and regulations. As part of this work HIW will seek to identify and support improvements in services and the actions required to achieve this. If necessary, HIW will undertake special reviews and investigations where there appears to be systematic failures in delivering healthcare services, to ensure that rapid improvement and learning takes place. In addition, HIW is the Local Supervising Authority for the statutory supervision of midwives in Wales.

- 6 HIW’s website provides more information about what HIW does, [how it decides what to do](#) and its responsibilities. HIW has a different role in regard to either NHS or Independent healthcare settings. HIW is the regulator of independent healthcare and responds to [non-compliance](#) in these settings with the various regulations.

Role of the Health and Safety Executive (HSE)

- 7 The Health and Safety Executive (HSE) is an enforcing authority responsible for the regulation of health and safety at work in Great Britain and was established by the Health and Safety at Work etc Act 1974 (HSWA). HSE is a non-departmental public body with Crown status, sponsored by the Department for Work and Pensions (DWP) and accountable to its ministers.
- 8 HSE also investigates incidents and concerns about health and safety practices and develops new or revised health and safety legislation and codes of practice.
- 9 HSE regulates health and safety across a range of sectors and industries including major hazard sites such as offshore gas, oil installations and onshore chemical plants through to more conventional sites, quarries, farms, factories, waste management sites and hospitals. HSE and LA are co-regulators of health and safety in the workplace. This includes private or publicly owned health and social care settings in Great Britain. HSE inspects, investigates and where necessary takes enforcement action. HSE regulates residential nursing care and local authority (LA) provision.

Policy and procedures

- 10 To enable HSE to conduct its functions in an open and transparent manner all of the operational procedures that it works to, plus the associated internal guidance and instructions, are publicly available on its [website](#).

Decisions to investigate accidents to non-employees, including patients

- 11 As part of Operational Procedures for Investigation, HSE uses a published [incident selection criteria](#) for selecting which incidents should be selected for investigation by an inspector.
- 12 HSE has a [HSWA section 3 enforcement policy](#) about whether or not specific accidents to non-employees (e.g. patients) should be investigated and associated guidance on [priorities for enforcement of section 3](#), which includes situational examples covering various industry sectors, including health and social care, to assist in decision making.
- 13 The guidance states:
HSE does not, **in general**, investigate matters of clinical judgement or matters related to the level of provision of care. Other legislation and regulatory bodies deal with these issues. Examples of ‘provision of care’ include situations where

poor hydration, poor nutrition or the development of pressure ulcers was the primary cause of death.

- 14 In Wales, HSE deals with the major non-clinical risks to patients such as trips and falls, scalding, electrical safety etc; and with some aspects of risks that apply to both staff and patients alike, such as manual handling. Such incidents are normally reported to HSE under the [Reporting of Incidents, Diseases, Dangerous Occurrences Regulations 2013 \(RIDDOR\)](#), and HSE follows its published [incident selection criteria](#) when deciding whether to investigate. In England from April 2015, new enforcement powers meant that CQC became the lead regulator for patient / service user health and safety matters.
- 15 In addition to this general policy, HSE's [who regulates health and social care](#) web page also provides specific guidance on the regulation of health and social care.

