



Concordat between the Health & Safety Executive and the Scottish Executive

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Introduction

1. This concordat is an agreement between the Scottish Executive and the Health and Safety Executive. It is intended to provide the framework to guide the future working relationship between the Health and Safety Executive (HSE) and the Scottish Executive (SE). The objective of the concordat is to ensure that the roles and responsibilities of HSE and the SE in the new constitutional structure are effectively translated into practical working arrangements between the two organisations. The aim is to promote the establishment of close and harmonious working relationships and good communications at all levels between HSE and the SE, and in particular to foster constructive co-operation. Most day to day liaison between the SE and HSE will, in the first instance be handled by HSE's Director for Scotland, based in Edinburgh.

Nature of concordat

2. This concordat has been drawn up in accordance with the principles outlined in the Memorandum of Understanding (MOU) which sets out the understanding of the UK Government and the administrations of Scotland and Wales of the principles and practices that will underlie relations between them. The MOU is augmented by an agreement on the Joint Ministerial Committee (JMC) and by guidance on common working practices. There are also overarching concordats setting out the framework for co-operation on EU policy issues, international matters and statistics which are relevant to this agreement. Where those matters are concerned, reference should first be made to those overarching concordats.

3. This concordat is a voluntary arrangement between HSE and the Scottish Executive. It is not a binding agreement or contract and so does not create any legally enforceable rights, obligations, or restrictions. It is intended to be binding in honour only. The Health and Safety at Work etc. Act 1974 (HSWA) provides for statutory consultation in connection with proposals for regulatory change; this concordat does not create any other right to be consulted or prevent consultation beyond that required by statute. Any failure to follow the terms of the concordat is not to be taken as invalidating decisions taken by HSE or the Scottish Executive.

Interpretation

4. As this concordat indicates, HSE and the SE will exchange information and inform or consult each other about a wide range of issues in a wide range of situations, in the irrespective roles of advising the Health and Safety Commission and Scottish Ministers. The concordat is not, however, intended to be an exhaustive description of every aspect of the relationship between the organisations, or to preclude communication between them about other issues or in other situations. The primary aim is not to constrain the discretion of either party but to allow HSE and the SE to make representations to each other insufficient time for those representations to be fully considered.

5. It is not generally either possible or desirable for the concordat to prescribe in detail the precise circumstances which will trigger a need to invoke the arrangements set out in this concordat, or the exact form of communication or the timescale involved. Where specific arrangements are necessary on particular topics they are outlined in this concordat and its annexes. Otherwise HSE and the SE will use their judgement, taking into account the terms of this concordat, in determining the procedures (including the level of detail and, where necessary, the period of notice) that appear reasonable and appropriate in any given circumstance, in accordance with the principle that if either is planning action which impinges on the responsibilities of the other, it should give adequate forewarning.

6. The Health and Safety Commission and Executive (HSC/E) are statutory non-departmental public bodies established under HSWA. HSC/E are sponsored by the Department of the Environment, Transport and the Regions (DETR) whose Secretary of State appoints the members of HSC. The Commission advises UK Ministers on health and safety policy matters; HSE acts on behalf of the Commission in implementing Commission policies and is the main adviser to the Commission on those policies. HSE also enforces health and safety law throughout Great Britain. HSC/E are reserved bodies under the Scotland Act 1998. Their health and safety functions and certain other functions delegated to them by UK Ministers extend to the whole of Great Britain.

7. Under Section 13 of HSWA, HSC/E may by agreement with the Scottish Ministers carry out functions in Scotland on their behalf.

8. This concordat is framed in terms of the interface between HSE and the SE; it is not intended to imply that communications on issues covered by the concordat should not, where appropriate, also involve the Health and Safety Commission, UK Departments, particularly DETR, or other devolved administrations; indeed that may be the most effective way of conducting some business.

Confidentiality

9. HSE and the SE wish to ensure that the information each supplies to the other is subject to appropriate safeguards, in accordance with the principles set out in the Memorandum of Understanding. These arrangements rely for their effectiveness on mutual respect for the confidentiality and sensitivity of information exchanged. Therefore HSE and the SE will not disclose unpublished information to third parties without the permission of the administration which provided the information, subject to the requirements of the law and other obligations.

10. In considering the case for disclosure, the requirements of freedom of information legislation, or before that comes into operation, the guidelines for disclosure of information in the UK Government's and Scottish Executive's Codes of Practice on access to Government information will be taken into account, subject to any requirements imposed by Data Protection Act 1998, the Official Secrets Act, and the Environmental Information Regulations (1992), as amended, or duties placed on HSE by section 28 of HSWA.

