

**Provision of support in respect of Northern Irish Market Surveillance and Product Safety for  
Workplace Goods**

**Memorandum of Understanding between the Health and Safety Executive (GB) and the Health and  
Safety Executive Northern Ireland on the provision of support and services to the Health and  
Safety Executive Northern Ireland**

**INTRODUCTION**

- 1.1** This document forms a Memorandum of Understanding made between the Health and Safety Executive (HSE) and HSE Northern Ireland (HSENI), together “the Parties”. It outlines how both parties will cooperate in respect of Market Surveillance and Product Safety for Workplace Goods and provides a framework whereby HSE will provide technical support/expertise and advisory services to HSENI, as necessary.
- 1.2** HSE is an executive non-departmental public body sponsored by the Department for Work and Pensions. HSE is the lead body responsible for the promotion and enforcement of health and safety at work standards in England, Scotland and Wales.
- 1.3** HSENI is an executive non-departmental body sponsored by the Department for the Economy. HSENI is the lead body responsible for the promotion and enforcement of health and safety at work standards in Northern Ireland.
- 1.4** This agreement is made between HSE and HSENI, respectively, under Section 13 of the Health and Safety at Work etc. Act 1974 and Article 15 of the Health and Safety at Work (Northern Ireland) Order 1978.
- 1.5** Public authorities, such as HSE and HSENI, are responsible for monitoring the safety and conformity of products against product supply law. This is known as market surveillance.
- 1.6** HSE is responsible for market surveillance of most products used in the workplace in England, Scotland and Wales. HSENI is responsible for market surveillance of most products used in the workplace in Northern Ireland.
- 1.7** This MoU concerns the following product supply legislation, for which HSE and HSENI act as the market surveillance authorities:
- 1.8**
  - a. The Electrical Equipment (Safety) Regulations 2016
  - b. The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 2016
  - c. The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017
  - d. The Gas Appliances (Enforcement) and Miscellaneous Amendments Regulations 2018
  - e. The Lifts Regulations 2016
  - f. The Pressure Equipment (Safety) Regulations 2016
  - g. The Personal Protective Equipment (Enforcement) Regulations 2018
  - h. The Simple Pressure Vessels (Safety) Regulations 2016
  - i. Supply of Machinery (Safety) Regulations 2008
  - j. Cableway Installations Regulations 2018

**2. Parties**

**2.1** The Health and Safety Executive (“HSE”) and the Health and Safety Executive Northern Ireland (“HSENI”).

### **3. Purpose**

**3.1** This Memorandum of Understanding (“this Memorandum”) provides a framework for joint-cooperation and the provision of support by HSE to HSENI in respect of Northern Irish market surveillance and product safety for workplace goods and the costs associated with the provision of those services.

**3.2** The level and costs of the support are listed in Annex 2 to this Memorandum entitled “Financial Arrangements”.

### **4. Duration**

**4.1** This Memorandum applies for the period 01 01 2021 to 01 01 2026, or unless otherwise revised, terminated or suspended by either party.

### **5. Principal Contact Points**

**5.1** The Engagement & Policy Division of HSE is responsible for co-ordination and liaison with HSENI on the services covered by this Memorandum.

**5.2** The HSE Principal Contact Point (PCP) shall be the Safety Unit Policy team; ([Safety.Unit@hse.gov.uk](mailto:Safety.Unit@hse.gov.uk)). The HSENI PCP shall be: [productsafety@HSENI.gov.uk](mailto:productsafety@HSENI.gov.uk).

### **6. Reviews, Revisions, Suspension and Terminations**

**6.1** This Memorandum will be regularly reviewed by the parties, and at least every 2 years, or at the request of either party.

**6.2** This Memorandum may be revised or suspended or terminated at any time by mutual agreement by both parties. Changes to this Memorandum must be approved by both parties.

**6.3** If any part of this Memorandum is revised or suspended the parties will agree a revised programme for the delivery of the affected services, should that programme need revision.

**6.4** The costs associated with any revision, suspension or termination to this Memorandum will be agreed by both parties.

