



Memorandum of Understanding
between
the Charities Regulatory Authority
and
the Health Service Executive

1. Definitions

1.1 In this Memorandum of Understanding:

- (i) "2009 Act" means the Charities Act 2009 as amended from time to time;
- (ii) "2004 Act" means the Health Act 2004 as amended from time to time;
- (iii) "Charities Regulator" means the Charities Regulatory Authority established by section 13 of the 2009 Act;
- (iv) "Controller" has the meaning given to it in Article 4(7) of the GDPR;
- (v) "Data Protection Legislation" means the Irish Data Protection Acts 1988 to 2018, the GDPR and any other applicable law or regulation relating to the processing of personal data and to privacy (including the E-Privacy Directive 2002/58 EC and the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011), as such legislation shall be supplemented, amended, revised or replaced from time to time as such legislation shall be supplemented, amended, revised or replaced from time to time;
- (vi) "Data Subject" is an individual who is identifiable directly or indirectly from personal data relating that individual;
- (vii) "GDPR" means the General Data Protection Regulation (EU) 2016/679;
- (viii) "Health Acts" means the Health Acts 1947 to 2021 and any other legislation to be construed collectively with the said Acts;
- (ix) "Health and Personal Social Services" has the meaning given it in Section 2(1) of the 2004 Act;
- (x) "HSE" means the Health Service Executive;
- (xi) "MoU" means this Memorandum of Understanding;

- (xii) “parties” means the Charities Regulator and HSE and “party” means either of them;
- (xiii) “personal data” has the meaning given it in Article 4(1) of the GDPR;
- (xiv) “personal data breach” means any personal data breach as defined in Article 4(12) of the GDPR; and,
- (xv) “processing” has the meaning given to such term in Article 4(2) of the GDPR and Processed and Process shall be interpreted accordingly.

2. Purposes and objectives of this MoU

2.1 The parties recognise that there are areas where the performance of the functions of the Charities Regulator and the HSE overlap in respect of charitable organisations and charitable trusts (“charities”) which are either service providers to the HSE or bodies which provide a service similar or ancillary to the HSE and to which the HSE provides assistance. This MoU provides a framework for a close working relationship between the Charities Regulator and the HSE on specific matters within these areas. It supports cooperation and collaboration in the interest of ensuring appropriate sharing and assessment of information by both parties in the interest of:

- (a) upholding the integrity of charities in Ireland,;
- (b) supporting public trust and confidence in charities operating in Ireland or under Irish law;
- (c) with respect to the HSE, ensuring high standards in Health and Personal Social Services and supporting the role of charities in the provision of such services;
- (d) facilitating the HSE’s stewardship and proper management of public funds granted to it and through it for the provision of Health and Personal Social Services.

2.2 The Charities Regulator and the HSE are committed to the statutory purposes of this MoU which are¹:

- (i) to facilitate administrative cooperation between the Charities Regulator and the HSE² in the performance of their respective functions in so far as they relate to the regulation of charitable organisations and charitable trusts;
- (ii) to avoid duplication of activities by the Charities Regulator and the HSE, and
- (iii) to ensure, as far as practicable, consistency between decisions made or measures taken by the Charities Regulator and the HSE in so far as any part of those decisions or measures consists of or relates to a determination of any matters concerning the regulation of charitable organisations and charitable trusts.

2.3 The additional objectives of this MoU are:

- (i) to promote a common understanding of the responsibilities, working procedures, legal powers and constraints of the Charities Regulator and the HSE;

¹ Section 33(1), 2009 Act.

² The HSE is prescribed as a relevant regulator for the purposes of Section 33 of the 2009 Act by SI 586 of 2017.

- (ii) to facilitate and provide the necessary safeguards for the effective investigation and the exchange of information, with the objective of preventing, detecting, remedying misconduct or mismanagement in the administration of charities and charitable funds;
- (iii) to ensure appropriate consultation and co-operation on matters of mutual interest to ensure that charities are encouraged to comply fully with their legal responsibilities under charity and healthcare law and adopt best practice and governance.

