# WORKING ARRANGEMENTS PROTOCOL BETWEEN THE HEALTH AND SAFETY EXECUTIVE, LOCAL AUTHORITIES IN SCOTLAND* AND SOCIAL CARE AND SOCIAL WORK IMPROVEMENT SCOTLAND ("Care Inspectorate")

* Although Scottish Local Authorities are not signatories to this protocol, it has been endorsed by the Society of Chief Officers of Environmental Health in Scotland, who support it and will aim to work in accordance with its principles.

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## Introduction, purpose and scope

1 This protocol is not legally binding but is intended to facilitate effective working relationships between the Health and Safety Executive (HSE), Local Authorities (LAs) in Scotland, and Social Care and Social Work Improvement Scotland - "Care Inspectorate" (CI) on areas of mutual interest. The overall aim is to generally improve standards within the care sector by using respective resources and expertise effectively.

2 Health and Safety is a reserved matter under the terms of the Scotland Act 1998 and this protocol does not and is not intended to permit HSE/LAs to transfer their regulatory responsibilities to CI to act in a reserved area.

3 The protocol attempts to assist staff in the respective organisations by setting out the expected arrangements for dealing with various situations, by outlining areas of interaction between HSE, LAs and CI, by clarifying respective roles and responsibilities and by putting in place mechanisms to promote effective working relationships at a local and national level. CI has Memoranda of Understanding (MoU) with most Scottish LAs. There is no conflict between the contents of the MoUs and this protocol, which provides more detail and supplements the information contained in the MoUs in relation to LA Environmental Health Departments' enforcement responsibilities.

4 LAs also enforce food safety and other environmental legislation and may do so as part of a dual purpose inspection of a care home. This is not within the scope of this protocol.

**Section 1**

**Functions of:**

**Health and Safety Executive and Local Authorities**

5 HSE and LAs are responsible for enforcing the Health and Safety at Work etc Act 1974 (HSWA) and associated legislation throughout Great Britain. They aim to "prevent death, injury and ill health to those at work and those affected by work activities".

6 HSWA sets out general duties, which employers, the self employed and people in control of premises, have towards employees and others who could be affected by work activities.

7 HSE and LAs undertake health and safety inspections and investigations of accidents or complaints covering occupational health, safety and welfare risks to employees, as well as health and safety risks to members of the public, arising from work activities. Further information about the regulatory role of LAs (reference to LAs throughout this protocol relates to their role with regard to the enforcement of health and safety legislation only) and HSE, including a guide to the relevant health and safety enforcing authority can be found in Annex A.

**Care Inspectorate**

8 CI was set up under s44(1) of the Public Services Reform (Scotland) Act 2010 ("PSR Act") to establish a new system of regulation and inspection for care services and social work services in Scotland.

9 CI has the general duty of furthering improvement in the quality of social services. It will do so having regard to the rights of people who use those services to dignity, privacy, choice, safety, realising their potential, equality and diversity. CI has a number of duties and powers, which are specified within The PSR Act and regulations made thereunder, including *inter alia* The Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011 (SCSWIS(RCS)R). More detailed information about CI is contained in Annex A.

## Section 2

## Guidance on Working Arrangements

### Areas of Regulatory Interest

10 There will be many situations where work activities are covered both by the general provisions of HSWA, and also by PSR Act and associated secondary legislation, as a result of which HSE, LAs and CI will have legitimate interest in matters concerning regulation in the care sector.

11 CI will take the lead in relation to any issues covered by PSR Act and the relevant Regulations or National Care Standards regarding the provision of care and the wellbeing of people who use care services.

12 HSE/LA as appropriate will take the lead in relation to matters where the health and safety of staff and people who use care services may be, or have been, placed at risk as a result of work activities. Where there is overlap between PSR Act and HSWA, HSE/LAs will continue to apply the principles of HSE's enforcement policy statement.

13 Section 2 of HSWA requires employers to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all their employees. HSWA section 3 requires employers and the self employed to conduct their undertaking in such a way as to ensure, so far as is reasonably practicable, that other persons not in their employment, (for example people who use care services) are not exposed to risks to their health and safety.

14 The application of HSWA, section 2 is relatively straight forward. However the scope of HSWA section 3 is wide and HSE/LAs exercise discretion in deciding what enforcement action is appropriate in accordance with HSE's guidance on Priorities for enforcement of Section 3 of the HSWA 1974

15 Section 7 HSWA places duties on the employee irrespective of the obligations on the employer. Every employee has a duty to take reasonable care for their own health and safety and of other persons who may be affected by their acts or omissions at work. It is intended to protect not only fellow employees but other persons who may be affected by the employee's actions. There may be overlap between requirements placed on individuals in regulations made under PSR Act and HSWA. HSE's policy on employee's duties can be found in guidance on Proceeding against employees HSWA S7

16 In areas outside HSE/LA priorities, consideration is given to whether activities that give rise to risk are better regulated by other authorities, who may be more suitably placed than HSE/LAs to address the risks in question. For example, HSE/LA will give a lower priority to the enforcement of HSWA section 3 and Section 7 where the principal issues involved are the level or quality of care provided, or relate to clinical judgements, such as diagnosis, the choice of treatment and the standard of care. Such issues are monitored by a range of other bodies, including CI, the General Medical Council (GMC) and the Nursing and Midwifery Council (NMC).

17 That said, there may be circumstances where HSE/LAs and/or the police may be involved in investigating deaths and serious injuries to people who use care services under the work-related deaths protocol (see paragraph 36 onwards). For example, where serious systematic failures in the arrangements for delivery of care indicate

significant failure to manage health and safety, and people who use care services are exposed to a high level of risk, including risk of death or major injury.

18 Even where another body has responsibility for addressing risks to non-employees, HSE/LA may need to take action to secure control of an immediate risk. Further guidance on this can be found at http://www.hse.gov.uk/enforce/hswact/imminentdanger.htm

19 Annex B provides a summary table that aims to clarify the role of HSE/LA and CI with regard to health and safety issues. However the limitation of the table is that it cannot account for every scenario that may arise and in some instances (particularly those identified during accident investigations) the issues identified may span several sections of the table. In these circumstances, discussions between the regulators will be key to ensuring that health and safety issues are dealt with appropriately. Annex C gives examples of hypothetical case studies which identify how the different regulators might work together.