**6.6** The parties will give each other a minimum of 6 months’ written notice of the termination of the services in this Memorandum.

### **7. Emergencies**

**7.1** When HSE resources are required to meet other priorities as a result of a major incident, HSENI will be notified of the effects.

### **8. Authorisations and Appointments**

**8.1** Support will be provided by HSE appointed inspectors or HSE staff other than appointed inspectors, such as, policy staff.

### **9. Return of Warrants**

**9.1** HSENI will warrant relevant HSE staff under the Health and Safety at work (Northern Ireland) Order 1978, to indemnify HSE staff and for the purpose of gaining access to workplaces in Northern Ireland.

**9.2** All warrants will remain the property of HSENI.

### **10. Indemnity in respect of Appointed Persons**

**10.1** HSENI will indemnify those appointed HSE Inspectors or HSE policy staff (who will remain HSE employees) for any losses incurred while lawfully and honestly performing services under this Memorandum.

**10.2** HSENI shall accept full responsibility for anything contained in any report of recommendation made and for any requirements imposed by an Inspector arising from, or in consequence of, a visit or inspection in Northern Ireland and for any other thing done or omitted by an Inspector in the exercise of their functions as part of this Memorandum.

### **11. Enforcement Action**

**11.1** HSE staff supporting HSENI shall not take any enforcement action, including the issuing of enforcement notices. Where HSE staff consider that a situation exists where enforcement action may be appropriate, they should approach HSENI which will consider and act accordingly.

### **12. Prosecutions and other Legal Proceedings**

**12.1** HSE staff supporting HSENI shall not institute, in any respect, prosecutions or other legal proceedings. The parties agree that HSE do not have the necessary powers under legislation in NI to be able to take enforcement action. HSE will provide support as requested by HSENI to any investigation, prosecution, or other legal proceedings. This support by HSE shall include (but is not limited to) provision of information, advice, witness statements and giving evidence in court as an expert or otherwise. HSE will provide this support within reasonable timescales and in particular will use their best endeavours to ensure that HSENI meets prescribed timescales.

### **13. Quality Assurance and Monitoring Arrangements**

**13.1** The parties will undertake a regular quality assurance exercise, reviewing work to assess whether activities have been carried out properly, appropriately and recorded, where necessary, to an acceptable standard. The format and quality of the work for the review to be agreed.

**13.2** HSE will advise HSENI immediately of any difficulties which may prevent the delivery of services to agreed standards, targets or budget.

**13.3** All correspondence between HSE and HSENI relating to this Memorandum should be via the PCPs.

### **14. Services Provided**

**14.1** Examples of the services to be provided and the service standards to be met are set out in Annex 1 to this Memorandum entitled "Examples of Services to be provided by HSE".

**14.2** Support may be provided by HSE staff other than appointed inspectors, such as, but not exclusively, in relation to matters of policy. This support is covered by the Memorandum.

**14.3** The level of support will be agreed in the context of available resource and other potential demands in HSE.

### **15. Requesting Support**

**15.1** Support should be requested under this Memorandum through an exchange of emails between the PCPs. The request should include a short-written paragraph of what is required and state the request is being made under this Memorandum.

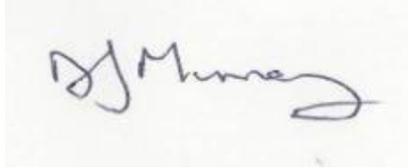
### **16. Financial Arrangements**

**16.1** Where an HSE member of staff has been made available on the basis of this Memorandum, HSE will remain responsible for the payment of that person's remuneration. HSENI shall pay HSE's costs on the basis of travelling and subsistence or other allowances in accordance with the HSE's rules; plus

a flat-rate charge per hour, applied pro rata according to how much of an hour is worked, by HSE inspectors or other HSE staff.

**16.2** The hourly rate to be charged shall be that rate set out for work an inspector or other HSE staff in force at the time.

**16.3** Costs shall be payable within the financial year in which the work is performed. Full details are set out in Annex 2 to this Memorandum.

