MEMORANDUM OF UNDERSTANDING FOR THE PROVISION OF WORK BY THE HEALTH AND SAFETY EXECUTIVE BUILDING SAFETY REGULATOR IN CONNECTION WITH THE CARRYING OUT OF CERTAIN FUNCTIONS UNDERTAKEN BY HSE UNDER PART 2A OF THE BUILDING ACT 1984 (THE ACT) ON BEHALF OF THE WELSH MINISTERS.

This Memorandum of Understanding (MoU) is between the following Parties:

(1) The Health and Safety Executive (HSE) and

(2) The Welsh Ministers, together referred to below as the "**Parties**"

1. Introduction and Context

1.1 The purpose of the MoU is to set out the arrangements for governance, funding and reporting in relation to the carrying out of certain functions under Part 2A of the Act for regulation of the building control profession in Wales, which are to be undertaken by the HSE Building Safety Regulator on behalf of the Welsh Ministers.

1.2 Part 2A provides that HSE is the regulatory authority for the building control profession in relation to England and the Welsh Ministers will be the regulatory authority for the building control profession in relation to Wales. In this MoU "regulatory authority" means the HSE or the Welsh Ministers (as the case may be) in its capacity as regulatory authority in relation to Part 2A functions.

1.3 There is a duty on the regulatory authority to establish and maintain a register of building inspectors; and prepare and publish a code of conduct for registered building inspectors. The regulatory authority is also required to establish and maintain a register of building control approvers; and prepare and publish professional conduct rules applying to registered building control approvers. In addition, the Act permits the regulatory authority to make rules applying to local authorities and registered building control approvers (together, Building Control Bodies) in relation to their exercise of building control functions.

1.4 HSE and the Welsh Government have prepared a related Agency Agreement which will come in to effect on the date of its final signature, through which the HSE will perform certain functions relating to the regulation of the building control profession on behalf of the Welsh Ministers. The Agency Agreement is at Annex A.

1.5 This MoU is not intended to create a binding legal obligation between the Parties.

2. Duration

2.1 This MoU takes effect on the date of the last signature. This MoU will continue until it is terminated in accordance with paragraph 11.1.

3. Purpose

3.1 This MoU provides a framework for the governance, funding and reporting in relation to the functions which will be undertaken by the HSE on behalf of the Welsh Ministers in relation to regulation of those subject to registration, and the undertaking of enforcement action. An Agency Agreement has been drafted and once signed, the Parties will continue to meet regularly to discuss any questions and issues which may from time to time arise.

4. Governance and reporting

4.1 The effectiveness of the working relationship between HSE and the Welsh Ministers will be supported by regular contact, either formally or informally.

4.2 Meetings to discuss policy and operational issues of interest to both organisations will take place between relevant colleagues from both organisations as appropriate – initially these will be monthly meetings for the first 6 months, and then reviewed at the 6 month point to consider whether these can be reduced to quarterly meetings if all Parties are satisfied at that point.

4.3 HSE will report on the delivery of outcomes on a regular basis to the Welsh Ministers.

4.4 Any disagreement between HSE and the Welsh Ministers will normally be resolved at working level. If this is not possible then then it must be escalated appropriately within the two organisations to reach a mutually satisfactory solution. Both organisations should aim to resolve disagreements in a reasonable time.

5. Financial arrangements

5.1 The Welsh Ministers will meet all costs incurred by HSE in connection with the work carried out under this MoU which are not cost recoverable by HSE via a charging scheme. For example, but not limited to, translation costs, and building of the digital system.

5.2 HSE will provide the Welsh Ministers with an estimate of the costs associated with conducting the work and agree a budget. Should further funding be required beyond this budget, then the Parties will meet to assess their next steps.

5.3 Invoices will be submitted by HSE to the Welsh Ministers monthly in arrears, except for the final month in a financial year, which may be submitted in advance on the basis of estimated costs, for payment within that financial year. Invoices will provide a breakdown of the time spent and costs incurred under this MoU.

5.4 In the event that this MoU is terminated, HSE will submit an invoice to the Welsh Ministers for any outstanding costs incurred as a result of time spent on work under this MoU, if any, up to the termination date. This final invoice will be certified by HSE as an accurate statement of the costs properly incurred under this MoU.

6. Welsh Ministers ability to comment on certain functions

6.1 Welsh Ministers will retain the ability to comment on the exercise of the functions, namely Section 58C(2) (Classification), Section 58C(7) (Availability of register to the public), Section 58O(2)(b) (criteria for registration), Section 58O(3)(b) (conditions for registration).

7. Confidentiality and Information Sharing

7.1 Each Party to this MoU will:

- Understand and acknowledge that it may receive or become aware of confidential information belonging to the other Party whether in the course of the performance of the obligations under the MoU or otherwise.
- Understand their responsibilities with respect to the processing of personal data and special categories of personal data and agree to fully comply with UK Data Protection legislation (see Annex A). Provide to the other Party any information in its possession that may be reasonably requested by the other, subject to necessary confidentiality constraints, safeguards and statutory rules on disclosure.

- Ensure that data is managed and controlled in accordance with the requirements of the retained EU law version of the General Data Protection Regulation (EU 2016/679) (UK GDPR), the Data Protection Act 2018, the Freedom of Information Act 2000, and the Environmental Information Regulations 2004. Subject always to ensuring compliance with any time constraints contained in the relevant legislation, consult the other Party before making any disclosures of information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.
- Seek the approval of the other Party before externally publishing any information resulting from the use of information received from the other Party, and such approval will not be unreasonably withheld.

