

**Memorandum of Understanding**

**between**

**Healthcare Inspectorate Wales (HIW)**

**and**

**the Health and Safety Executive (HSE)**

**April 2016**

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## **1 Introduction**

1.1 This Agreement refers to NHS and independent healthcare provision in Wales. It comes into effect on 1<sup>st</sup> April 2016.

1.2 The purpose of this Agreement is to set out a framework to support the working relationship between the Healthcare Inspectorate Wales (HIW) and the Health and Safety Executive (HSE) to help ensure that there is effective, co-ordinated and comprehensive regulation of risks to care and the health and safety of patients, service users, workers and members of the public visiting relevant healthcare premises. It outlines the respective responsibilities of HIW and HSE for investigations in the healthcare sector, and the principles that will be applied where specific exceptions to these general arrangements may be justified. It describes the principles for effective liaison and for sharing information more generally.

1.3 This Agreement does not override the statutory responsibilities and functions of HIW and HSE and is not enforceable in law. However, HIW and HSE agree to adhere to the principles of the Agreement.

## **2 Principles of co-operation**

2.1 HIW and HSE are committed to the principles of transparency, accountability, proportionality, consistency, and targeting when regulating healthcare in Wales (for further information see [Better Regulation Task Force principles of good regulations for non-economic regulators](#)).

2.2 HIW and HSE intend that their working relationship will be characterised by the following principles:

- Drive improvement in the delivery of safe healthcare.
- Respect for each organisation's independent status.
- The need to maintain public confidence in the two organisations and the regulatory process.

- Openness and transparency between the two organisations as to when cooperation is and is not considered necessary or appropriate.
- The need to use resources effectively and efficiently.

2.3 HIW and HSE will work together to ensure that the best placed organisation leads any collaborative work. Where serious harm occurs or a serious concern arises which may lead to significant harm in a healthcare setting, both organisations will liaise with each other at an early stage to ensure that there is one lead organisation. Both organisations will aim to co-ordinate any follow-up so that the right people and organisations are approached to support improvement. **Annex A** sets out the role and functions of each organisation. **Annex B** sets out a flowchart for the organisations to follow.

### **3 Areas of co-operation**

3.1 The working relationship between HIW and HSE involves co-operation in the following areas:

- Information sharing
- Incident investigation
- Strategic collaboration and supporting improvement

3.2 Named contacts for each organisation are identified in **Appendix 1**.

#### **Information sharing**

3.3 HIW and HSE will share information arising from their activities that may assist the other in its remit subject to any applicable statutory exemption or under any other restriction or prohibition under any enactment, rule of law or order of the court preventing release.

#### **Incident investigation**

3.4 Where a work-related death occurs, the police take primacy initially in the investigation in accordance with the [Work Related Deaths Protocol \(WRDP\)](#) and the associated [Practical Guide](#). The police / Crown Prosecution Service (CPS) are

responsible for the investigation and prosecution of certain offences. This includes individual or corporate manslaughter, ill treatment or wilful neglect and extends to cases of theft in an abuse case. HIW or HSE will notify them of such incidents and work with them in accordance with the WRDP and this MoU.

3.5 Where primacy for investigation into work-related death or serious harm needs to be passed from the police, a decision will be made as to whether HIW or HSE assumes primacy for the investigation (see **Annex A** for Responsibilities and functions of HIW and HSE). The flowchart in **Annex B** is provided to assist in making such decisions.

#### Strategic collaboration and supporting improvement

3.6 HIW and HSE will have regard to the circumstances in which their objectives may be best served by collaboration. Each organisation will seek to give consideration to the other when planning their work programmes and identify any possibilities for joint working.

3.7 They may, by agreement, undertake joint inspection, investigation or other work. Throughout such work HIW and HSE will retain and act in accordance with their own statutory powers. This work may include:

- Joint reviews of information about a healthcare organisation
- Site visits to a healthcare organisation
- The co-production of documents and reports
- Coordination of any follow up action planning to address any recommendations
- Intelligence based proactive interventions
- Other joint working deemed appropriate

## **4 Information Sharing**

4.1 Each organisation will work collaboratively by:

- notifying and liaising with the appropriate organisation as soon as appropriate about information they receive about incidents that may be in their jurisdiction;

- sharing relevant intelligence and data related to providers regulated in common; and
- meeting periodically to discuss information sharing and to review procedures and working arrangements as part of continuous improvement and an opportunity to feedback and share issues / concerns.