Consultation

11. There are a significant number of areas where HSC/E and Scottish Ministers share or have closely related interests, as set out in the Annex. HSE and the SE recognise that the extent of these areas makes good communications essential in order to assist the process of policy formation and decision-making in each administration and to meet any consultation or other requirements connected with the exercise of a function. They also recognise that there will be mutual benefit from the exchange of information on scientific, technical and, where appropriate, policy matters.

12. Information obtained by use of HSC/E's statutory powers cannot be made available to SE where the release of that information is not for the purposes of HSE's functions. Subject to that, the HSE and the SE will:

- share relevant information, analysis and research;
- inform each other of any relevant information which comes to their attention which may require action or have resource consequences for the other party;
- seek to involve each other, as and when appropriate, in policy development on all topics where there is a reasonable expectation that a policy initiative might affect the other's responsibilities, or be used or adapted by the other;
- inform each other at the earliest practicable stage of any emerging proposal to change primary or secondary legislation which might have an impact upon the other's responsibilities;
- inform each other at the earliest practicable stage of substantive new policy announcements which may be relevant to the other's responsibilities; and
- co-ordinate activities where appropriate

Major incidents and public inquiries

13. In this section of the concordat, a 'major incident' means a significant event which demands a response by the HSE beyond the routine. Significance is determined by the severity of the incident, the degree of public concern and the nature and extent of HSE's previous involvement with the duty holder(s); though the nature of previous involvement would not alone trigger a major incident investigation. 'Work-related incident' means any incident where a work activity is involved and so it will include incidents in any place where people are employed. It will also include incidents where members of the public are exposed to serious harm by the work activities of others, e.g. because of a train crash or a fairground accident.

14. Under Section 14 of HSWA, the HSC has powers to direct investigations and inquiries in relation to any accident, occurrence, situation or other matter which the Commission thinks it is necessary or expedient to investigate for the general purposes of Part 1 of the Act or with a view to making regulations for those purposes. Under Section 14(2)(a) the HSC may direct HSE or authorize any other person to investigate and make a special report. Under Section 14(2)(b) the Commission may with the consent of the Secretary of State direct an inquiry. Such an inquiry would be held in accordance with the Health and Safety Inquiries (Procedures) Regulations 1975.

15. The purpose of such an investigation or inquiry should be to reveal the underlying causes and to learn lessons for the future. It should be conducted in as efficient and effective manner as possible. HSC and the SE may both have interests in the event formater concerned. It is therefore very important that there should be the closest co-operation possible between HSE and the SE. The following arrangements will apply:

- HSE Secretariat will inform the SE when it becomes aware of a major incident that has taken place in Scotland. To ensure the effectiveness of this arrangement SE will advise HSE Secretariat of the necessary contact details and ensure that these are kept up to date. Similarly the SE will inform HSE Secretariat of incidents which appear to have work-related aspects;
- where the Commission directs or authorises an investigation under Section 14(2)(a) of the 1974 Act relating to an accident, occurrence or situation in Scotland, HSE will inform the SE. HSE will, wherever possible, consult the SE before advising the HSC about the setting up of an investigation where it appears that the Scottish Ministers may have areas of common and closely related interest;
- where the Commission directs an inquiry under Section 14(2)(b) relating to an

- accident, occurrence or situation in Scotland, the HSE will consult the SE; and
 - the SE will consult HSE where the instigation by the Scottish Ministers of an investigation or inquiry is being considered into any accident, occurrence, situation or other matter in which the HSC may have an interest.
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Local authorities

16. The constitution of Scottish local authorities, which includes their establishment, dissolution, assets, liabilities, funding and receipts, is a devolved matter in which the Scottish Ministers have a policy interest as are most functions conferred upon such authorities. The HSC has an interest in the functions of local authorities under health and safety legislation, and under Section 18(4) of HSWA, the Commission may issue guidance to local authorities, as enforcing authorities, which they must follow. The HSE, on behalf of HSC will consult the SE in advance where proposed changes in health and safety legislation, or directions under Section 18(4) might result in new burdens being imposed upon Scottish local authorities.

Publicity and publications

17. The SE will inform HSE, in advance, of public statements which can be prepared well in advance (e.g. consultation documents, press notices, publication of research finding sand reports) which impact on reserved matters. And HSE will give advance notification to the SE of public statements which can be prepared well in advance on matters within HSC/E responsibilities which impact on matters within the responsibility of the Scottish Ministers. In preparing publicity campaigns, HSE and the SE will consider in advance whether co-ordinated campaigns would be mutually beneficial; and co-operate on delivery where appropriate.