20 Annex B should be read in conjunction with the guidance below, which outlines the five areas of work where HSE/LA and CI may have a mutual interest:

- Inspection;
- injuries, diseases and dangerous occurrences;
- work related deaths;
- complaints and concerns;
- adult support and protection and child protection.

**INSPECTION**

21 For the purposes of inspection work the following guidance should be applied to Annex B:

- **Issues 1-3:** HSE/LA will take the lead;
- **Issue 4:** HSE/LA have primacy for health and safety issues arising out of work activities affecting the people who use care services. CI has responsibilities under PSR Act and associated secondary legislation. In some instances therefore a multi-agency approach may be required to secure compliance with both health and safety and care legislation;
- **Issues 5 and 6:** CI will take the lead.

**Communication – working together**

22 It is envisaged that local arrangements will be established through the regional health and safety liaison groups, which are discussed at paragraphs 66-68.

23 In general terms CI, HSE and LAs will endeavour to keep each other informed about work in which the other has an interest and will inform the other without undue delay of any relevant information that would require their action or assistance (provided that disclosure will not jeopardise any ongoing investigation or future proceedings and is in accordance with provisions provided at paragraphs 54-65).

24 In particular HSE and LA inspectors will inform CI of any formal enforcement action taken under health and safety legislation against any provider of care as soon as is practicably possible, by telephone, by email or in writing. In the case of HSE/LA served Improvement Notices, CI should note that any appeal has the effect of suspending a notice. Accordingly, the details of the notice must not be disclosed outside CI until the time limit for appeal has expired (21 days from the service of the

notice) or when the appeal process has come to an end. CI has a statutory duty to inform the appropriate LA of certain enforcement action. Additionally CI will inform HSE as soon as reasonably practicable, where the latter has a relevant interest.

25 During inspection activities issues may be drawn to the attention of inspectors that fall outside their regulatory jurisdiction. In order to maximise the effectiveness of the inspection it is envisaged that the following action will be taken as appropriate:

- whilst registration is primarily a matter for CI, HSE and LA inspectors will inform CI if they become aware of any provider of care who is not registered, where that care falls within the scope of registrable activities. Guidance on registration is provided in Annex A;
- whilst health and safety risks to staff are primarily a matter for HSE/LAs, CI officers will contact HSE or the relevant LA if they encounter risks to staff that are not being adequately managed. For example where adequate precautions are not being taken to manage the risks arising from dermatitis, asbestos, legionella, challenging behaviour or where staff are using people handling equipment but have not been trained to do so;
- where the visiting inspector has reason to contact another regulator to inform them of any concerns, they will inform the service provider that they have done so.

26 Any disputes about which regulator should take the lead in a particular circumstance should be resolved between the relevant line managers in the organisations concerned. Senior management of the relevant parties should be consulted as appropriate.

## INVESTIGATION OF INJURIES, DISEASES AND DANGEROUS OCCURRENCES

### Role of HSE/LAs

27 The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) 2012 requires specific incidents to be reported. The legal duty to report is on the 'responsible person', which is normally the employer. All incidents can be reported online and there is a telephone service for reporting fatal and major injuries only. In some instances the police, the Care Inspectorate, relatives or others may inform HSE/LA of an incident (although the responsibility remains with the 'responsible person'). Guidance about what needs to be reported in health and social care can be found in HSE's RIDDOR pages

28 HSE and LA policy is to conduct investigations and take any resulting enforcement action in accordance with HSE's Enforcement Policy Statement (EPS), which reflects the principles of the Regulators Compliance Code (RCC) and the Crown Office and Procurator Fiscal Service Prosecution Code (COPFS)

29 Incidents involving issues 1-4 in Annex B may be considered for investigation by HSE/LA. A proportion of over 7 day injuries, major injuries, diseases and dangerous occurrences are selected for investigation by HSE and LAs with all fatal accidents normally being investigated (work-related deaths are dealt with in paragraphs 36-46 below). These decisions are informed by a number of factors including HSE's published selection criteria and HSE's EPS.

30 Many accidents to people who use care services may arise solely out of their individual care needs and would not be reportable (examples are listed in Annex B issue 5). Deaths from natural causes are also not reportable. In some instances due to the limited information provided, reportability is not clear and in those circumstances Initial enquiries are made by HSE/LA to clarify the situation.

31 HSE/LA inspectors may, during an investigation, identify failings detailed in issue 5 of Annex B, which may have contributed or been the main cause of an incident. Discussion between the regulators would then be required and further guidance on communication is provided in paragraphs 33-35 below.

**Role of CI**

32 All registered service providers are required to notify CI of certain matters as required by Regulation 21 of SCSWIS(RCS)R. For care services registered on or after 1 April 2011, additional notification requirements are in place. These are not specified in legislation, but are to be determined by CI as required by Social Care and Social Work Improvement Scotland (Registration) Regulations 2011 (SCSWIS(R)R), Regulation 4.

**Communication – working together**

33 Where HSE/LA selects an accident involving a service user for investigation, it would be helpful at the outset to consider if there are any issues in which CI would have an interest. If this is the case then HSE or the appropriate LA will inform CI that an investigation has commenced as soon as reasonably practicable.