A handwritten signature in blue ink, appearing to read 'D Murray', on a light-colored background.

**David Murray – Director of Planning, Finance, Procurement (PFPD), Health & Safety Executive (HSE)**

A handwritten signature in blue ink, appearing to read 'Robert Kidd', on a light-colored background.

**Robert Kidd – Chief Executive, Health & Safety Executive for Northern Ireland**

## Annex 1

## Examples of Services to be provided by HSE

Support Function	Type of Support	Frequency of Requirement	Cost Recovery
Provision of general advice relating to product supply legislation & Market Surveillance.	Operational/Operational Policy/Policy	As & when needed	Hourly rate (5 days non-cost recoverable)
Technical specialist expertise	Operational	As & when needed	Hourly rate
Provision of support to HSENI investigation	Operational	As & when needed	Hourly rate
Provision of support to HSENI enforcement activities	Operational	As & when needed	Hourly rate

## Annex 2

### Financial Arrangements

- 1.1** HSENI agree to pay HSE costs for technical support, advice and travel and subsistence, based on inspector or administrative staff hours spent on the work.
- 1.2** Actual costs will be paid based on full economic cost recovery. Costings will be calculated on an hourly basis, using Full Economic Costs (FEC) for the grade of HSE resource involved in delivering the work. Table 1 below sets out the costs for each of the grades for the financial year 2020/21. The costs quoted in Table 1 will be subject to annual review and uplifts.

**Table 1 - Costs**

<b>Resource</b>	<b>Hourly rate (GBP) – Financial Year 2020/21</b>
Principal Inspector (Band 2)	106
Inspector (Band 3)	84
Senior Policy Advisor (Band 3)	84
Policy Advisor (Band 4)	60
Administrator (Band 5)	51

- 1.3** Invoices will be submitted to HSENI quarterly.
- 1.4** HSE will keep and maintain cost records until two years after the completion of the agreed work. These will be available for scrutiny, by prior arrangement, to HSENI auditors acting on their behalf.

**Annex 3**  
**GDPR Article 26, Joint Data Controller Declaration**

**Purpose**

1. The purpose of this annex is to explain the respective roles that HSENI and HSE will play in managing the processing of personal data associated with the terms of this Memorandum of Understanding. HSENI and HSE are considered joint-controllers of the data collected, as both parties (independently) determine the means and purpose of processing personal data as part of the functions defined in this broader MoU.

**Data Protection**

2. HSENI and HSE will comply with all relevant provisions of the Data Protection Act 2018 (and the General Data Protection Regulation). HSENI and HSE will act as joint data controllers, in respect of any personal data pursuant to this MoU; they will only process such personal data to the extent defined in the relevant regulatory framework.
3. Neither HSENI nor HSE will transfer any personal data it is processing outside of the European Economic Area, unless appropriate legal safeguards are in place, such as Privacy Shield or Model Contract Clauses.
4. HSENI and HSE will ensure that they have appropriate technical and organisational procedures in place to protect any personal data they are processing. This includes any unauthorised or unlawful processing, and against any accidental disclosure, loss, destruction or damage. HSENI will promptly inform HSE, and vice versa, of any unauthorised or unlawful processing, accidental disclosure, loss, destruction or damage to any such personal data. Both parties will also take reasonable steps to ensure the suitability of their staff having access to such personal data.

**Specific HSENI Responsibilities**

5. HSENI has the following specific responsibilities:
  - i. Carrying out any required Data Protection Impact Assessment for any element of business or process change
  - ii. Following HSENI Data Security Guidance to ensure that the necessary measures are taken to protect personal data.
  - iii. Ensuring HSENI staff are appropriately trained in how to use and look after personal data and follow approved processes for data handling.
  - iv. Ensuring HSENI staff have appropriate security clearance to handle personal information collected as part of this process.
  - v. Secure transfer of personal data to HSE as necessary for fulfilment of HSE's regulatory functions.
  - vi. Responding to Data Subject Access Requests when and where required.
  - vii. Reporting any data breaches within HSENI to their Data Protection Officer and the ICO (where appropriate).
  - viii. Maintaining any Article 30 processing records for data held on HSENI systems