Dispute resolution mechanisms

18. The vast majority of matters should be capable of being handled bilaterally between HSE and SE officials. If further discussion is needed on any issue DETR Ministers, or the Commission if appropriate, and Scottish Ministers will mediate. Where, exceptionally, an issue cannot be resolved bilaterally or through the good offices of the Secretary of State for Scotland, it will normally be referred, in accordance with the MOU and JMC agreement to the Joint Ministerial Committee Secretariat. While such discussions are under way, HSE and the SE will continue to act in areas within their respective competence.

19. It is recognised that the agreed dispute resolution mechanism will not be appropriate in some, perhaps exceptional, cases. In these instances arrangements will need to follow any specific legal requirements.

Correspondence and Parliamentary business

20. The SE and HSE will consult each other where appropriate on the handling of correspondence and Parliamentary business, involving DETR or other Government

departments as necessary.

Joint working, secondments and cross postings

21. HSE and SE may set up joint working groups or committees where appropriate.

22. HSE and the SE recognise the importance of secondments and cross-postings, shadowing, joint training arrangements and other kinds of collaborative activities in developing mutual understanding and facilitating the sharing of expertise and good practice, and will consider the scope for supporting such activities.

Analysis, statistics and research

23. HSE and the SE will consult each other regularly about matters of mutual interest on analysis, statistics and research, including proposals for and results of research programmes. HSE and SE will, as and where appropriate, co-operate with each other, to the extent that available resources permit, in the provision of data and information needed to fulfil their respective responsibilities. The over-arching concordat on statistics provides general guidance on that issue, and should be read in conjunction with this paragraph.

EU and international matters

24. The over-arching concordats on EU and international matters provide general guidance on how these issues should be handled.

Review and renewal of concordat

25. It will be open to HSC/E or the SE to propose alterations to this concordat at anytime to reflect changes in policy or to reflect the evolution of administrative conventions of co-operation and joint working between the UK Government and the SE. In any event, this concordat will be reviewed one year after its agreement and thereafter at three yearly intervals.

ANNEX - Areas of common and closely related interest

This annex lists subjects in which the Scottish Ministers and the HSC/E share an interest and other areas where there may be a particular need for consultation between HSE and the Scottish Executive.

Building control

This is a devolved matter, but the HSC/E have an interest in the related matter of construction safety.

Dangerous substances

The HSC/E have an interest under the Health and Safety at Work etc. Act 1974 and the European Communities Act 1972 in the control of the keeping, notification, supply and use of explosive or highly flammable or otherwise dangerous substances which have the potential to create a major accident and in the prevention of the unlawful acquisition, possession and use of such substances. HSE also has an interest in the carriage by road and rail of dangerous and environmentally hazardous goods. The Scottish Ministers, however, have an interest in such matters for the purposes of protection of the environment and the planning system (by virtue of the Planning (Hazardous Substances) (Scotland) Act 1997). HSE will continue to advise what hazardous substances and in what quantities have significant risk off site. HSE involvement in individual hazardous substances consent/planning applications which are before Scottish Ministers for a decision will be on the basis of established planning and related public inquiry procedures.

The HSE and Scottish Environment Protection Agency are the Joint Competent Authority (CA) responsible for enforcing the Control of Major Accident Hazards Regulations 1999 which include provisions for health, safety, environmental protection, emergency planning and information for the public. However Ministerial functions which are concerned with the inclusion or exclusion of information that is to put on the public register (involving national security and commercial confidentiality) are not devolved to Scottish Ministers.

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Educational facilities; adventure activity centres

The safety of these premises is generally a devolved matter. However, the HSC/E have interests in the safety of adventure activity centres because of their responsibilities by virtue of the Activity Centres (Young Persons Safety) Act 1995 and subordinate legislation made under that Act. They also have an interest in the health and safety of workers and those affected by the activities of workers in these premises.

Fire safety

General fire safety is a devolved matter and the policy responsibility of the Scottish Ministers. However, HSC/E have an interest in the reserved matters of process fire precautions, fire precautions in relation to petroleum and petroleum spirit, fire safety on construction sites, ships under construction or repair by persons other than the master or crew, in mines, on offshore installations, and on any other premises which on 1 July 1999 are of a description specified in Part I of Schedule 1 to the Fire Certificates (Special Premises) Regulations 1976.

