

**MEMORANDUM OF UNDERSTANDING**

BETWEEN

HEALTH AND SAFETY EXECUTIVE

AND

OFFICE FOR NUCLEAR REGULATION

ON

DATA PROTECTION AND INFORMATION SHARING

## **PURPOSE**

1. This Memorandum of Understanding (MOU) sets out the arrangements ONR and HSE have agreed are effective following separation of ONR's IT systems from HSE that facilitates the efficient and effective discharge of each organisations statutory and legal responsibilities and their respective strategic priorities.
2. It covers the fundamental principles and working arrangements for all envisaged information handling and reciprocal data management and to ensure appropriate information sharing and handling arrangements are in place.
3. This MoU complements the existing over-arching MoU between the two organisations ("Co-operation between HSE and ONR"). There are a number of agreements in place between HSE and ONR which the fundamental principles of this MOU cut across.
4. The MoU will come into effect on 31 October 2020.

## **BACKGROUND**

5. ONR and HSE have collaborated closely since the creation of ONR away from HSE as an independent statutory corporation on 1 April 2014.
6. ONR has continued to use HSE IT systems for all aspects of its digital enterprise, sharing applications, systems and infrastructure with an on-going effort to divest information owned by the organisations.
7. Upon completion of its "IT Separation" project ONR will fully divest from HSE systems to its own applications, systems and infrastructure.
8. Due to the historic shared nature of the HSE and ONR IT systems it is inevitable that post IT Separation HSE will continue to hold ONR information, and potentially vice versa.
9. Both organisations have agreed how to appropriately protect and share information going forward.

## **FUNDAMENTAL PRINCIPLES**

10. Both organisations understand and accept the need to appropriately protect each other's information held by them on an on-going basis in accordance with appropriate policy, regulation and legislation.

11. Each organisation will notify the other on discovery of the others previously unidentified information retained by them and provide the other with a copy that information if so requested.
12. Neither organisation will destroy the others information without appropriate written authorisation from the other.

## **LEGISLATIVE ENVIRONMENT**

13. This MOU confirms the commitment of ONR and HSE to meet the requirements of:
14. Section 96(1) of the Energy Act 2013 by entering into arrangements with each other for securing co-operation and the exchange of information in connection with the carrying out of any of their functions.
15. Section 97 of the Energy Act whereby the ONR has the power to obtain information which it needs for carrying out its functions.

## **WORKING ARRANGEMENTS**

16. ONR and HSE will provide mutual expertise and assistance to enable the organisations to fulfil their functions in accordance with the information sharing and management arrangements as set out in this MOU. Information is categorised into five types and will be handled as follows:

## **INFORMATION BELONGING TO ONR THAT WAS NOT MIGRATED WHEN ONR SEPARATED ITS DATA FROM THE HSE INFRASTRUCTURE.**

17. HSE will only delete files that have been identified and confirmed belong to ONR, and only once ONR have confirmed it is safe to do so.
18. If ONR files remains in the HSE CM9 system they will be passed to ONR.
19. If HSE files remains in the ONR CM9 system they will be passed to HSE.
20. This process will be managed by the respective Record Management Teams.

## **INFORMATION BELONGING TO HSE THAT WAS MIGRATED IN ERROR WHEN ONR SEPARATED ITS DATA FROM THE HSE INFRASTRUCTURE**

21. ONR will pass those files to HSE.
22. ONR will delete files those once HSE have confirmed it is safe to do so.

23. This process will be managed by the respective Record Management Teams.

#### **INFORMATION ON EITHER SYSTEM THAT BOTH ORGANISATIONS HAVE A CONTINUING NEED TO SHARE**

24. This will apply to information either relevant to both organisations or areas where one organisation performs a service on behalf of the other, such as conventional health & safety, where HSE Inspectors provide support to ONR inspections and investigations.

25. Both organisations will provide the other with any and all information as reasonably requested.

26. Both organisations will provide the requested information as soon as reasonably possible but in any event not more than 10 working days after the request.

27. In the event that the providing organisation becomes aware that it cannot provide the requested information within 10 working days it will notify the other organisation of the same and when the information will be provided.

#### **INFORMATION RELATING TO STAFF THAT HISTORICALLY HAVE WORKED FOR BOTH ORGANISATIONS**

28. Both organisations will provide the other with any and all information as reasonably requested.

29. Both organisations will provide the requested information as soon as reasonably possible but in any event not more than 10 working days after the request.

30. In the event that the providing organisation becomes aware that it cannot provide the requested information within 10 working days it will notify the other organisation of the same and when the information will be provided.

31. As personal information is subject to Data Protection legislation there is a requirement for the parties to enter into a Joint Data Controller Declaration (see at Annex 1) to allow for the two-way transmission of this information at the point of ONR IT separation.

## **BACK UP INFORMATION RELATING TO THE ONR SYSTEM THAT IS STILL RECOVERABLE BY HSE AFTER THE IT SEPARATION.**

32. For up to two years post ONR IT separation ONR data will be held within HSE backup tapes.
33. HSE will restore ONR information and provide that information whenever reasonably requested by ONR.
34. HSE will provide the restored information only. It is ONR's responsibility to provide any supporting systems to process that information.
35. HSE will provide ONR the restored information as soon as reasonably possible but in any event not more than 10 working days after the request.
36. In the event that HSE becomes aware that it cannot provide the restored information within 10 working days it will notify the ONR of the same and when the information will be provided.
37. In the event that HSE undertakes a restore of its own information it will make all reasonable efforts not to restore ONR information at the same time.
38. In the event that HSE does restore ONR information it will remove that information as soon as possible after the restore and notify ONR of the same.

