



## **Memorandum of Understanding Between**

### **Health and Safety Executive and Healthcare Improvement Scotland**

#### **Introduction**

1. This Memorandum of Understanding (MoU) is intended to facilitate effective working relationships between the Health and Safety Executive (HSE) and Healthcare Improvement Scotland (HIS). The purpose of the MoU is to help ensure that there is effective co-operation and co-ordination of respective responsibilities to protect people from harm – under the regulation of work-related health and safety for workers and members of the public and the arrangements in Scotland to assure the quality and safety of healthcare.
2. The MoU has been developed to assist in:
  - clarifying roles and responsibilities;
  - co-ordination of responses on issues or to incidents that have resulted in preventable service user deaths or serious injuries and where a joint approach may be advantageous;
  - appropriate and timely sharing of relevant information to support each organisation in carrying out its respective functions;
  - liaison arrangements to learn from events and share information on strategic developments.
3. Health and safety is a reserved matter under the terms of the Scotland Act 1998. This agreement does not transfer regulatory or scrutiny responsibility from one body to another nor does it alter reserved or devolved government responsibilities.
4. The key areas covered by this MoU are:
  - roles of HIS and HSE;
  - information sharing and disclosure;
  - jointly responding to cross-cutting issues;
  - review of liaison arrangements; and
  - nominated contacts (annex A – closed).

#### **Statutory roles**

##### Healthcare Improvement Scotland (HIS)

5. HIS was established in 2011 as a health body, constituted by the National Health Service (Scotland) Act 1978, as amended by Public Service Reform Scotland Act 2010 and the Public Bodies (Joint Working) Act 2014. HIS's key statutory duties are as follows:
  - a general duty of furthering improvement in the quality of health care;
  - a duty to provide information to the public about the availability and quality of services provided under the health service;
  - when requested by the Scottish Ministers, a duty to provide to the Scottish Ministers advice about any matter relevant to the health service functions of HIS.

6. Specifically, HIS is to exercise the following functions of Scottish Ministers
  - to support, ensure and monitor the quality of healthcare provided or secured by the health service;
7. In furtherance of HIS's duty to improve the quality of health care, these functions – broadly, quality assurance (through inspections and reviews), supporting the engagement of people and communities, and the provision of evidence (including advice, standards and guidelines) – are co-located with the delivery of improvement support.
8. The diversity of functions within HIS requires a differentiated approach. In undertaking assessments of the quality of care, HIS will operate independently of Scottish Government, Health Boards and Integration Authorities. In relation to other functions, HIS will work in partnership with the Scottish Government and other stakeholders. A close, mutually supportive working relationship, is essential in order to deliver improvement.
9. HIS has the following statutory powers:
  - powers of access and right of entry (for the purposes of inspection) in relation to the health service and independent healthcare services;
  - the power to direct a Health Board to close a ward to new admissions where there is a serious risk to the life, health or wellbeing of persons;
  - regulatory powers, including enforcement in relation to the independent healthcare sector;
  - regulatory powers, including enforcement, in relation to patients', comforters' and carers' medical exposure to ionising radiation.
10. Where there are no statutory powers of enforcement HIS may publicly escalate serious concerns about a service to Scottish Government in accordance with the agreed escalation process as set out on the [HIS web site](#). This would be undertaken when a lack of progress/response/input has been made by the service provider as a result of the usual HIS processes.
11. HIS has a duty to respond to concerns raised about NHS services by NHS Scotland employees and about independent healthcare providers. All concerns made are subject to a level of assessment and investigation. Details about how complaints can be made and are investigated are set out on the [HIS web site](#).
12. HIS provide healthcare expertise for inspections undertaken by Her Majesty's Inspectorate of Prisons Scotland.
13. HIS Inspection Reports are publicly available on their web site - [HIS website](#)

#### Health and Safety Executive (HSE)

14. HSE is the independent regulator for health and safety in the workplace across Great Britain. This includes private or publicly-owned healthcare settings in Scotland.
15. HSE enforces the Health and Safety at Work etc. Act 1974 (HSWA) and associated legislation throughout Great Britain. HSWA sets out general duties, which employers, the self-employed and people in control of premises have towards workers and other people – including healthcare service users - who could be affected by work activities.
16. HSE conducts inspections of healthcare premises from time to time to address risks to the health and safety of employees that have been identified as a priority. Inspectors have legal powers to enter premises and to talk to people during inspections and investigations of reported incidents. They have a variety of enforcement tools to secure immediate and sustained compliance with the law, ranging from the provision of advice to the serving of enforcement notices and the reporting of offences to the Crown Office and Procurator Fiscal Service (COPFS).

