



**The Mental Welfare Commission for Scotland
and the
Health and Safety Executive
Information Sharing Agreement**

Document Status

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Document owner	Bruno Porter – Director of Regulation’s Office HSE
Document author and enquiry point	Bruno Porter – Director of Regulation’s Office HSE
Document authoriser	David Murray SIRO/MWC counterpart Ashley Dee
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Version History

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Introduction

1. This Information Sharing Agreement (Agreement) has been developed to facilitate partnership working between the partners identified in paragraph 4 below (Parties). This Agreement identifies the legal powers and methods of sharing information in order to achieve common goals for the benefit of workplace health and safety.
2. This Agreement outlines the need for the Health and Safety Executive (HSE) to work together with the Mental Welfare Commission (the Commission) to promote an effective working relationship and information sharing protocol for the purposes of improving statutory investigations and improving safety standards.
3. All Parties to this Agreement must ensure that all of their staff who are affected by it are aware of its contents and the obligations it creates between the Parties signed up to it.

Parties to the agreement

4. The Parties committed to this Agreement are:
 - I. The Mental Welfare Commission for Scotland, Thistle House, Edinburgh, EH12 5HE who has the role of Independent Data Controller.
 - II. The Health and Safety Executive, Redgrave Court, Bootle, L20 7HS who has the role of Independent Data Controller.
5. It will be the responsibility of these Parties to ensure that they:
 - I. have realistic expectations from the outset
 - II. maintain ethical standards
 - III. have a process by which the flow of information can be controlled
 - IV. provide appropriate training
 - V. have adequate arrangements to test compliance with the agreement
 - VI. meet the requirements of the Data Protection Act 2018 (DPA), UK General Data Protection Regulation (GDPR) and other relevant legislative requirements, including complying with the Information Commissioner's Data Sharing Code of Practice and other applicable standards.

Background and scope of the Agreement

6. The Agreement covers the sharing of personal data for the purpose of promoting an effective working relationship between HSE and the Commission when supporting statutory investigations and improving safety standards. The Agreement also covers information sharing for any of the purposes listed in paragraph 13.

Information to be shared

7. It has been identified by the Parties that the following fields of data in paragraphs 8 and 9 are required to fulfil the purpose and scope of the Agreement as identified above.
8. These data are to be provided by the Commission and are to be received by HSE:
 - I. Personal data of deceased and living individuals including:
 - Community Health Index (CHI) number
 - Forename
 - Surname
 - DOB
 - Age
 - Gender
 - Address
 - Full/partial postcode
 - II. Special category data
 - Health data e.g. medical diagnosis or conditions
 - Specialist evidence e.g. a statement or report
9. The Commission may, on occasion, identify concerns about health and safety standards for patients, service users and/or employees within the services it visits. Where these might indicate systemic health and safety management failings, the Commission should report the matter to the nominated HSE contact for HSE to consider appropriate action.
10. HSE may, on occasion, identify concerns about welfare standards for patients, service users and/or employees during routine work. This includes information being passed to HSE. Where these appear to fall under the remit of the Commission, HSE will pass the information to the nominated Commission contact.
11. Neither Party will utilise a sub-processor for the purposes of this Agreement without prior written approval of the other Party.

Data Processing

12. Full details of Data subject's rights in relation to processing of personal information can be found in each Participant's Privacy Notice.

MWC	Privacy Policy Mental Welfare Commission for Scotland
HSE	HSE Privacy Policy Statements - HSE. Including HSE's privacy notice for investigations for law enforcement.

Terms of use of the information

13. Data is shared only to support statutory investigations and regulatory functions under the Health and Safety at Work etc Act 1974 (HSWA) and Mental Health (Care and Treatment) (Scotland) Act 2003 and the Adults with Incapacity Act (Scotland) 2000. Information is exchanged to promote welfare and safety, investigate deaths (including suicides), serious injuries, and systemic failings.
14. Any shared data may be used by HSE:
 - I. For the purposes of any criminal investigation which is being or may be carried out in Scotland.
 - II. For the purposes of any criminal proceedings whatever which have been or may be initiated, in Scotland
 - III. For the purposes of the initiation or bringing to an end of any such investigation or proceedings; or
 - IV. For the purpose of facilitating a determination of whether any such investigation or proceedings should be initiated or brought to an end.
15. Neither Party will share any data received under the terms of this Agreement onwards or for example, with a third party, without prior written approval of the other Party (the information supplier).