34 For more serious and complex investigations consideration should be given to holding a meeting between the interested parties to establish roles and responsibilities and to share information (provided that disclosure does not jeopardise any ongoing investigation or future proceedings and is in accordance with the provisions in paragraphs 54-65) about the care provider and the circumstances of the incident. At such a meeting, consideration may need to be given to the following issues:

- reasons for calling the meeting, including an explanation from the organisation responsible for the meeting;
- nature of the incident;
- role and responsibilities of the police (where applicable) and or HSE/LA and CI;
- securing and preserving evidence;
- arrangements for co-ordinating enforcement action that might need to be taken in the short term (to avoid any overlap or duplication);
- passing information to other interested parties, for example in relation to adult support and protection and child protection (this is discussed in paragraphs 54-65)
- sharing information; bearing in mind any restrictions which may be necessary due to the potential for criminal proceedings to be brought and providing the information is shared in accordance with paragraphs 60-71);
- contacting relatives of the injured person where appropriate;
- the need to inform and involve other investigating bodies, for example the Medicines and Healthcare Products Regulatory Agency (MHRA) – see ;
- handling communications/media;

- future handling and coordination, including the appointment of a liaison officer from each organisation;
- making and keeping a record of key decisions/discussions;
- the need to inform professional regulatory bodies eg NMC

35 Each regulator will need to fulfil their statutory obligations throughout an investigation. For example in some instances CI may need to take action if people using the care service are at risk (eg cancellation of the registration of the service being provided). At the same time, HSE/LA may also need to serve enforcement notices in response to an on going risk and collate evidence to support possible future legal proceedings. The steps outlined above provide a framework for cooperation and liaison, which should allow any conflicts to be resolved and should reduce the likelihood of any one regulator compromising any investigation.

## INVESTIGATION OF WORK RELATED DEATHS

36 For the purposes of investigation of work related deaths the following guidance should be applied to Annex B:

- **Issues 8-9**: Crown Office and Procurator Fiscal Service (COPFS)/Police/HSE/LA will take the lead in accordance with the Scottish Work Related Deaths Protocol (WRDPS)
- **Issue 10:** As above - plus CI**.** Although HSE/LAs have primacy for health and safety issues arising out of work activities affecting the people who use services, CI has responsibilities under care legislation and also has a potential role in relation to deaths of children in care. Therefore, a multi-agency approach may be required.
- **Issue 11:** COPFS/Police/CI to take the lead

### Role of HSE/LAs

37 Taking into account the role of the police (which is described in paragraph 39 below), HSE and LAs are normally required by HSE's EPS to "carry out a site investigation of a reportable work-related death".

38 Where appropriate, HSE and LAs will report breaches of health and safety law under the HSWA to COPFS. In doing this HSE and LAs are guided by the principles of the HSE's EPS, which emphasises the serious nature of any death resulting from work activities and reflects the principles of RCC and the COPFS Code. However, HSE/LAs cannot investigate or report offences to COPFS for unlawful killing, or any other criminal offences outside their health and safety remit.

### Role of the police

39 The police, supported by HSE/LA will investigate a work-related death where there is an indication that an offence of corporate/culpable homicide or a serious criminal offence other than a health and safety offence may have been committed. The police also have an interest in establishing the circumstances surrounding a work-related death in order to assist Fatal Accident Inquiries (FAIs).

### Role of the Procurator Fiscal

40 Procurators Fiscal are independent prosecutors working within COPFS, who receive and consider reports from the police, HSE/LAs and others and decide whether or not to raise criminal proceedings in the public interest. In addition to their

role in prosecuting crime, the Procurator Fiscal has a responsibility to investigate all sudden, suspicious, and unexplained deaths in Scotland. In the case of deaths resulting from an accident in the course of employment or occupation this results in a FAI unless the death occurs from natural causes. HSE's guidance to inspectors on the roles and interface with COPFS can be found in the Enforcement Guide (Scotland)

**Care Inspectorate**

41 CI does not have a specific remit to investigate deaths or accidents, but may investigate the quality of care provided to people who use a particular care service if a particular death or accident/incident (or a series of deaths or accidents/incidents) appears to warrant that. Formal enforcement action may follow such an investigation. If appropriate, having regard to any circumstances which may come to light during such an investigation, CI may make a referral or referrals to other agencies, including HSE, LAs or the police, and may suspend its own investigation, pending the conclusion of inquiries by any other agency.

**Communication – working together**

42 In investigating such work-related deaths HSE, [1]LAs and the police will follow the principles contained in the WRDPS. WRDPS sets out the framework for effective liaison between the police, HSE and LAs (and others) in relation to work related deaths in Scotland (other bodies acknowledge the principles of WRDPS, including Fire and Rescue Services, but are not signatories to it). WRDPS applies to any incident arising out of, or in connection with work, resulting in one or more fatalities, or injuries so serious there is a clear indication, according to medical opinion, of a strong likelihood of death. WRDPS addresses issues concerning general liaison between the various regulators and is not intended to cover the operational practices of the signatory organisations.

43 Although CI is not a signatory to WRDPS it acknowledges the principles contained in it. CI will support the protocol, make its staff aware of its terms and aim to work in accordance with its recommendations.

44 WRDPS states that investigations will generally be conducted jointly, with one or more parties taking the lead, or having primacy, as appropriate. The police will always have primacy initially, and will retain primacy until they are satisfied that there is no evidence to suggest a serious criminal offence (other than a health and safety offence) has been committed. At that stage primacy can be transferred to HSE/LA to conduct their investigation as described in paragraphs 37-38.

45 Where the police have primacy they will also have responsibility for the management of the overall investigation but HSE/LA and other relevant enforcing authorities such as CI should remain actively involved in key decisions, similar to those contained in paragraph 34.

46 Decisions relating to investigation/prosecution will be co-coordinated in accordance with the WRDPS. This protocol does not affect the operation of the WRDPS but should be used in conjunction with it.

## INVESTIGATION OF COMPLAINTS AND CONCERNS

[1] Although Scottish LAs are not signatories they support the WRDP and aim to work in accordance with its recommendations

**Role of HSE/LAs**

47 For the purposes of complaints the following guidance should be applied to Annex B – Areas of regulatory interest:

- **Issues 1-3:** HSE's risk based complaints handling procedure will be instigated for complaints made by employees or members of the public to HSE. LAs will have their own complaints procedure which will allow them to prioritise according to risk.
- **Issues 4 and 7:** As above but note that although HSE/LA have primacy for health and safety issues arising out of work activities affecting the people who use services, CI has responsibilities under care legislation. Therefore the complainant may need to be directed to the most appropriate authority taking into account the nature of the complaint. The authority will then deal with the complaint in accordance with their procedures.
- **Issues 5-6:** Complaints will be referred to CI for consideration under the Care Inspectorate complaints procedure.