**Specific HSE Responsibilities**

6. HSE has the following specific responsibilities:

- i. Carrying out any required Data Protection Impact Assessment for any element of business or process change
- ii. Following HSE Data Security Guidance to ensure that the necessary measures are taken to protect personal data.
- iii. Ensuring HSE staff are appropriately trained in how to use and look after personal data and follow approved processes for data handling.
- iv. Ensuring HSE staff have appropriate security clearance to handle personal information collected as part of this process.
- v. Responding to Data Subject Access Requests when and where required in relation to personal data being processed as part of the regulatory function
- vi. Reporting any data breaches to their Data Protection Officer and the ICO (where appropriate)
- vii. Maintaining any Article 30 processing records for data held on HSE systems

### **Individual Rights**

7. GDPR specifies new rights for individuals over the processing of their data. These rights, and the process an individual should follow when making a request, are listed in both HSENI and HSE's privacy notice. Both parties should ensure they consult and comply fully with their respective privacy policies in the event of a Data Subject exercising any of their rights under data protection legislation.
8. In response to any subject access request, HSENI or HSE will undertake a proportionate and reasonable search and respond within one month of the original request.

### **Data breach**

9. HSENI is responsible for reporting any breach occurring within their authority to their Data Protection Officer and the ICO (where appropriate). HSENI will also inform HSE of the breach if there is any direct impact on their staff or wider interest.
10. HSE are responsible for reporting any data breaches within their Authority to their Data Protection Officer and ICO (where appropriate), as well as to HSENI if there is any direct impact on their staff or wider interests.
11. Any personal data breach as defined by GDPR Article 4(12) that meets the relevant threshold criteria will be reported to the Information Commissioners' Office (ICO) within 72 hours of notification. This will include informing the affected data subject should the circumstances warrant it. The appropriate Data Protection Officer (see below) will be responsible for making the report, following consultation their Chief Executive Officer (CEO).
12. If financial penalties are imposed by the Information Commissioner on a party in relation to any data processed under this agreement and if in the view of the Information Commissioner, one party is responsible for the imposition of those penalties, that party shall be responsible for the payment of the penalties imposed.
13. If the Information Commissioner expresses no view as to responsibility, then each party shall bear responsibility for half of the penalty imposed.

14. If either HSE or HSENI are the defendant in a legal claim before a court of competent jurisdiction by a third party in respect of data processed under this agreement, then the party determined by the final decision of the court to be responsible for the damage shall be liable for the losses arising from such damage. Where both parties are liable, the liability will be apportioned between the parties in accordance with the decision of the court. If the court does not apportion liability between the parties then each party shall bear responsibility for half of the penalty imposed, unless it can prove that it is not in any way responsible for the event giving rise to the damage.
15. The provisions of this clause do not prevent the parties coming to a mutual agreement as to the apportionment of financial responsibility for any losses, cost claims or expenses arising from the processing of data under this agreement.

#### **Data retention**

16. HSENI and HSE will retain personal data associated with the terms of this Memorandum of Understanding in accordance with their respective organisational disposal policies. Each party is responsible for ensuring appropriate technical and procedural functions are in place to ensure the secure and timely destruction of personal data.

#### **Information Disclosure**

17. 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 (EU General Data Protection Regulation 2016/679 (GDPR) and the Data Protection Act 2018 (DPA)), Environmental Information Regulations 2004 (EIRs), the Freedom of Information Act 2000 (FOIA) etc.).
18. 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.
19. 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.
20. 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.

**Data Protection Officers**

The contact details of the Joint Controller Data Protection Officers are:

HSENI	HSE
Debby McAllister Data Protection Officer Health and Safety Executive NI 83 Ladas Drive Belfast  Email: DPO@hseni.gov.uk	Sean Egan Data Protection Officer Health and Safety Executive 1.3 Redgrave Court Merton Road, Bootle Liverpool L20 7HS  Email: Data.Protection@hse.gov.uk