Exchange of Information

16. Data will be transferred securely using encrypted email and stored on encrypted devices with password protection. Emails will be marked 'Official Sensitive' as appropriate.
17. Staff who receive information are appropriately trained in how to use and look after personal data and follow approved processes for data handling.
18. Information will only be shared to support statutory investigations or to raise concerns over systematic health and safety management failings or welfare standards of patients, service users and/or employees.
19. Information will be shared as frequently as required to support statutory investigations and proceedings. The frequency of information exchange will be determined by the needs and timelines of each investigation.

Purposes and legal basis for information sharing

Purpose for sharing information

20. The exchange of information between the HSE and the Commission is undertaken to support effective investigations and informed decision-making in relation to health and safety incidents, including fatalities and, in rare cases, living individuals.

21. This data sharing will enable both organizations to identify risks, implement preventative measures, and improve overall safety standards.

Legal Powers to share information

22. Both parties derive powers from Acts of Parliament:

MWC	The Mental Health (Care and Treatment) (Scotland) Act 2003	Section 2 – establishes the Mental Welfare Commission and its general functions
		Sections 11–13 – powers to visit, investigate and make inquiries, and to require information and assistance necessary to carry out its statutory functions
		Section 16-17. Inspection of medical or other records
		Schedule 1. General powers. The Commission may do anything which appears to it to be necessary or expedient for the purposes of, or in connection with, the exercise of its functions;
	The Adults with Incapacity Act (Scotland) 2000	Sections 9–11 – functions and powers to investigate and obtain information in relation to adults with incapacity
HSE	The Health and Safety at Work etc Act 1974 (HSWA) and associated legislation	Section 3 - duty to protect non-employees from risks arising from work activities
		Section 18 – responsibility for enforcement of the relevant statutory provisions
		Section 19 – appointment of inspectors to carry out enforcement functions
		Section 20 – powers of inspectors to obtain information, conduct investigations, inspect documents and gather evidence
		Section 21 – powers to issue Improvement Notices

		Section 22 – powers to issue Prohibition Notices;
		Section 33 – investigation and enforcement of offences under the Act

23. HSE and the Commission will share information under the terms of, the Data Protection Act (DPA) 2018 and the UK General Data Protection Regulations (GDPR) as outlined in paragraph 23.

Lawful Basis for Sharing Personal Information

24. Data can only be shared where there is a legal basis for the exchange and for the purposes described in this agreement:

UK GDPR	Public tasks – Public Task Article 6 (1); (e) Public task	the processing is necessary to perform a task in the public interest or for the Parties' official functions, and the task or function has a clear basis in law;
UK GDPR	Processing of special categories of personal data Article 9.2; (g)	processing is necessary for reasons of substantial public interest, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject;
DPA 2018	DPA Section 8 and Schedule 1(2)(6)(2)(a)	for the purpose of exercising a function conferred on a person by enactment or rule of law.
DPA 2018	DPA Section 35(2)(b) and Schedule 2, Part 1, Paragraph 2 (1)(a)	the prevention [investigation] or detection of crime

25. HSE and the Commission confirm that, in so far as they are sharing special category data, they each maintain an Appropriate Policy Document in accordance with Schedule 1 of the DPA 2018.

MWC	Microsoft Word - IG-POL-03 Data Protection Policy v.1.docx (Section 6)
HSE	Appropriate Policy Document - Data Protection

Data Quality

26. Information shared under this Agreement must be fit for purpose, meaning that it must be adequate, relevant and not contain excessive detail which is beyond that required for the agreed purpose.
27. Where information received by any partner is insufficient to achieve the agreed purpose, i.e. inaccurate, out-of-date or inadequate for the stated purpose, clarification will be sought with the relevant Data Controller before the information is acted upon. Partners receiving such queries will act promptly to resolve them, ensuring corrections are documented and cascaded to the other Party without delay.