4.2 Both HSE and HIW are subject to the Freedom of Information Act 2000 and Data Protection Act 1998. If one organisation receives a request for information that originated from the other, the receiving organisation will discuss the request with the other before responding.

#### Liaison for individual incidents

4.3 Where there is uncertainty about jurisdiction the relevant organisations will:

- determine who should have primacy for any action and whether joint or parallel action will be conducted;
- keep a record of this decision and agree criteria for review, if appropriate;
- designate appropriate contacts within each organisation to establish and maintain any necessary dialogue throughout the course of the action; and,
- keep dutyholders / providers, injured parties and appropriate relatives informed accordingly.

#### Referral of concerns to professional bodies

4.4 HSE and HIW have Memoranda of Understanding (MoU) with some professional bodies. Where HSE does not have a MoU in place, HSE will liaise, where appropriate, with HIW to get advice on a relevant contact within the relevant professional body.

#### Cross border issues (e.g. commissioning)

4.5 HSE is a GB regulator and is not confined to border constraints between Wales and the rest of GB. HIW's remit relates to Wales. In England, CQC has powers in respect of patient safety and so cross border matters may need to be directly referred to them. Where care is commissioned across the border (from England or from Wales) and HSE or HIW have intelligence of poor compliance or standards, each organisation will liaise with CQC to share intelligence where appropriate.

## **5 Resolution of issues**

5.1 Any disagreement between HIW and HSE will normally be resolved at a working level. If this is not possible, it may be escalated through those responsible for the management of this MoU to ensure a mutually satisfactory resolution.

## **6 Duration and review of this Agreement**

6.1 This agreement will be regularly reviewed every two years or more frequently if required, to reflect feedback from operational staff, lessons learnt from implementation and the impact of any changes in legislation.



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Chief Executive  
Healthcare Inspectorate Wales



Samantha Peace  
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Health & Safety Executive

## **Annex A**

### **Responsibilities and functions of HIW and HSE**

- 1 Healthcare Inspectorate Wales (HIW) and the Health and Safety Executive (HSE) acknowledge the responsibilities and functions of each other and will take account of these when working together.

#### **Role of Healthcare Inspectorate Wales (HIW)**

- 2 HIW is the independent inspectorate and regulator of healthcare in Wales.
- 3 HIW carries out its functions on behalf of Welsh Ministers and, although part of the Welsh Government, protocols have been established to safeguard its operational autonomy. HIW's main functions and responsibilities are drawn from the following legislation:
  - Health and Social Care (Community Health and Standards) Act 2003;
  - Care Standards Act 2000 and associated regulations
  - Mental Health Act 1983 and the Mental Health Act 2007
  - Statutory Supervision of Midwives as set out in Articles 42 and 43 of the Nursing and Midwifery Order 2001
  - Ionising Radiation (Medical Exposure) Regulations 2000 and Amendment Regulations 2006.
- 4 HIW's primary focus is on:
  - Making a significant contribution to improving the safety and quality of healthcare services in Wales
  - Improving citizens' experience of healthcare in Wales whether as a patient, service user, carer, relative or employee
  - Strengthening the voice of patients and the public in the way health services are reviewed
  - Ensuring that timely, useful, accessible and relevant information about the safety and quality of healthcare in Wales is made available to all.



- 5 HIW's core role is to review and inspect NHS and independent healthcare organisations in Wales to provide independent assurance for patients, the public and others that services are safe and of good quality. Health services are reviewed against a range of published standards, policies, guidance and regulations. As part of this work HIW will seek to identify and support improvements in services and the actions required to achieve this. If necessary, HIW will undertake special reviews and investigations where there appears to be systematic failures in delivering healthcare services, to ensure that rapid improvement and learning takes place. In addition, HIW is the Local Supervising Authority for the statutory supervision of midwives in Wales.
- 6 HIW's website provides more information about what HIW does, [how it decides what to do](#) and its responsibilities. It also states how HIW responds to [non-compliance](#) with the various regulations.

