

Joint working arrangements and the provision of support in respect of Northern Irish explosives related health and safety legislation

Memorandum of Understanding between the Health and Safety Executive and the Northern Ireland Office, Northern Ireland on joint working arrangements and principles and the provision of services to the Northern Ireland Office, Northern Ireland

Covering the period 1 January 2021 – 31 December 2026

HSE reference: CEMHD 209

1. PARTIES

- 1.1 The Health and Safety Executive (“HSE”) and the Northern Ireland Office (NIO) (“the parties”).

2. PURPOSE

- 2.1 This Memorandum of Understanding (“The Memorandum”) records the services HSE will provide in relation to the provision of support by HSE to the NIO in respect of Northern Irish explosives related health and safety legislation and the costs associated with the provision of those services.
- 2.2 The level and costs of the support are listed in Annex 1 to this Memorandum entitled “Estimated Support Resources and Cost Recovery Arrangements”.
- 2.3 This Memorandum also sets out the joint working arrangements and shared principles between HSE and the NIO in light of the UK’s departure from the EU, the existence of the Northern Ireland Protocol (“The Protocol”) and the desire to preserve internal market parity. Civil explosives are listed in Annex 2 of the Protocol.
- 2.4 This Memorandum is not intended to be legally binding. It documents the respective roles, processes, procedures and agreements reached between the parties. This Memorandum should not be interpreted as removing, or reducing, existing legal obligations or responsibilities of each participant, for example as data controllers under the Data Protection Act 2018.

3. DURATION

- 3.1 This Memorandum applies for the period 1 January 2021 to 31 December 2026, or unless otherwise revised, terminated or suspended by either party.
- 3.2 The previous agreement on joint working arrangements and the provision of support in respect of Northern Irish explosives related health and safety legislation between HSE and Northern Ireland enforcement agencies, dated 01 August 2017, is hereby revoked.

4. PRINCIPAL CONTACT POINTS

- 4.1 The HSE Explosives Division (CEMHD7) is responsible for co-ordination and liaison with the NIO on the services covered by this Memorandum.
- 4.2 The HSE Principal Contact Point (PCP) shall be the Explosives Division; email: explosive.enquiries@hse.gov.uk. The NIO PCP shall be the National Security Casework and Protection Team; email: TheSecretary@nio.gov.uk

5. REVIEW, REVISIONS, SUSPENSION AND TERMINATIONS

- 5.1 This Memorandum will be regularly reviewed by the parties at least every two years, or at the request of either party.
- 5.2 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.
- 5.3 The costs associated with any revision, suspension or termination to this Memorandum will be agreed by both parties.
- 5.4 The parties will give each other a minimum of 6 months’ written notice of the termination of the services in this Memorandum.

5.5 The proper functioning of this Memorandum will be governed through bi-annual meetings between the parties.

5.6 The provisions and governance set out in the NI Protocol take precedence over this Memorandum in terms of any issues relating to the functioning of the UK internal market and proper application of the Protocol in respect of civil explosives, where they cannot be resolved through the bi-annual meetings.

6 EMERGENCIES

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

PART 1 – PROVISION OF SERVICES

7 AUTHORISATIONS AND APPOINTMENTS (WARRANTS FOR HSE INSPECTION IN NORTHERN IRELAND)

7.1 Support will be provided by those HSE Inspectors who have been made available to NIO by HSE who are appointed by NIO as Inspectors under Article 21(1) of the Health and Safety at Work (Northern Ireland) Order 1978 to carry out inspections required to discharge the Secretary of State's duties under Regulation 8 of the Inspection and Traceability of Explosives Regulations (Northern Ireland) 2013. Such appointments shall be terminated or new appointments made by the NIO on receiving reasonable notice in writing from HSE.

8 RETURN OF WARRANTS

8.1 All warrants for HSE inspectors remain the property of NIO.

9 INDEMNITY IN RESPECT OF APPOINTED PERSONS

9.1 The NIO will indemnify those appointed HSE Inspectors (who will remain HSE employees) for any losses incurred while lawfully and honestly performing services under this Memorandum.

9.2 NIO shall accept full responsibility for anything contained in any report or 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.

10 ENFORCEMENT ACTION

10.1 HSE Inspectors appointed by NIO shall not take any enforcement action, including the issue of enforcement notices. Where HSE staff consider that a situation exists where enforcement action may be appropriate, they should approach NIO which will consider and act accordingly.

11 PROSECUTIONS AND OTHER LEGAL PROCEEDINGS

11.1 HSE staff appointed by NIO shall not institute, in any respect, prosecutions or other legal proceedings. HSE will provide support as requested by NIO to any investigation, prosecution or other legal proceedings. This support by HSE Inspectors 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 NIO meets any prescribed timescales.

12 QUALITY ASSURANCE AND MONITORING ARRANGEMENTS

- 12.1 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.
- 12.2 HSE will advise NIO immediately of any difficulties which may prevent the delivery of services to agreed standards, targets or budget.
- 12.3 All correspondence between HSE and NIO relating to this Memorandum will be routed through the PCPs.

13 SERVICES PROVIDED

- 13.1 The services to be provided by both parties and the service standards to be met are set out in the Annex 2 to this Memorandum.
- 13.2 Support may be provided by HSE staff, other than warranted inspectors; such as, but not exclusively, in relation to matters of policy. This support is covered by this Memorandum.

14 FINANCIAL ARRANGEMENTS

- 14.1 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. The NIO 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.
- 14.2 The hourly rate to be charged shall be that rate set out for work by an inspector for explosives licensing in the Health and Safety (Fees) Regulations in force at the time.
- 14.3 Costs shall be payable within the financial year in which the work is performed.