Retention, Storage and Disposal

28. The Commission and HSE will retain personal data associated with the effective operation of this Liaison Agreement 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.
29. Both Parties shall ensure that their systems in which information is held have appropriate security measures in place to sufficiently protect it, and that the information can only be accessed by relevant staff with a lawful purpose to do so. Both Parties shall ensure that their staff comply at all times with the relevant Party's established policies and procedures.
- I. All Parties must ensure that they have appropriate measures in place to ensure the secure storage of all the information subject to this Agreement will be kept as follows:
 - II. Physical copies of information provided should be held in a lockable storage area, office or cabinet
 - III. Electronic files must be protected against illicit internal use or intrusion by external parties through the appropriate security measures
30. The application for, collection of and, processing of, data requested under this agreement is retained, stored and destroyed in line with HSE's Business Classification Scheme and Disposal Policy.
31. The Commission retains information on its central record and information management systems. It retains, stores and destroys data in accordance with its own data retention and disposal policies.

Access and Security

32. For any data received from the Commission and stored electronically, the individual signing this sharing agreement must hold an appropriate notification with the Office

of the Information Commissioner. HSE operate a clear desk policy. Any files that are stored on HSE's record management system (CM) can only be assessed by HSE staff and can be restricted where necessary.

33. The Controllers will not transfer any personal data it is processing outside of the UK unless appropriate legal safeguards are in place, such as an adequacy decision or Standard Contractual Clauses, as required by data protection law.
34. Each Controller will ensure staff are appropriately trained in how to use and look after personal data and follow approved processes for data handling.
35. Each Controller will ensure staff have appropriate security clearance to handle personal information subject to the Agreement.
36. HSE, as the Controller which processes data for law enforcement purposes, will ensure appropriate audit logs are maintained, including in compliance with Data Protection Act 2018, s62 requirements where law enforcement data is concerned, and any data sharing registers are updated and maintained as required to evidence accountability of the Parties.

Handling of complaints, information requests or breaches of the Agreement

Handling of data breaches

37. Each Controller will ensure that any Personal Data Breach, suspected or actual, involving the data covered under this agreement, will be reported to the Data Protection Officers without undue delay to allow them to undertake necessary assessments on reporting to the Information Commissioner's Office (ICO) within the 72 hours statutory reporting requirement. The relevant DPOs will follow local policies and procedures to inform the affected data subject should the circumstances warrant it. The appropriate Data Protection Officer contact details are below:

Mental Welfare Commission for Scotland	HSE
Data Protection Officer Mental Welfare Commission for Scotland Thistle House 91 Haymarket Terrace Edinburgh EH12 5HE Email: mwc.enquiries@nhs.scot	Data Protection Officer Health and Safety Executive 1.3 Redgrave Court Merton Road, Bootle Liverpool L20 7HS Email: Data.Protection@hse.gov.uk

38. If financial penalties are imposed by the ICO or a court on a Controller in relation to any data processed under this agreement, the Controller deemed responsible by the ICO or court is responsible for the payment of any penalty imposed. Where responsibility is not determined or apportioned by the ICO or court, each Controller shall bear an equal share of the relevant liability, unless a Controller can prove that it is not in any way responsible for the event giving rise to the damages.

Handling of complaints

39. Any Party, on receipt of a complaint, without delay must refer the complainant to their respective complaint's procedure.

MWC	Complaints Mental Welfare Commission for Scotland
HSE	Complaints about HSE

40. Complaints from data subjects, or their representatives, made under Section 164A of the Data Protection Act 2018 regarding information held by any of the parties to this Agreement will be investigated first by the organisation receiving the complaint, and forwarded to the other party without undue delay where needed.

40.1. Each Data Controller will consult with other parties where appropriate.

40.2. The Data Controller of the data subject to a complaint will be responsible for responding to the complaint.

Handling of requests for information under Data Protection / FOI

41. Each Party will ensure that data is managed and controlled in accordance with the requirements of the FOI and EIR, and in line with UK GDPR and associated legislation.