### **Role of the Health and Safety Executive (HSE)**

- 7 The Health and Safety Executive (HSE) is an enforcing authority responsible for the regulation of health and safety at work in Great Britain and was established by the Health and Safety at Work etc Act 1974 (HSWA). The HSE is a non-departmental public body with Crown status, sponsored by the Department for Work and Pensions (DWP) and accountable to its ministers.

The mission of HSE is:

*The prevention of death, injury and ill health to those at work and those affected by work activities.*

- 8 HSE also investigates incidents and concerns about health and safety practices, and develops new or revised health and safety legislation and codes of practice.
- 9 HSE regulates health and safety across a range of sectors and industries including major hazard sites such as offshore gas, oil installations and onshore chemical plants through to more conventional sites, quarries, farms, factories, waste management sites and hospitals. It regulates private or publicly owned

health and social care settings in Great Britain. HSE inspects, investigates and where necessary takes enforcement action. HSE regulates residential nursing care and local authority (LA) provision.

### **Policy and procedures**

- 10 To enable HSE to conduct its functions in an open and transparent manner all of the operational procedures that it works to, plus the associated internal guidance and instructions, are publicly available on its [website](#).

### **The Health and Safety at Work etc Act 1974 (HSWA)**

- 11 HSE enforces the provisions of HSWA and the Regulations made thereunder. Under the main provisions of this Act, employers have legal responsibilities in respect of the health and safety of their employees and other people, including patients and service users, who may be affected by their undertaking and who may be exposed to risks as a result. Employees are required to take reasonable care for the health and safety of themselves and others. Breaches of health and safety legislation amount to criminal offences.

### **Scope and application of section 2 HSWA**

- 12 Section 2 of the HSWA requires every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all employees.

### **Scope and application of section 3 HSWA**

- 13 The purposes of HSWA include protecting people other than those at work from risks to their health and safety arising out of or in connection with the activities of persons at work (section 1(1)(b) of HSWA).
- 14 HSWA section 3 places a duty on employers and, in some circumstances, the self-employed to conduct their undertakings in such a way as to ensure, so far as reasonably practicable, that non-employees are not exposed to risks to their health and safety.

### **Scope and application of section 7 HSWA**

- 15 As well as powers to deal with failing organisations HSWA also provides powers to hold individual employees to account. Section 7 creates a duty on every

employee while at work to take reasonable care for their own safety and the safety of others who might be affected by their acts or omissions.

### **Scope and application of section 37 HSWA**

- 16 HSWA provides powers to hold Directors and Senior Managers to account. Section 37 places duties on directors and senior managers (effectively the controlling minds of the organisation) and makes them liable to penalties, including imprisonment, if an offence is committed by a corporate body with their 'consent' or 'connivance' or is due to their neglect.

### **Incident Selection Criteria**

- 17 As part of Operational Procedures for Investigation, HSE uses a published [incident selection criteria](#) for selecting which incidents should be selected for investigation by an inspector.

### **Decisions to investigate accidents to non-employees, including patients**

- 18 HSE has a [HSWA section 3 enforcement policy](#) about whether or not specific accidents to non-employees (e.g. patients) should be investigated. In addition to this general policy, HSE's [who regulates health and social care](#) web page also provides specific guidance on the regulation of health and social care.
- 19 HSE has [HSWA section 3 guidance](#) which includes situational examples covering various industry sectors, including health and social care, to assist in decision making.
- 20 The guidance states:

HSE does not, **in general**, investigate matters of clinical judgement or matters related to the level of provision of care. Other legislation and regulatory bodies deal with these issues. Examples of 'provision of care' include situations where poor hydration, poor nutrition or the development of pressure ulcers was the primary cause of death.

In Wales, HSE deals with the major non-clinical risks to patients such as trips and falls, scalding, electrical safety etc; and with some aspects of risks that apply to both staff and patients alike, such as manual handling. Such incidents are normally reported to HSE under the Reporting of Incidents, Diseases, Dangerous

Occurrences Regulations 2013 (RIDDOR), and HSE follows its published incident selection criteria when deciding whether to investigate. In England from April 2015, new enforcement powers meant that CQC became the lead regulator for patient / service user health and safety matters.

### **Work-related death protocol**

- 21 HSE may investigate work-related deaths jointly with the police under the [Work-Related Deaths Protocol](#). Such investigations can give rise to charges of individual or corporate manslaughter where the police and Crown Prosecution Service are in the lead and may also include HSWA charges. HSE may also investigate incidents jointly with other regulators.