7.2 Subject always to paragraphs 7.3 and 7.4 below, each Party shall treat all confidential information belonging to the other Party as confidential and safeguard it accordingly and shall not disclose any confidential information belonging to the other Party to any other persons without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the MoU or where disclosure is otherwise expressly permitted by the provisions of the MoU.

7.3 The Parties acknowledge and agree that the Welsh Ministers may disclose commercial information for purposes connected with the exercise of the Welsh Ministers' functions, including: (a) any audit or examination of the Welsh Government's accounts or the use of its resources, and/or (b) scrutiny by the Senedd (or any of its committees or sub-committees) of the exercise of the Welsh Ministers' functions.

7.4 Nothing in this MoU shall prevent either Party from disclosing any information required to be disclosed pursuant to any applicable law, government regulation or decision of any court or tribunal of competent jurisdiction.

7.5 The obligations of confidentiality imposed by the paragraphs above continue in force notwithstanding termination of this MoU. They do not apply to any confidential information to the extent that it is required to be disclosed by a requirement of law placed upon the Party making the disclosure (including any requirements for disclosure under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 or in accordance with HSE's policy on open government).

7.6 The information handled under this MoU is subject to any government requirements as to transparency which may apply to the Parties from time to time.

7.7 Both parties will agree a Data Sharing Agreement that will ensure that the parties comply with their UK General Data Protection Regulation (GDPR), the Data Protection Act 2018 and any other relevant legislation, codes of practice, frameworks or other policies relating to confidential personal information. The Data Sharing Agreement will rely on Article 6(1)(c) UK GDPR, compliance with a legal obligation to which the controller is subject, as the legal basis for the processing of personal data.

7.8 The Data Sharing Agreement must be signed by both parties before any sharing or processing of data under this MoU can commence.

7.9 Where HSE uses third-parties in the delivery of this MoU and the related Agency Agreement, such as for assessing the competency of those making applications to be a registered building inspector, it will ensure it has entered into suitable data protection contracts with the third parties to provide equivalent protections as the Data Sharing Agreement

7.14 Information Disclosure

- Either party to this MoU may receive a request for information from a member of the public or any other person under the various pieces of information disclosure legislation (Environmental Information Regulations 2004 (EIRs), the Freedom of Information Act 2000 (FOIA) etc.).
- The recipient party to any request for information is ultimately responsible for making the final decision on disclosure. All requests for information will be considered on case-by-case basis, and all resulting disclosures must be lawful. The default position for both Parties is to disclose unless one or more absolute exemptions (as defined by the appropriate legislation) apply to a specific request. Where the recipient party wishes to apply a qualified exemption (as defined by the appropriate legislation) to all or part of a request, they must ensure this is validated by a documented public interest test.
- If a party receives a request for information that has been supplied by the other party ("the information supplier"), the party that has received the request for information will consult the information supplier as early as possible and before any information is disclosed in response to the request to enable sufficient time for the views of the information supplier, including

  any objections to disclosure, to be taken into account when determining whether the information is to be disclosed or withheld.
- If a party receives a request for information that it holds and knows or believes the information is held by the other party, the party that received the request will consult the other party as early as possible and before any information is disclosed in response to the request. The purpose of this consultation is to ensure that the party that received the request is able to share any concerns about information that might be disclosed to the requester, that the party holding the information is able to take those concerns fully into account in its decision-making, and that the Parties can co-ordinate their handling of requests.
- For clarity, requests for information from a member of the public or any other person under the EU General Data Protection Regulation 2016/679 (GDPR) and the Data Protection Act 2018 (DPA) will be managed in line with the terms of the Data Sharing Agreement to be agreed by the Parties.

8. Resolution of Disputes

8.1 Should a dispute of any kind whatsoever arise between the Parties in connection with or arising out of the MoU the Parties shall continue to perform the services and obligations outlined in the MoU with all due diligence unless otherwise agreed in writing.

8.2 All disputes between the Parties arising out of or relating to this MoU shall be initially dealt with at official level with any dispute referred to any of the Parties in the first instance.

8.3 If a dispute cannot be resolved within 14 days, it shall be escalated to the Chief Inspector of Buildings of HSE and Director of Climate Change, Energy and Planning of the Welsh Government to resolve.

9. Conflict of Interest

9.1 The Parties are responsible for ensuring that no conflict of interest arises in connection with the policy development work to be carried out under this MoU. All Parties should be consulted if there is any uncertainty about whether any such conflict of interest may exist or arise, and each Party shall act on any reasonable advice, recommendation, or requirement on such matters.

10. Review

10.1 From the date that this MoU takes effect, it will be reviewed quarterly by the responsible officials to ensure the purpose of the MoU is being achieved.

10.2 This MoU will be kept under review by both Parties to identify any new opportunities for joint working, should they arise. Should the MoU require amendment to factor in these new opportunities, it will be through mutual agreement in writing.

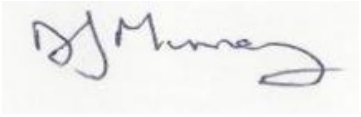
11. Termination

11.1 This MoU shall terminate on the expiry of six months' written notice of termination given by either party to this agreement to the other party, or such shorter period as agreed in writing by the Parties.

12. Signatories

The duly authorised representatives of the Parties affix their signatures below:

Signed on behalf of Sarah Albon, Chief Executive, Health & Safety Executive:



David Murray

Director of Finance & Corporate Service

Health & Safety Executive

Signed: 25/01/2024

John Howells

Director for Climate Change, Energy and Planning

Welsh Government