42. Either Party may receive a request for information from a member of the public or any other person under the various pieces of information disclosure legislation (GDPR, DPA, EIR, FOI).

43. Where either party, in response to a request for information that has been supplied by the other Party (the information supplier) made under the Freedom of Information Act 2000, or the Environmental Information Regulations 2004 or a Subject Access Request, as applicable, is considering disclosing information requested and obtained via this Agreement it will consult with the information supplier before doing so. The purpose of this consultation is to ensure:

- I. the Party that received the request is able to share any concerns about information that might be disclosed to the requester,

- II. that the Party holding the information is able to take those concerns fully into account in its decision-making, and
- III. that the Parties can co-ordinate their handling of requests.

- 44. The respective Controller is ultimately responsible for making the final decision on disclosure, non-disclosure or application of any exceptions and exemptions in relation to any request they receive for information relating to the purposes and means they have determined, ensuring all resulting responses are lawful.
- 45. Each Party will provide to the other any information in its possession that may be reasonably requested by the other, subject to necessary confidentiality constraints, safeguards and statutory rules on disclosure.
- 46. Each Party will seek the approval of the other Party before externally publishing any information resulting from the use of information received from the other Party, and such approval will not be unreasonably withheld.
- 47. Both parties will, in fulfilling obligations under the Freedom of Information Act 2000 or Freedom of Information (Scotland) Act 2002, or the Environmental Information Regulations 2004, or Subject Access Request, as applicable, comply with the Data Protection Act 2018 and the General Data Protection Regulation (GDPR) where the requested information includes personal and/or special category data.

Commencement and Termination of the Agreement

Commencement of the Agreement

- 48. This Agreement shall take effect from the date that the Parties fix their signatures below and shall continue in force until this Agreement is terminated under the section below.

Termination of the Agreement

- 49. Any Party may terminate this Agreement at any time provided they give a minimum of 30 days' notice in writing to the other Parties.
- 50. Any Party can suspend this Agreement for 30 days if they consider that security arrangements have been compromised. Such suspension arrangements are intended to allow the affected Party the opportunity to seek a resolution and cause any remedial actions to be completed. In the event that agreement is not reached, the Agreement will be terminated in writing with full explanation to the Parties concerned.
- 51. The obligations of confidentiality imposed on the Parties by this Agreement shall continue in full force and effect after the expiry or termination of this Agreement.

Monitoring, review and dissemination of the Agreement

Monitoring of the Agreement

52. Every 3 years, HSE and MWC will discuss matters of mutual interest arising from their respective responsibilities and arrange face to face meetings if deemed appropriate.

Review of the Agreement

53. Both Parties agree to review the Agreement when there is any major change to the data, process, relevant legislation or Parties to the Agreement and otherwise every 3 years.

54. The Parties agree to notify a representative of the other Party of any requirements to review the Agreement, and it will be the responsibility of the relevant Party to instigate the review.

55. The Parties may decide to continue, amend or terminate the arrangements depending on the outcome of any review.

56. The nominated points of contact are as follows:

Names/emails redacted from published version under the following exemptions: FOI Act Section 40 / FOI (Scotland) Act Section 28 (personal information)

HSE	MWC
Head of Regulatory Practice Team, Director of Regulation's Office	Casework Manager
Health and Safety Executive Director of Regulation's Office c/o Queen Elizabeth House 1 Sibbald Walk Edinburgh EH8 8FT	Mental Welfare Commission for Scotland Thistle House, 91 Haymarket Terrace Edinburgh EH12 5HE

Dissemination of the Agreement

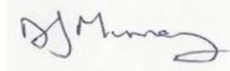
57. All Parties will disseminate copies of this Agreement to all relevant staff and, on request, to the data subjects of the Agreement process and will ensure that appropriate training is provided to all relevant staff.

Signatories

Data Controller: Health & Safety Executive

DAVID MURRAY

Director of Finance and Planning



07/09/2026

Name & Title/Role

Signature

Date

Data Controller: Mental Welfare Commission for Scotland

ASHLEY DEE

Head of Culture & Corporate Services



21/09/2026

Name & Title/Role

Signature

Date