17. Reportable incidents are notified to HSE under RIDDOR<sup>1</sup> and HSE may be informed of other incidents by the Crown Office and Procurator Fiscal Service. HSE applies incident selection criteria<sup>2</sup> to decide what to investigate. HSE will not - in general - investigate or act in relation to service users where other regulators have patient / service user safety within their remit. HSE may however investigate, in accordance with published criteria, where there is evidence of systemic health and safety management failings or when established standards have not been followed, except those that may apply to clinical treatment or patient care that fall within the vires of bodies such as the General Medical Council or Nursing and Midwifery Council.
18. This division of responsibilities between HSE and HIS (and other professional bodies in healthcare) is important so that the boundaries between statutory roles are respected, specialist expertise is deployed appropriately, that improvement in quality of care across healthcare services is achieved and, if necessary, justice is secured for victims of harm and their families.

#### Information sharing and disclosure

19. In general, where HSE and HIS agree that sharing of information is necessary for meeting either organisation's remit to protect health and safety more effectively, they should do so promptly. Disclosure must follow data protection legislation. If HSE or HIS receive a request for information originating from the other body, they will consult the other before disclosure.
20. During inspections, staff from either HIS or HSE may come across matters of evident concern (MEC<sup>3</sup>), which due to their seriousness, would warrant being reported to the other body. Contacts to exchange information are given at Annex A.
21. If HIS staff wish to report MECs they should first contact the nominated Senior Inspector in HIS who will assess the information and contact the relevant HSE Principal Inspector, if appropriate to do so.
22. If HSE inspectors wish to report MECs they should first contact the relevant Principal Inspector who will assess the information and contact the appointed HIS lead, if appropriate to do so.
23. So far as is practicable, both organisations will inform the healthcare provider at the time of their concerns and their intention to notify the other organisation.
24. HSE and HIS will ensure that their staff are made aware of this MoU and the working arrangements to share information.

#### Jointly responding to cross-cutting issues

25. There may be circumstances where the action required following an incident, or the identification of an issue, cuts across the responsibilities of HIS and HSE and would benefit from the expertise of both organisations. Should either HSE or HIS consider it appropriate, contact will be made with the other party to agree the approach to be taken. Details of initial points of contact are in Annex A.
26. For more serious and complex cases, consideration should be given to holding a meeting between both organisations to consider the following issues:
  - reasons for calling the meeting, including an explanation from the organisation responsible for the meeting;
  - nature of the issue or incident;
  - role/responsibilities of the police (where applicable);

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<sup>1</sup> RIDDOR – Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013

<sup>2</sup> <http://www.hse.gov.uk/foi/internalops/og/ogprocedures/investigation/incidselcrits.htm>

<sup>3</sup> HSE defines Matters of Evident Concern as those matters that create a risk of serious personal injury or ill-health and which are observed (i.e. self-evident) or brought to the attention of HSE staff. Matters of major potential concern are those which have a realistic potential to cause either multiple fatalities or multiple cases of acute or chronic ill-health.

- securing and preserving evidence;
- sharing information, providing disclosure does not jeopardise any ongoing investigation or future proceedings;
- contacting relatives where appropriate;
- the need to inform and involve other bodies, for example the Nursing and Midwifery Council;
- making and keeping a record of key decisions/discussions;
- co-ordination of public communications.

27. The steps outlined above provide a framework for co-operation and liaison, which should resolve any conflict or confusion of responsibility and avoid compromising any criminal investigation.

Liaison and review

28. Liaison meetings will be held every six months between HSE and HIS. The purpose of these meetings will be to discuss issues of mutual interest, consider the value of joint events for staff, discuss strategy and change in the healthcare sector, and monitor the arrangements for information sharing.

29. The effectiveness of these arrangements will be subject to biennial review carried out at Director Scotland level for HSE and Chief Executive level for HIS to agree any amendments to ensure that it remains relevant and up to date.

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**Director**  
**HSE Scotland**



**24<sup>th</sup> April 2019**

**Robbie Pearson**  
**Chief Executive**  
**NHS Healthcare Improvement Scotland**



**22<sup>nd</sup> April 2019**

Revision History	
Date	
03/2012	First published
04/2019	Full review and update