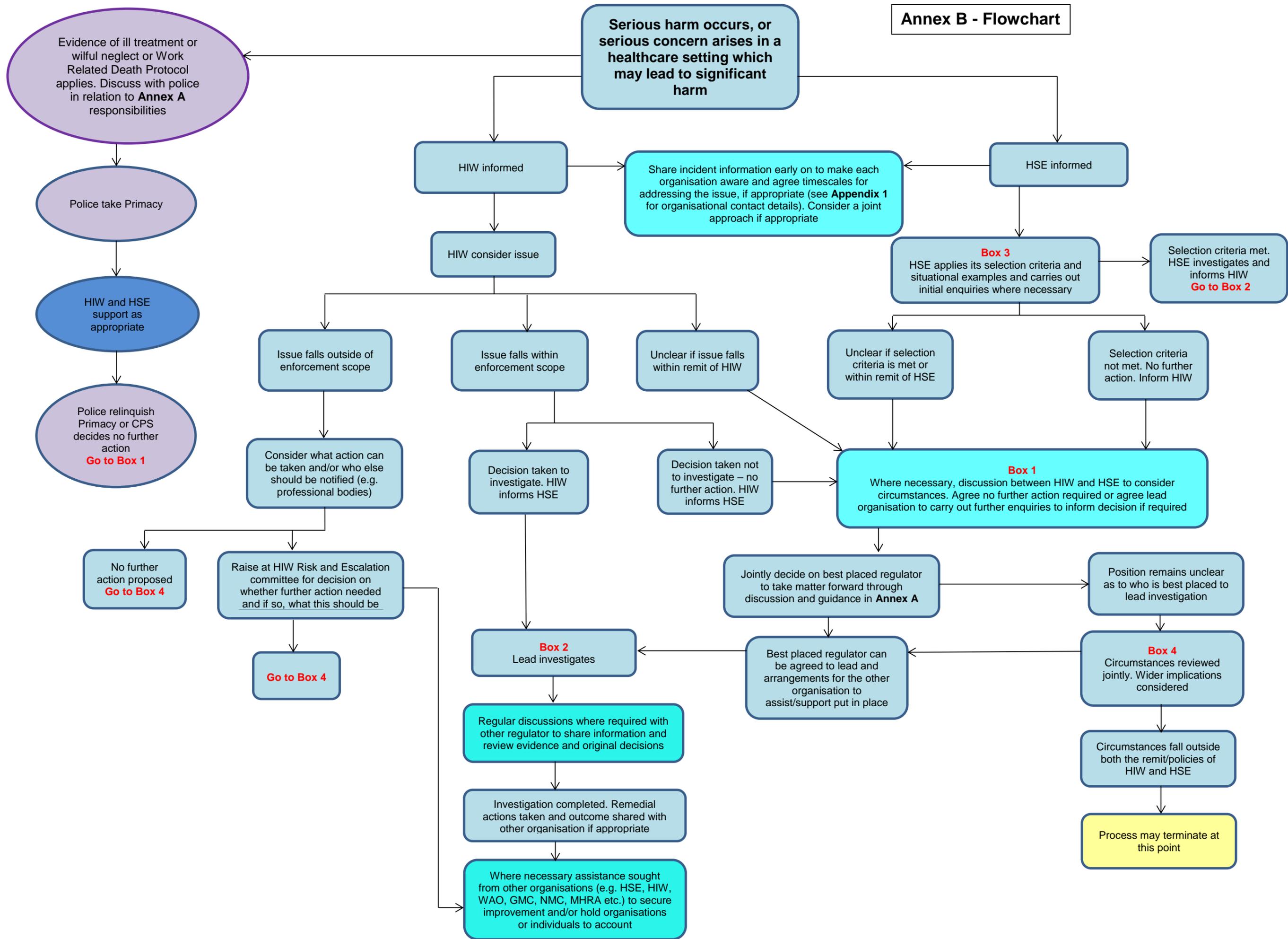
Enforcement Policy Statement

- 16 HSE has prepared and published an [Enforcement Policy Statement](#) (EPS) which sets out the general principles and approach which HSE staff, mostly inspectors, are expected to follow when taking enforcement decisions. The EPS covers areas such as the purpose and method of enforcement, the principles of enforcement, investigation, prosecution and death at work.

Regulatory powers – improvement, investigation and enforcement

- 17 The [duties of employers](#) and powers of HSE are laid out in [HSWA](#) and its relevant statutory provisions. [Section 20 of HSWA](#) sets out powers of inspectors.
- 18 Where there is evidence of poor compliance or serious harm (which meets its selection criteria) HSE has recourse to regulatory powers including serving enforcement notices and undertaking prosecutions against individuals or corporate bodies. Further information is available on HSE's website at: <http://www.hse.gov.uk/enforce/enforcement.htm>.