## **DATA PROTECTION LEGISLATION**

39. As personal information is subject to Data Protection legislation there is a requirement for the parties to enter into a Joint Data Controller Declaration (see at Annex 1) to allow for the two-way transmission of this information at the point of ONR IT separation.

## **COSTS**

40. Each organisation shall be solely responsible for any and all costs incurred by it (or by its agents or other third-parties acting on behalf of the organisation) directly, indirectly or as a consequence of that organisation complying with its obligations under this MOU; save for activities pursuant to paragraphs 33 through 38 where each organisation shall be responsible for recovering the costs incurred by it (or by its agents or other third-parties acting on behalf of the organisation) from the other organisation directly.

## DISCLOSURE OF INFORMATION

41. Information disclosure legislation and requests for information are covered in the Annex, paragraphs 17-20.

## RESOLUTION OF DISPUTES

42. ONR and HSE will, in the first instance, resolve any disputes at a working level, escalating to relevant managers as appropriate. In the rare occurrence where agreement is not possible at this level, ONR's Deputy Chief Executive and HSE's Director of Planning, Finance and Procurement will meet to resolve the issues.

## REVIEW OF THE MEMORANDUM OF UNDERSTANDING

43. ONR and HSE will review this MoU on an annual basis after it has been signed. Part of the annual review process will be to confirm if these formal arrangements remain valid or can be withdrawn.

## TERMINATION

44. Either ONR or HSE may terminate this MOU giving two months' notice in writing to the other party.

Signed

	
David Murray Director of Planning, Finance and Procurement on behalf of the Health and Safety Executive	Sarah High Deputy Chief Executive and Finance Director on behalf of the Office for Nuclear Regulation
Date: 31 October 2020	Date: 31 October 2020

## Annex 1

### GDPR Article 26, Joint Data Controller Declaration

#### Purpose

1. The purpose of this annex is to explain the respective roles that ONR and HSE will play in managing the processing of personal data associated with their regulatory activity and legacy staff related matters. ONR and HSE are considered joint controllers of the data collected, as both parties (independently) determine the means and purpose of processing personal data as part of the functions defined in this broader MOU.

#### Data Protection

2. ONR and HSE will comply with all relevant provisions of the Data Protection Act 2018 (and the General Data Protection Regulation). ONR and HSE will act as joint data controllers, 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 ONR nor HSE will transfer any personal data it is processing outside of the United Kingdom, unless appropriate legal safeguards are in place, such as Privacy Shield or Model Contract Clauses.
4. ONR 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. ONR 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.

#### Specific ONR Responsibilities

5. ONR has the following specific responsibilities:
  - i. Carrying out any required Data Protection Impact Assessment for any element of business or process change
  - ii. Following ONR Data Security Guidance to ensure that the necessary measures are taken to protect personal data.
  - iii. Ensuring ONR staff are appropriately trained in how to use and look after personal data and follow approved processes for data handling.
  - iv. Ensuring ONR 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 Subject Rights Requests, in accordance with approved processes, when and where required.

- vii. Reporting any data breaches within ONR to their Data Protection Officer and the ICO (where appropriate).
- viii. Maintaining any Article 30 processing records for data held on ONR systems

### Specific HSE Responsibilities

6. 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**

- 7. GDPR specifies 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 ONR 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.
- 8. In response to any Subject Rights Requests, ONR or HSE will undertake a proportionate and reasonable search and respond within one month of the original request.

### **Data breach**

- 9. ONR is responsible for reporting any breach occurring within their authority to their Data Protection Officer and the ICO (where appropriate). ONR will also inform HSE of the breach if there is any direct impact on their staff or wider interest.
- 10. HSE are responsible for reporting any data breaches within their Authority to their Data Protection Officer and ICO (where appropriate), as well as to ONR if there is any direct impact on their staff or wider interests.
- 11. Any personal data breach as defined by GDPR Article 4(12) that meets the relevant threshold criteria, as defined by GDPR Article 33(1), will be reported to the Information Commissioners' Office (ICO) within 72 hours of notification. If necessary, the affected data subject(s) will be informed of the personal data breach, as defined by GDPR Article 34(1). The appropriate Data Protection Officer



(see below) will be responsible for making the report, following consultation with their Chief Executive Officer (CEO).

12. If financial penalties are imposed by the Information Commissioner on a party in relation to any data processed under this MOU 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.
13. If the Information Commissioner expresses no view as to responsibility, then each party shall bear responsibility for half of the penalty imposed.
14. If either HSE or ONR are the defendant in a legal claim before a court of competent jurisdiction by a third party in respect of data processed under this MOU, 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.
15. 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 MOU.

### **Data retention**

16. ONR and HSE will retain only adequate, relevant and necessary personal data. Each party is responsible for ensuring appropriate technical and procedural functions are in place to ensure the secure and timely destruction of personal data in line with their respective organisational disposal policies.

### **Information Disclosure**

17. 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.).
18. For EIRs and FOIA requests only, 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.

19. 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.
20. 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:

ONR	HSE
Charlotte Cooper Data Protection Officer <i>Office for Nuclear Regulation</i> 4S3 Redgrave Court Merton Road, Bootle Liverpool L20 7HS  Email: Dataprotection@onr.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