**Role of the Care Inspectorate**

48 For the purposes of complaints the following guidance should be applied to Annex B – Areas of regulatory interest:

- **Issues 1-3:** Where complaints are received by CI they should be referred to HSE or the LA.
- **Issue 4: W**here complaints are received by CI they may contact HSE/LA to discuss the most appropriate authority to deal with it, taking into account the nature of the complaint.
- **Issues 5-6**: Where appropriate CI will deal with these in accordance with the Care Inspectorate complaints procedure.

**ADULT SUPPORT AND PROTECTION AND CHILD PROTECTION**

49 Care inspectors and HSE/LA inspectors may, during the course of inspections or investigations, come across situations where they believe that persons using care services are being abused or neglected.

50 The Adult Support and Protection (Scotland) Act 2007 (ASPA) was introduced to make provision for protecting adults who are unable to safeguard their own interests and are at risk of harm, or self-harm including neglect. However, the statutory requirement to undertake adult protection investigations lies with the appropriate LA and police service. Consequently, direct referral should be made to the LA in which area the adult at risk resides.

51 There is a requirement under ASPA for certain public bodies to co-operate with the LA making enquiries. CI is specifically prescribed but HSE is not. Nevertheless there is an additional requirement that a public body or office holder, who knows or believes that a person is an adult at risk and that action needs to be taken to protect them from harm, must report the matter to the LA (Again HSE is not prescribed at this time but the Scottish Ministers may do so in the future).

52 Notwithstanding the foregoing, in specific circumstances it may be that an individual HSE/LA inspector or care inspector will wish to liaise with their local counterparts to establish whether any wider action under the auspices of the HSE/LA

or CI requires to be taken, for example, regulatory activity with the service within which the adult at risk of harm had been placed. Further guidance on safeguarding is contained in SIM 07/2011/01 – Adult Safeguarding in Social Care – HSE Role.

53 The statutory requirement to undertake investigations of child protection matters lies with the appropriate LA and police services. Where CI knows and believes that a child is at risk and that action needs to be taken to protect them from harm, the matter will be reported to the relevant LA or to the police in accordance with established CI policy. In these circumstances the provisions set out at paragraph 52 above, may also apply.

**Information sharing under section 28 HSWA**

54 HSE, LAs and CI recognise the mutual benefits from working together, acknowledging respective strengths and duties. They will consider sharing information to support their respective roles, subject to the legal responsibilities and duties of the three organisations. The presumption is in favour of sharing, subject to any legal restrictions.

**Information Security, Data Protection and Confidentiality**

55 All staff must comply with the provisions of the Data Protection Act 1998 (DPA).

56 Each organisation will have a representative who holds overall responsibility for ensuring data protection, security and confidentiality within their own organisation.

**Information Security**

57 Personal data and other confidential information must be transferred securely in all formats.

58 In particular, each of the parties shall ensure that appropriate measures are taken to protect personal data and other confidential information during and after the disclosure process.

59 All information sharing shall only take place in accordance with the law, including the provisions of DPA, the Freedom of Information (Scotland) Act FOI(S)A 2002, the Environmental Information (Scotland) Regulations (EI(S)R) 2004, the Human Rights Act 1998 and the common law duty of confidentiality.

60 Each of the parties shall ensure employee competency in handling information including a basic understanding of the relevant parts of DPA, FOI(S)A, EI(S)R, the Human Rights Act 1998 and the common law duty of confidentiality.

61 Each of the parties shall obtain consent of the originator before further sharing or disclosing any information obtained under this protocol with organisations or individuals outside this protocol. The exceptions will be:

- disclosure to third parties that is required by law;
- disclosure in the public interest; each of the parties shall assume consent to disclose in response to a valid request made under the FOI(S)A or EI(S)R unless advised otherwise at the time of sharing or disclosure;
- disclosure of personal data to the individual concerned; each of the parties shall assume consent to disclose in response to a valid Subject Access

Request made under the DPA unless advised otherwise at the time of sharing or disclosure unless one of the exemptions in the DPA apply;

- each of the parties shall, as a matter of courtesy, inform the others of any such requests received.

62 Each party will keep appropriate records of the personal data and other confidential information that it has provided to or received from other parties to this agreement.

63 Each of the parties is responsible for the integrity of any information that they make available to the other and shall clearly state whether information is fact, opinion, or a combination of both.

64 Each party will already have appropriate policies and procedures for approving and authorising the sharing of personal data or other confidential information, and will share those procedures with the other parties.

65 Personal data and other confidential information will only be retained for as long as it is needed – in accordance with appropriate Retention and Disposal Schedules. At the end of this period, that information will be securely returned to the originating organisation or destroyed/deleted as appropriate.

## Liaison Arrangements
## LA Health and Safety Liaison Groups

66 There are four Regional Groups in Scotland, which meet regularly and provide a forum for LA health and safety enforcement officers and HSE inspectors to promote consistent enforcement practice and uniformity within Scotland. They enable the exchange of information and promotion of joint initiatives regarding health and safety. In addition, representatives from the Regional Groups meet once a quarter as the Health and Safety Coordinating Group (HASCOG).

67 The Regional Groups provide an existing forum where HSE, LAs and CI can meet together to discuss liaison arrangements. Arrangements will be made to ensure that CI is invited to attend when matters relevant to them are being discussed.

68 CI is organised into four geographical areas in Scotland, each with a regional office. It will seek to facilitate reciprocal liaison arrangements by inviting HSE/LA representatives to attend appropriate meetings.

### Corporate providers of social care services

69 To ensure consistent advice is provided to the large national corporate care providers when inspections/investigations reveal deficiencies of potential national significance:

- HSE and LA inspectors should consult SIM 07/2012/02 - 'Social care and health services lead inspector scheme for large independent companies'. The SIM provides information on the lead contacts for the largest corporate care providers in the UK. Alternatively contact HSE's Public Services Sector to ascertain if there are already national liaison arrangements in place by emailing the publicservicessector@hse.gsi.gov.uk account.

- CI operates a Contact Manager system with all LAs, health boards and larger national private and independent providers. Specific information can be found on the Care Inspectorate website.