### **HSE enforcement decisions**

- 22 HSE has regard to its Enforcement Policies and the Enforcement Management Model when making enforcement decisions. In addition all prosecution decisions have to take into account the Code for Crown Prosecutors.

### **Enforcement Policy Statement**

- 23 HSE has Enforcement Policies based on the principles of proportionality, targeting, consistency, transparency and accountability.
- 24 HSE has prepared and published an [Enforcement Policy Statement](#) (EPS) which sets out the general principles and approach which HSE staff, mostly inspectors, are expected to follow when taking enforcement decisions. The EPS covers areas such as the purpose and method of enforcement, the principles of enforcement, investigation, prosecution and death at work.

### **Regulatory powers – improvement, investigation and enforcement**

- 25 The [duties of employers](#) and powers of HSE are laid out in [HSWA](#) and its relevant statutory provisions. [Section 20 of HSWA](#) sets out powers of inspectors.
- 26 Where there is evidence of poor compliance or serious harm (which meets its selection criteria) HSE has recourse to the following powers:

a) *Securing improvement*

1 – Notice of contravention (NOC) – If, when visiting a workplace, material breaches of the law are found a NOC may be issued.

2 – Improvement Notice (IN) – Section 21 HSWA allows an inspector / officer, where they are of the opinion that a person is contravening one or more of the relevant statutory provisions, or has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated, to serve an Improvement Notice on individuals or providers.

3 – Prohibition Notice (PN) - Section 22 HSWA allows an inspector to serve a PN on a person or legal entity if they are of the opinion that an activity carried on (or likely to be carried on) by or under the control of that person / legal entity involves (or will involve) a risk of serious personal injury.

[Note: The issuing of an NOC, IN or PN by HSE incurs a fee for intervention (FFI). The fee depends on the amount of time that the inspector spends identifying the material breach, helping the business put it right, investigating and taking enforcement action.]

b) *Prosecution*

In appropriate cases, and having regard to the evidential and public interest tests in the Code for Crown Prosecutors, HSE may take criminal proceedings against an individual or a corporate body for breaches of health and safety legislation. Costs incurred in bringing proceedings are recovered through the courts wherever possible.

## **Role of the police**

### Deaths or suicides

27 Where a death or suicide occurs in a workplace, the police will take primacy in the investigation in accordance with the [Work Related Deaths Protocol \(WRDP\)](#). The police / Crown Prosecution Service (CPS) are responsible for the investigation and prosecution of certain offences. This includes individual or

corporate manslaughter, ill treatment or wilful neglect and extends to cases of theft in an abuse case.

28 Where the police / CPS decide not to take any criminal action, primacy may be passed to the best placed organisation that can carry out a full investigation into individual or organisational failings, if needed, and consider other criminal breaches or enforcement action. Both HSE and HIW are signatories of the WRDP.

29 The police also have powers to investigate and prosecute under:

1) 'Wilful Neglect' legislation (Criminal Justice and Courts Act 2015)

This came into force in England and Wales in April 2015. An offence is committed where:

a) an individual who has the care of another individual by virtue of being part of the care provider's arrangements ill-treats or wilfully neglects that individual,

(b) the care provider's activities are managed or organised in a way which amounts to a gross breach of a relevant duty of care owed by the care provider to the individual who is ill-treated or neglected, and

(c) in the absence of the breach, the ill-treatment or wilful neglect would not have occurred or would have been less likely to occur.