Food safety

This is generally a devolved matter and the policy responsibility of the Scottish Ministers. However the HSC/E have an interest in the safety of workers in the food processing, manufacturing, cooking and food distribution industries and in related risks to the public.

Genetically modified organisms

The Scottish Ministers' interest is in the protection of the environment, public health, animal health, plant health and food safety. The HSC/E's interest is in the protection of workers and those affected by the activities of workers. HSE enforces regulations connected with the deliberate release of GMOs and HSC/E take the lead responsibility for the regulation of the contained use of GMOs, but the effect of such use upon the environment and public health is a matter for the Scottish Ministers.

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Local authorities

The Scottish Ministers have the interest in the devolved matter of the constitution of Scottish local authorities, which includes their establishment, dissolution, assets, liabilities, funding and receipts. The HSC has an interest in the functions and performance of local authorities in relation to the enforcement of health and safety legislation.

Planning

Land-use planning is a devolved matter and the policy responsibility of the Scottish Ministers. HSE involvement in individual hazardous substances consent/planning applications which are before Scottish Ministers for a decision will be on the basis of established planning and related public inquiry procedures.

Pesticides (including biocides and plant protection products)

The Scottish Ministers' interest is in the protection of the environment, public health, animal and plant health and food safety. HSE's interest is in the protection of workers and those affected by the activities of workers, protection of the environment, and product approvals.

Places of entertainment (cinemas, theatres, casinos, dance-halls etc), sports facilities, sports events and zoos

The Scottish Ministers' interest is in public safety, fire safety, structural building standards, sanitation, food standards, pest control, security, etc. The HSE have an interest in the safety of workers and the safety of members of the public and others affected by work activity.

Ports, harbours and inland waterways

Scottish Ministers' interest is in ports policy and communications via the various ferry links between mainland Scotland and the islands. Responsibility for safety enforcement for the ships and their crews, rests with the Maritime and Coastguard Agency. The HSE has an interest in the safety of workers and the safety of members of the public and others affected by work activity at inland waterways, the safety aspects of new harbour byelaws and the health and safety of shore side workers loading or unloading from berthed ships or the dock side.

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Protection of the environment

This is a devolved matter and the policy responsibility of the Scottish Ministers. Responsibility for enforcement of much environmental legislation in Scotland rests with the Scottish Environment Protection Agency. However, the HSC/E have enforcement responsibilities for certain environmental legislation under agency arrangements under section 13 of HSWA.

Public health, occupational health and health promotion

Public health is generally a devolved matter and the policy responsibility of the Scottish Ministers: Occupational Health is a reserved matter for HSE. General health promotion in Scotland is a devolved matter and the policy responsibility of the Scottish Ministers, but HSE has an interest in "lifestyle" issues such as misuse of drugs, alcohol and smoking (see also below), when these impinge on the workplace.

Nuclear safety

This is a reserved matter. However, the Scottish Ministers have an interest because of the part they would play in the event of a nuclear incident - they have, for instance policy responsibility for the civil emergency services in Scotland - and because of the connection between nuclear safety and the protection of the environment, which is a devolved matter.

Rail safety

This is a reserved matter. However, the Scottish Ministers have an interest because of their executively devolved functions in relation to a number of aspects of the regulation of the rail industry in Scotland. HSE has an interest in any matter which could have an impact on its responsibility for the approval of new and altered works on railways, light rail and tramways.

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Safety of clinical and medical procedures

The Scottish Ministers have an interest in the health, safety and welfare of those undergoing clinical and medical procedures. For example, clinical and medical actions and decisions, and the disposal of clinical waste are devolved matters. The HSE have an interest in the safety of the working environment in which such activities take place, matters relating to the clinical care of patients where they arise from issues connected to systems of work or the adequacy of plant and equipment, and the design of medical devices.

Smoking

The regulation of smoking and passive smoking in work places is a reserved matter. However, the Scottish Ministers have an interest. Other aspects of smoking such as the regulation of tobacco advertising are generally devolved and are the policy responsibility of the Scottish Ministers.

Water and sewerage

This is generally a devolved matter and the policy responsibility of the Scottish Ministers. Water and sewerage services in Scotland are provided by 3 publicly owned water authorities. The HSE's interest is in matters relating to the safety of workers and those affected by the activities of workers.

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If an emergency is likely to occur

How can Govt Exec
have plan to prevent

The ~~Gov~~ LAs etc (under Govt Exec guidance)
should have plan to prevent the emergency.