### Care Inspectorate/HSE/LAs

70 Arrangements will be made for the Chief Executive of CI, the HSE Head of Operations Scotland and a nominated LA representative to meet annually.

### Wider collaboration

71 CI, HSE and LAs will explore opportunities to collaborate on wider issues where appropriate. Such collaboration may include:

- Joined up working and investigations;
- Speaking at conferences and other public discussions;
- Disseminating good practice in relation to each other's work;
- Advance notice of public relations work, which may have an impact on the work of the other organisations;
- Consideration of joint training and development opportunities.

**Review of the Protocol**

72 HSE, LAs and CI will endeavor to ensure their staff are aware of the content of this protocol, the responsibilities it places on staff and the working arrangements that should apply. The protocol should be reviewed annually and any amendments must be agreed by all parties to ensure it remains relevant and up to date.

**Signatories:**

**Mrs Pam Waldron**
**Director, HSE Scotland**

**……** **Date** 18/7/12

**Mrs Annette Bruton**
**Chief Executive, Care Inspectorate**

Annette Bruton **……** **Date** 13/7/12

**Annex A HSE and LAs Working Together**
**Organisational structure**

1 HSE is subdivided into directorates and divisions. The Field Operations Directorate (FOD) is the largest operational directorate in HSE and is split into 3 geographical divisions and a Headquarters division. Scotland is part of FOD's Scotland and Northern England Division which covers Scotland, North East, Yorkshire and the North West. Staff in geographical divisions are involved primarily in front-line activities, giving advice and guidance, contacting and inspecting workplaces, investigating incidents/accidents/complaints and taking enforcement action. Each division has a Divisional Director, Heads of Operations (number depends on size of division) and teams of operational inspectors led by Principal Inspectors. In Scotland HSE has offices in Edinburgh, Glasgow, Aberdeen and Inverness. Further details can be found at:
http://www.hse.gov.uk/contact/maps/index.htm

2 There are teams of health and safety inspectors for every LA in Scotland. Each LA is an autonomous democratically elected body, accountable to its local community and therefore organisational structures and health and safety priorities vary.

3 **HSE's Public Services Sector** is part of HSE's Operational Strategy Division and has responsibility for national policy relating to health and social care, and the development of working protocols/memoranda of understanding etc between various regulatory bodies whose interests and functions overlap with HSE's remit.

4 **HSE's Local Authority Unit** - has national policy responsibility to promote consistency between HSE and LAs in the enforcement of health and safety legislation.

**Regulatory Framework**
**Relevant enforcing authority for services registered with the Care Inspectorate**

5 The allocation of enforcement responsibility between HSE and LAs is set out in the Health and Safety (Enforcing Authority) Regulations 1998 (EAR).

6 Under EAR, allocation of the enforcement of health and safety in care homes is split between residential accommodation and nursing care. It should be noted that this legal distinction previously applied under the Social Work (Scotland) Act 1968 (as amended) and was removed following the implementation of the Regulation of Care (Scotland) Act 2001. **All such homes are designated care homes.**

7 Detailed guidance about enforcement allocation for a variety of social care premises can be found in SIM 2007/08/03 – **'**Balanced decision making for people who use care services'. For those services registered with CI the enforcement allocation is:

- Support services – care at home and daycare - HSE is the enforcing authority for peripatetic work activities being undertaken in domestic premises and at LA daycare centres;
- Care home services – where the main activity is the provision of residential accommodation with personal care, LAs will normally be the enforcing authority, unless the service is owned by the LA in which case it falls to HSE. Where the main activity is the provision of nursing care in such

accommodation, HSE will be the enforcing authority. Where both services are provided at the same location, enforcement allocation will need to be decided locally;

- School care accommodation services – HSE is the enforcing authority;
- Nurse agencies – HSE is the enforcing authority with regard to nursing activities in domestic premises. LAs will be the enforcing authority for the office-based activities;
- Child care agencies - HSE is the enforcing authority with regard to child care activities in domestic premises. LAs will be the enforcing authority for office based activities;
- Secure accommodation services – HSE is the enforcing authority;
- Offender accommodation services – HSE is the enforcing authority;
- adoption services – LAs will be the enforcing authority for the office-based activities of organisations that provide fostering and/or adoption services, unless the service is run by the LA, in which case HSE is the enforcing authority. HSE will be the enforcing authority for any peripatetic work or work in domestic premises eg home visits;
- Child minders – HSE is the enforcing authority with regard to child minding activities in domestic premises;
- Day care of children – LAs are the enforcing authority where the service is in non-domestic premises that are not part of a school and are independently run. HSE is the enforcing authority where the service is provided in premises under the control of the LA or where it is provided in separate premises within school premises, under control of an independent operator;
- Housing support services – HSE is the enforcing authority with regard to activities in domestic premises.

**Inspection**

8 HSE/LA Inspectors are appointed under the terms of the HSWA and have a written instrument of appointment (their warrant). They have the legal rights to enter premises and to talk to relevant staff during inspections or investigations.

9 Inspection is the process carried out by HSE and LA warranted inspectors which involves assessing relevant documents held by the duty holder, interviewing people and observing site conditions, standards and practices where work activities are carried out under the duty holder's control. HSE and LAs prioritise inspections and regulatory interventions on higher risk sectors and on dealing with serious breaches of health and safety law.

**Enforcement**

10 HSE and LA inspectors use a variety of enforcement tools in order to secure immediate and sustained compliance with the law. These enforcement tools range from the provision of advice, to the service of enforcement notices and the reporting of offences to COPFS as necessary. HSE's enforcement policy statement gives overall direction to HSE and LAs in investigation and enforcement decisions, which should adhere to the five principles of enforcement: proportionality, consistency, targeting, transparency and accountability. This reflects the principles of the Regulator's Compliance Code and the COPFS Prosecution Code. Enforcement decisions are also guided by the Enforcement Management Model (EMM). The EMM provides a framework, which helps to ensure that enforcement decisions are taken in line with HSE's enforcement policy statement.