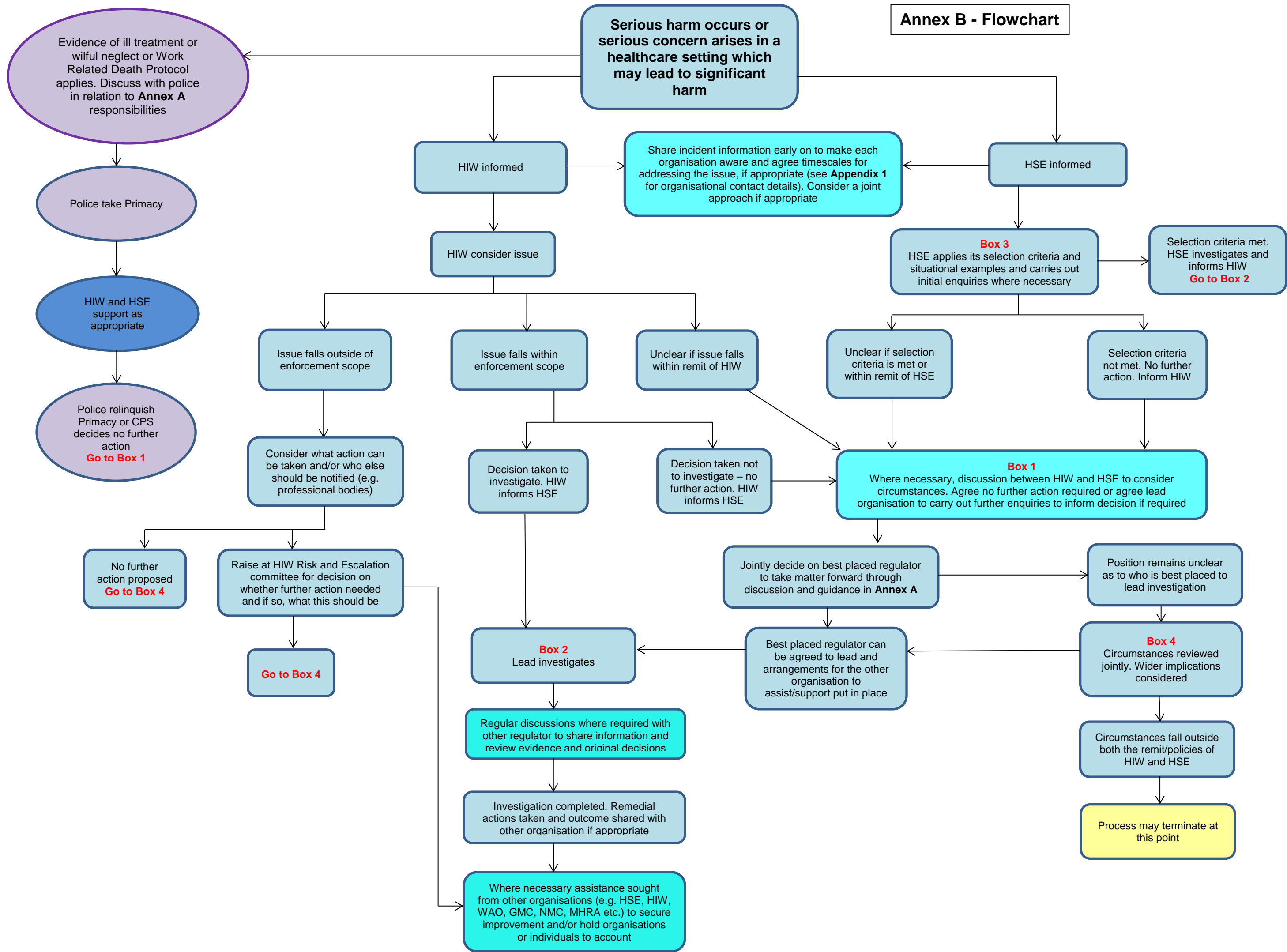
2) Corporate Manslaughter legislation (Corporate Manslaughter and Corporate Homicide Act 2007)

An organisation is guilty of Corporate Manslaughter if the way in which its activities are managed or organised causes a person's death, and it amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased. Corporate Manslaughter is investigated by the police and prosecutions are determined, and taken, by CPS.

Allegations of manslaughter which fall to be considered by the police and CPS in work-related deaths include manslaughter by gross negligence, which is committed by an individual when he/she owed a duty of care towards the deceased; breached that duty of care; the breach caused or

significantly contributed to the death; and the breach should be characterised as gross negligence and therefore a crime.

**Annex B - Flowchart**





## Appendix 1 - Lead contacts

There are specific points of contact between HIW and HSE as follows:

Healthcare Inspectorate Wales  
Rhydycar Business Park  
Merthyr Tydfil  
CF48 1UZ  
Tel: 0300 062 8163

Health and Safety Executive  
Government Buildings – Phase 1  
Ty Glas, Llanishen,  
Cardiff  
CF14 5SH  
Tel: 029 20 263000

## MoU management and information sharing

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