Annex B - Flowchart



Annex C

Partnership Working

While this MoU sets out the guiding principle of information and incident sharing, there are also some specific activities which will facilitate the partnership between HIW and HSE:

Healthcare Summits:

HIW host a Healthcare Summit every 6 months, which focuses on the sharing of intelligence about each Health Board. Attendees include professional regulators, performance bodies and the Community Health Councils. HSE are active members of this Summit and can present their findings to HIW and the other attendees.

Regular engagement activities

In between each Healthcare Summit, representatives from HIW and HSE will meet, as appropriate, to discuss any specific issues or concerns they may have about specific settings or incidences. The focus of this engagement will be to:

- Share information about specific concerns or incidences that are relevant to the other organisation
- Facilitate joint planning of inspection, investigation and review activity
- Discuss any incidents that have been raised by either organisation

Appendix 1 - Lead contacts Incidents and concerns

HIW

Healthcare Inspectorate Wales
Rhydycar Business Park
Merthyr Tydfil
CF48 1UZ
Tel: 0300 062 8163

HSE:

For routine concerns identified by HIW where there is **no imminent risk** and where HSE is the enforcing authority for health and safety contact:

Concerns Team

Tel: 0300 0031647
or complete an [online request form](#)

For specific incidents where **imminent risk** has been identified in the following LA areas and where HSE is the enforcing authority for health and safety, contact may need to be made directly with HM Principal Inspectors for the relevant geographical areas:

North Wales (Wrexham, Flintshire, Denbighshire, Conwy, Gwynedd, Anglesey, Powys)
Contact HSE Wrexham: Tel: 0203 028 5080

South West Wales (Pembrokeshire, Carmarthenshire, Ceredigion, Swansea, Bridgend, Neath Port Talbot, Merthyr, Rhondda Cynon Taf)
Contact HSE Cardiff: Tel: 0203 028 2260

South East Wales (Cardiff, Caerphilly, Newport, Torfaen, Vale of Glamorgan, Blaenau Gwent, Monmouthshire)
Contact HSE Cardiff: Tel: 0203 028 2260

HIW/HSE contact for MoU management and information sharing queries:

HIW

Partnerships, Intelligence and Methodology Team
Email: hiw.pim@gov.wales
Healthcare Inspectorate Wales
Rhydycar Business Park
Merthyr Tydfil
CF48 1UZ
Tel: 0300 062 8163

HSE

Wales Devolved Nations Team
Health and Safety Executive
Government Buildings – Phase 1
Ty Glas, Llanishen,
Cardiff
CF14 5SH
Tel: 020 3028 2260

Appendix 2 – IR(ME)R / IRR reporting

Ionising Radiation (Medical Exposure) Regulations 2017 Ionising Radiation Regulations 2017

Information Sharing

| Dataset | Lead Organisation | Description | Frequency / Timing |
|---------------------------------------|--------------------------|--|---|
| IR(ME)R Incident Reports | HIW | IR(ME)R incident reports reported to the Welsh Government | Contact HSE only if relating to health and safety and/or IRR17 issues |
| IRR17 Incident Reports | HSE | IRR17 incident reports reported to HSE. In relation to employees and/or other persons not subject to medical examination | Contact HIW only if relating to medical equipment failure or patient exposure |
| IR(ME)R / IRR Self-Assessment Returns | HIW | If areas of concern from completed self-assessments relate to health and safety and/or IRR17 incidents | Contact HSE following return of completed self assessment |
| IR(ME)R Inspection Feedback | HIW | If areas of concern following site visits relate to health and safety and/or IRR17 incidents | Contact HSE following site visit |
| IRR17 Inspection Feedback | HSE | If areas of concern following site visits relate to IR(ME)R, medical equipment failure and/or the quality and safety of Welsh healthcare | Contact HIW following site visit |

HSE Contact: irrnot@hse.gov.uk

HIW Contact: IRMERIncidents@gov.wales