**Care Inspectorate – Roles and Responsibilities**

11 CI was set up under PSR Act to maintain the unified system of registration and regulation for care services in Scotland which puts the safety and well-being of users at its heart. The aim of CI is to ensure improvement in the quality of care services in Scotland, respecting the rights of people who use those services to dignity, privacy, choice, safety, realising potential, equality and diversity.

12 CI has a number of duties and powers which are specified within PSR Act. These include functions such as:

- furthering improvement in the quality of social services;
- undertaking the regulation of care services in Scotland;
- providing advice to the Scottish Ministers;
- providing information to the public about the availability and quality of social services;
- taking into account the National Care Standards for all care services.

13 PSR Act and associated secondary legislation makes provision for the manner in which CI will carry out the regulation of care services.

14 PSR Act also specifies a set of principles, which must inform the manner in which CI carries out its duties and functions:

- The safety and wellbeing of all persons who use, or are eligible to use social services are to be protected and enhanced;
- The independence of those persons is to be promoted;
- Diversity in the provision of social services is to be encouraged to promote choice;
- Good practice in the provision of social services is to be identified, promulgated and promoted.

15 PSR Act provides for the publication, by Scottish Ministers of national standards and outcomes for a range of care services. The system of regulation adopted by CI must take account of these standards and outcomes.

16 CI has the statutory role in ensuring that applicants for registration to provide a care service are fit to provide that service and that they continue to comply with the relevant regulations taking into account the standards and outcomes published by the Scottish Ministers. CI has a range of powers to assist it in fulfilling its regulatory role. CI may:

- Grant registration, subject to conditions or unconditionally, and refuse registration;
- Impose, remove or vary conditions of registration, grant or refuse requests for variation of conditions, or cancel registration;
- Report care service providers who have committed specific offences under The PSR Act or regulations, to COPFS for prosecution.

17 In fulfilling its statutory role, CI may exercise various powers conferred upon it by statute, including, but not limited to:

- entering and inspecting premises which are used, or which the person has reasonable cause to believe are used, for the purpose of providing the social service which is subject to inspection;
- requiring information;
- taking photographs or making other recordings;
- accessing computer equipment;
- removing information.

**Annex B: Areas of regulatory interest**

The table below provides a break down of the key health and safety issues affecting employees and people who use care services. It sets out the relevant legislation and regulator with the lead responsibility for enforcement.

The table is not definitive and is provided as a guide only as it is not possible to encapsulate all scenarios.

**Important Note:** This table **should not** be used in isolation. It **must** be read in conjunction with **paragraphs 10-48** of the working arrangements protocol for context.

The police (as described in paragraph 39 of the protocol) will investigate a work-related death where there is an indication that an offence of corporate/culpable homicide or a criminal offence other than a health and safety offence may have been committed.

**See footnote for list of abbreviations**

| Issue | Legislation | Lead Enforcing Authority | Example |
|---|---|---|---|
| 1. General health and safety management | HSWA<br>MHSW | HSE/LA | a) General health and safety policy<br>b) Risk assessments for risks connected with work activities<br>c) Health and safety arrangements<br>d) Health and safety assistance (competent advice)<br>e) Health and safety information and training for employees in relation to work related risks<br>f) Co-operation & coordination between employers<br>g) Employers Liability Compulsory Insurance<br>NB Work related risks may include risks to service users arising out of or in connection with work |
| 2. Employee health and safety | HSWA<br>MHSW<br>COSHH<br>Workplace (HSW)<br>MHOR<br>RIDDOR<br>WAH | HSE/LA | Risks arising from:<br>a) Manual handling operations<br>b) Hazardous substances<br>c) Challenging behaviour<br>d) Slips and trips<br>f) Falls from height<br>g) Latex<br>h) Infection arising out of work e.g. legionella which has proliferated in a water system that has been poorly maintained.<br>Other issues:<br>i) Welfare facilities for staff<br>j) Staff accident and ill health reporting<br>k) Health and safety training provided to staff in areas such as moving & handling, V & A, infection control |

| | | | |
|---|---|---|---|
| 3. Building/facility management – issues arising from the fabric and maintenance of the building which could affect staff, people who use care services and other persons such as visitors and contractors | HSWA<br>MHSW<br>PUWER<br>Workplace (HSW)<br>LOLER<br>Electricity at Work Regs<br>CDM Regs<br>CAR<br>PSR Act<br>SCSWIS (RCS)R | HSE/LA<br><br>NB CI will also have an interest re fitness of premises but only insofar as it relates to the premises in the provision of a care service.<br><br>NB LA Building Control will also have an interest in some aspects | a) Maintenance of utilities eg gas, electricity, water<br>b) Pressure systems, control of legionella<br>c) Construction and refurbishment work<br>d) Lift/lifting equipment maintenance<br>e) Safety/maintenance of work equipment eg laundry, kitchen equipment<br>f) Condition of floors |
| 4. Risks to the health and safety of people who use care services arising directly out of work activities | HSWA<br>MHSW<br>MHOR<br>COSHH<br>PSR Act<br>SCSWIS (RCS)R | HSE/LA/CI<br><br>NB For all the risks described HSE/LA have enforcement responsibilities under HSWA 1974 in relation to specific conditions or events. CI also have an interest in relation to the wellbeing of service users and any conflict created by the need to control the risk and the rights of the service user | Risks arising from:<br>a) Moving and manual handling activities<br>b) Management of challenging behaviour eg restraint techniques – risk of physical injury/death<br>c) Floor & stair surfaces – risk of slip/trip<br>d) Infection arising out of work<br>e) Hot water<br>f) Hot surfaces<br>c) Falls from windows<br>g) Wandering and absconding from establishments<br>h) Use of Bedrails<br>i) Use of lap belts eg in wheelchairs or stair lifts<br>j) Self harm including suicide (where risk has been clinically identified)<br>k) Consumption of and exposure to chemicals<br>l) Drowning whilst bathing<br><br>Further information on these topics can be found on HSE's Health and Social Care web pages. |
| 5. Risks to people who use care services arising from their identified individual care needs or related to the provision of care | PSR Act<br>SCSWIS (RCS)R | CI** | a) Promotion and monitoring of risk assessments with respect to care issues relating to the person's safety: including: risks arising from the care needs of people using the service eg risk of falling due to condition, falling out of bed where bed rails not specified through clinical judgement; self harm where risk not clinically identified<br>b) Elective risk where service user able to make a choice<br>c) Level of care provided<br>d) Control & administration of drugs, including incorrect administration of medication for example<br>e) Infection control (e.g. MRSA) |
| 6. Service user wellbeing | PSR Act<br>SCSWIS (RCS)R | CI | |
| 7. Reporting of incidents | RIDDOR<br>PSR Act<br>SCSWIS(R)R<br>ROC(RCS)R | HSE/LA<br><br>CI | Reports to be made in accordance with relevant legislation. Dual reporting is unavoidable |
| 8. Death of | HSWA | HSE/LA | See Scottish Work Related Deaths |