PART 2 – JOINT WORKING ARRANGEMENTS AND PRINCIPLES

15.1 This Memorandum sets out the joint working arrangements and principles governing how HSE and NIO will continue to work together post the UK's departure from the EU and post the end of the transition period. This agreement is in line with the objective of securing the proper functioning of the regime governing the civil use of explosives. A Common Framework (as per the principles agreed at Joint Ministerial Committee (EU Negotiations) in October 2017) was not considered necessary for the policy area of the civil use of explosives because adequate alternative arrangements (including this MOU) would be in place.

15.2 Both parties agree to the following set of guiding principles to support joint working:

- to work collaboratively to enable the functioning of the UK internal market, while acknowledging policy divergence, and ensure compliance with international obligations,
- to ensure the free movement of civil explosives across the UK, in line with legal requirements, whilst respecting the devolution rights of the devolved administrations.

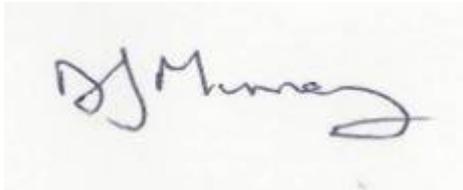
- to work towards consistent approaches to application of the respective legal frameworks preserve market parity;
- to continue working together in terms of supporting UK market surveillance and enforcement activity.

15.3 Divergence may occur around application of the legislation in terms of enforcement activity, but this will be weighed up against the impact of potential divergence on product safety and confidence, the functioning of the UK Internal Market and the proper functioning of the Protocol.

15.4 Divergence may also occur to ensure the proper application of the Protocol and NI's continued regulatory alignment with the EU. These issues will be dealt with through the Protocols governance routes.

16. **CONFIDENTIALITY AND INFORMATION SHARING**

16.1 Both parties will abide by Annexe 3 in relation to information processed under this memorandum of understanding

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

David Murray
Director of Planning, Finance and Procurement

Insert NIO Signature here

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

Nikki Bodel
Northern Ireland Office – Deputy Director, Security and Protection Group

2021-2031 Memorandum of Understanding

Estimated Support Resources and Cost Recovery Arrangements

Support functions	Type of support	Priority	Cost recovery
Inspection	Operational	M	ER2014 licensing hourly rate
Enforcement	Operational	M	ER2014 licensing hourly rate
Investigation	Operational	M	ER2014 licensing hourly rate
Advice	Operational/ Operational policy/Policy	M	ER2014 licensing hourly rate (5 days non cost recoverable)
Issue of ITOER site codes (issuing authority NIO)	Operational	M	ER2014 licensing hourly rate

Services to be provided by HSE

Legislation	Type of support required	Priority H/M/L
Identification and Traceability of Explosives Regulations (Northern Ireland) 2013	Inspection	H
Identification and Traceability of Explosives Regulations (Northern Ireland) 2013	Investigation	L
Identification and Traceability of Explosives Regulations (Northern Ireland) 2013	Enforcement	L

Services to be provided by NIO

Legislation	Type of support required	Priority H/M/L
Identification and Traceability of Explosives Regulations (Northern Ireland) 2013	Issue of site codes	L

GDPR Article 26, Data Controller Declaration

PURPOSE

1. The purpose of this annex is to explain the respective roles that Northern Ireland Office (NIO) and the Health and Safety Executive (HSE) will play in managing the processing of personal data associated with the terms of this Memorandum of Understanding. NIO is considered the controller of the data collected.

DATA PROTECTION

2. NIO and HSE will comply with all relevant provisions of the Data Protection Act 2018 (and the General Data Protection Regulation). NIO will act as the data controller, 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 NIO nor HSE will transfer any personal data it is processing outside of the European Economic Area, unless appropriate legal safeguards are in place.
4. NIO 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. NIO 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.
5. Information sharing arrangements will be reviewed and revised to account for the routine sharing of information in support of enforcement or market surveillance activity. Any decision made which may impact on the internal market will be discussed between officials of the respective parties initially and would then be escalated to Director level if it cannot be addressed at this level.

NIO Responsibilities

6. NIO has the following specific responsibilities:
 - i. Carrying out any required Data Protection Impact Assessment for any element of business or process change
 - ii. Following NIO Data Security Guidance to ensure that the necessary measures are taken to protect personal data.
 - iii. Ensuring NIO staff are appropriately trained in how to use and look after personal data and follow approved processes for data handling.
 - iv. Ensuring NIO 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 NIO to their Data Protection Officer and the ICO (where appropriate).
 - viii. Maintaining any Article 30 processing records for data held on NIO systems

Specific HSE Responsibilities

7. 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

8. 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 NIO 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.
9. In response to any subject access request, NIO or HSE will undertake a proportionate and reasonable search and respond within one month of the original request.

DATA BREACH

10. NIO is responsible for reporting any breach occurring within their authority to their Data Protection Officer and the ICO (where appropriate). NIO will also inform HSE of the breach if there is any direct impact on their staff or wider interest.
11. HSE are responsible for reporting any data breaches within their Authority to their Data Protection Officer and ICO (where appropriate), as well as to NIO if there is any direct impact on their staff or wider interests.
12. 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).
13. 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.
14. If the Information Commissioner expresses no view as to responsibility, then each party shall bear responsibility for half of the penalty imposed.
15. If either HSE or NIO 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.

16. 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

17. NIO 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

18. 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.).
19. 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.
20. 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.
21. 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:

NIO	HSE
Lloyd Ryan Data Protection Officer Northern Ireland Office Stormont House Stormont Estate Belfast BT4 3SH Email: lloyd.ryan@nio.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