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|---|---|---|---|
| employee while at work | RIDDOR<br>Scots law | Police<br>COPFS<br>NB CI may also have an interest where the death highlights a risk in relation to service users | Protocol |
| 9. Death of member of public other than service user as a result of work eg visitor to premises | HSWA 1974<br>RIDDOR<br>Scots law | HSE/LA<br>Police<br>COPFS<br>NB CI may also have an interest where the death highlights a risk in relation to service users | See Scottish Work Related Deaths Protocol |
| 10. Death of service user arising out of or connected with work | HSWA<br>RIDDOR<br>PSR Act<br>SCSWIS(R)R<br>Scots law | HSE/LA<br>CI<br>Police<br>COPFS | See Scottish Work Related Deaths Protocol<br>Liaison on investigation to be agreed for each case |
| 11. Death of service user (a) through natural causes or (b) related to the provision of care | PSR Act<br>SCSWIS(R)R<br>Scots law | CI<br>Police<br>COPFS | a) death from heart attack<br>b) death as a result of septicaemia from pressure sores. |

Legislation abbreviations:

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|---|---|
| PSR Act | - Public Services Reform (Scotland) Act 2010 |
| SCSWIS(RCS)R | - Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011 |
| SCSWIS(R)R | - The Social Care and Social Work Improvement Scotland (Registration) Regulations 2011 |
| ROC(RCS)R | - The Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002 |
| HSWA | - Health and Safety at Work etc Act 1974 |
| MHSW | - Management of Health and Safety at Work Regulations 1999 |
| MHOR | - Manual Handling Operations Regulations 1992 |
| COSHH | - Control of Substances Hazardous to Health Regulations 2002 |
| RIDDOR | - Reporting of Injuries, Diseases & Dangerous Occurrences Regulations 2012 |
| Workplace (HSW) | - Workplace (Health, Safety and Welfare) Regulations 1992 |
| PUWER | - Provision and Use of Work Equipment Regulations 1998 |
| LOLER | - Lifting Operations and Lifting Equipment Regulations 1998 |
| CDM Regs | - Construction (Design and Management) Regulations 2007 |
| CAR | - Control of Asbestos Regulations 2012 |
| WAH | - Work at Height Regulations 2005 |

(Other legislation may also apply).

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** There may be circumstances where HSE/LAs and/or the police may be involved in investigating deaths and serious injuries to service users under the work-related deaths protocol (see paragraphs 15-18 and 41 onwards). For example, where serious systematic failures in the arrangements for delivery of care indicate significant failure to manage health and safety, and service users are exposed to a high level of risk, including risk of death or major injury.

## ANNEX C: Case Studies

These are fictional case studies that demonstrate how the regulators that have signed up to the working arrangements protocol might work together to resolve an issue.

### Care home for older people – Scalding incident

HSE receives a RIDDOR notification, informing them that a resident in a care home with nursing has been scalded and admitted to hospital after being put in a hot bath by two care assistants.

As the accident happened in a care home with nursing, it falls to HSE to investigate this incident, rather than the LA which deals with homes without nursing care.

The HSE inspector contacts the local CI office, and asks to speak to the lead care inspector for the home. It transpires that CI had not been informed of the accident by the home.

The CI and HSE inspectors have an initial discussion about the accident. They agree that this requires an "adult protection" alert to the local authority, as the nature of the accident indicates that it may constitute abuse of a vulnerable adult. The care inspector agrees to follow this up, and contacts the local authority, following the Care Inspectorate's Adult Support and Protection Policy and Procedure.

The LA accepts the referral, and calls a strategy meeting. CI already has some concerns about the home and is considering taking enforcement action in relation to staffing issues. The home has an unsatisfactory (grade 1) quality rating, and there have been previous concerns around staff competence, so in this instance the care inspector attends the safeguarding strategy meeting. Following this meeting the care inspector refers the matter to their manager and follows the Care Inspectorate Enforcement Policy.

HSE decides not to attend the strategy meeting, as CI will be there. The care inspector agrees to feed back to the HSE inspector.

Due to the severity of the injuries, the accident meets HSE's incident selection criteria and is allocated for investigation. HSE will examine the procedures the home had in place to manage the risks arising from hot water.

CI decides to undertake an unannounced inspection to check the compliance of the provider with the SCSWIS(RCS)R and National Care Standards in relation to staffing competencies and training, and the notifying of incidents to CI. The care inspector also reviews all previous requirements made in relation to the regulation of water temperatures at outlets.

The lead inspectors from CI and HSE agree to keep one another informed of their activities by telephone. The LA suspends any further admissions to the home, but decides to wait for the findings of HSE and CI before taking any further action.

HSE and CI agree that prior to either organisation taking any enforcement action they will discuss their plans with one another.

Following the unannounced inspection, where it was found that staff had not been appropriately trained, CI issues a statutory improvement notice in relation to the lack

of appropriate staff training in providing personal care and staff competencies. CI also issues a statutory improvement notice regarding notifications to CI, for all required notifications in the future.

HSE investigate and find that the home has had a new bathroom installed and omitted to have a thermostatic mixer valve control fitted to the bath. HSE issues a prohibition notice in relation to the control of hot water temperatures, preventing the bath being used until a thermostatic mixer valve is fitted. HSE also requires that a bath thermometer is provided for each of the bathrooms and that staff are given instructions to ensure that safe bathing procedures are followed. HSE identifies a serious breach of Section 3 HSWA and informs CI that a report will be submitted to the Procurator Fiscal.

The findings of CI and HSE are fed back to the LA adult protection manager. The LA decides to continue the suspension of placements to the home until standards have improved. They also decide to review existing care plans of individual service users in the home to ensure that the home is able to meet the needs of people currently placed there.

CI considers whether or not it remains satisfied with the provision of this service, and whether there are sufficient grounds to propose to cancel the registration, vary the conditions of registration or take other enforcement action. They continue to monitor the service during this period.

**Care home for older people – defective passenger lift**

A LA receives a complaint from the son of a care home resident stating that his mother tripped getting into the passenger lift as a result of the carriage settling above the level of the floor. The complainant is concerned that this tripping hazard may cause his mother or another resident to fall and be seriously injured.

As the incident happened in a care home without nursing, it falls to the LA for health and safety enforcement. The LA [2]assesses the complaint and makes a decision to investigate based on the risk to vulnerable residents.

The care home is one of a chain of homes throughout Scotland and Northern England and its head office is in Glasgow. The care home has 60 residents, mainly older people many of whom have dementia and is on two levels. There are 20 residents on the first floor who eat in a dining room on that floor and food is prepared in the kitchen on the ground floor and delivered to the dining room in heated trolleys using the passenger lift.

The LA health and safety inspector visits the care home in the morning and speaks with the manager who confirms that the home has a lift maintenance contract but since the lift company went out of business about 2 years before there had been no thorough examinations of the lift as they haven't got round to finding a new company. On checking the lift the LA health and safety inspector finds that the carriage is stopping approximately 25mm higher than the floor at first floor level.

He considers serving a notice prohibiting the lift, as there is a risk of serious injury to residents using the lift if they were to trip on the raised floor and fall.

[2] HSE/LAs are expected to follow HSE/LGA Joint guidance for reduced proactive inspections

However, many of the residents on the first floor use walking frames or wheelchairs and will not be able to use the stairs which will effectively leave them stranded. Similarly, some of the residents on the first floor are visited by disabled relatives and friends who will no longer be able to access the first floor.

The lift is also used for transporting food to the first floor dining room, and for laundry and waste services, all of which will be disrupted if the lift cannot be used.

Recognising that there are significant implications for the care and welfare of the first floor residents he decides it is appropriate to involve CI. He contacts his local CI office and explains the position and that there are implications for the first floor residents. The local care inspector is in the area and agrees to meet the LA health and safety inspector on site. In the meantime, temporary arrangements are made by the home to make sure that residents do not use the lift.

The care inspector arrives on site and they both have a meeting with the care home manager. It is agreed that there is a risk to residents from using the lift but also that their care could be adversely affected if normal services such as food, laundry and waste removal are disrupted.

After discussing the situation they agree the following course of action:

- The LA health and safety inspector will serve an Improvement Notice (IN) on the care home under the Lifting Operations and Lifting Equipment Regulations 1998 and Health and Safety at Work etc Act 1974 requiring a thorough examination of the lift. However, it is agreed with the manager that the matter will be remedied as a matter of urgency;
- Until the lift is thoroughly examined and repaired the care home has to put in place a safe system for operation of the lift. The lift has the option for a keypad control which allows only those with a pass code to operate it. It is agreed to put this back into use and that only staff will be authorised to operate the lift. Residents will only be allowed to use the lift if they are accompanied by a member of staff. They agree that the care home will temporarily increase staffing to manage this.

When the LA inspector writes to the care home serving the Improvement Notice he sends a copy of the letter and the IN to the care inspector.

Three weeks later the LA inspector visits the site to check on compliance with the IN. A thorough examination report for the lift is made available and the defect with the lift has been remedied.

On returning to the office, the LA inspector emails the care inspector to confirm that the IN has been complied with.

**Annex D – Glossary of Abbreviations**

| | |
|---|---|
| **ASPA** | The Adult Support and Protection (Scotland) Act 2007 |
| **CAR** | The Control of Asbestos Regulations 2012 |
| **CDM** | The Construction (Design and Management) Regulations 1998 |
| **CI** | Care Inspectorate |
| **COPFS** | The Crown Office and Procurator Fiscal Service |
| **COSHH** | The Control of Substances Hazardous to Health Regulations 2002 |
| **DPA** | The Data Protection Act 1998 |
| **EAR** | The Health and Safety (Enforcing Authority) Regulations 1998 |
| **EI(S)R** | The Environmental Information (Scotland) Regulations 2004 |
| **EMM** | Enforcement Management Model |
| **EPS** | Enforcement Policy Statement |
| **FAI** | Fatal Accident Inquiry |
| **FOD** | HSE's Field Operations Directorate |
| **FOI(S)A** | The Freedom of Information (Scotland) Act 2002 |
| **GMC** | The General Medical Council |
| **HASCOG** | Health and Safety Coordinating Group |
| **HSE** | The Health and Safety Executive |
| **HSWA** | The Health and Safety at Work etc Act 1974 |
| **LAs** | Local Authorities |
| **LOLER** | The Lifting Operations and Lifting Equipment Regulations 1998 |
| **MHRA** | The Medicines and Healthcare Products Regulatory Agency |
| **MHSW** | The Management of Health and Safety at Work Regulations 1999 |
| **MHOR** | The Manual Handling Operations Regulations 1992 |
| **MoU** | Memorandum of Understanding |
| **NMC** | The Nursing and Midwifery Council |
| **PSR Act** | The Public Services Reform (Scotland) Act 2010 |
| **PUWER** | The Provision and Use of Work Equipment Regulations 1998 |
| **RCC** | Regulators Compliance Code |
| **RIDDOR** | The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2012 |
| **ROC(RCS)R** | The Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002 |
| **SCSWIS(RCS)R** | The Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011 |
| **SCSWIS(R)R** | The Social Care and Social Work Improvement Scotland (Registration) Regulations 2011 |
| **WAH** | Work at Height Regulations 2005 |
| **Workplace(HSW)** | The Workplace (Health, Safety and Welfare) Regulations1992 |
| **WRDPS** | The Scottish Work Related Deaths Protocol |