3. Statutory role, functions and relevant powers of the Charities Regulator

Role of the Charities Regulator

- 3.1 The Charities Regulator is the independent regulator of Irish charities as established by the 2009 Act. The Authority was established under the 2009 Act³ in October 2014.

Functions of the Charities Regulator

- 3.2 The key functions of the Charities Regulator under the 2009 Act⁴ are:

- (a) to increase public trust and confidence in the management and administration of charitable trusts and charitable organisations;
- (b) to promote compliance by charity trustees with their duties in the control and management of charitable trusts and charitable organisations;
- (c) to promote the effective use of the property of charitable trusts or charitable organisations;
- (d) to ensure the accountability of charitable organisations to donors and beneficiaries of charitable gifts, and the public;
- (e) to promote understanding of the requirement that charitable purposes confer a public benefit;
- (f) to establish and maintain a register of charitable organisations;
- (g) to ensure and monitor compliance by charitable organisations with the 2009 Act;
- (h) to carry out investigations in accordance with the 2009 Act;
- (i) to encourage and facilitate the better administration and management of charitable organisations by the provision of information or advice, including in particular by way of issuing (or, as it considers appropriate, approving) guidelines, codes of conduct, and model constitutional documents;
- (j) to carry on such activities or publish such information concerning charitable organisations and charitable trusts as it considers appropriate;

³ Section 13, 2009 Act.

⁴ Section 14, 2009 Act and section 82, 2009 Act.

- (k) to provide information or advice, or make proposals, to the Minister for Rural and Community Development⁵ on matters relating to the functions of the Charities Regulator.
- 3.3 The Charities Regulator also has certain related functions, previously performed by the Commissioners of Charitable Donations and Bequests for Ireland, under the Charities Acts 1961 and 1973.
- 3.4 All functions relating to charitable organisations and charitable trusts that were vested in the Attorney General were transferred to the Charities Regulator pursuant to section 38 of the 2009 Act.

Relevant powers of the Charities Regulator

- 3.5 The Charities Regulator is mandated by various provisions of the 2009 Act to enter administrative cooperation arrangements with other regulators and to share relevant information with other agencies. In particular:
- (a) section 33 of the 2009 Act requires the Charities Regulator, so far as is consistent with the proper performance of its functions, to endeavour to secure administrative cooperation between it and 'relevant regulators' for the purposes set out at paragraph 2.2 above, and authorises it to enter an MoU or other arrangement with any 'relevant regulator' for this purpose;
 - (b) section 32 of the 2009 Act empowers the Charities Regulator to provide a 'relevant person' having functions relating to ensuring compliance with statutory requirements or to the detection, investigation or prosecution of offences with information in the possession of the Charities Regulator as may reasonably be required for the purpose of enabling the relevant person to perform his or her functions;
 - (c) in certain circumstances, the Charities Regulator is required under section 28(1) of the 2009 Act to provide information obtained by the Charities Regulator in the performance of its functions that causes the Charities Regulator to suspect that an offence has been committed by a charity trustee or a charitable organisation to specified persons;
 - (d) section 66(3)(b)(iv) of the 2009 Act, the Charities Regulator may share inspectors' reports prepared in accordance with Section 66(1) of the 2009 Act with the HSE where the HSE's financial interests appear to the Charities Regulator to be affected by the matters dealt with in the report whether as a creditor of the charitable organisation or otherwise.

4. Statutory role, functions and relevant powers of HSE

Role of HSE

- 4.1 The HSE was established under the 2004 Act as a statutory body with responsibility to manage and deliver, or arrange to be delivered on its behalf, Health and Personal Social Services in Ireland.

⁵ Functions under the 2009 Act were transferred to the Minister for Rural and Community Development pursuant to the Charities (Transfer of Departmental Administration and Ministerial Functions) Order 2017.

- 4.2 The object of the HSE is to use the resources available to it in the most beneficial, effective and efficient manner to improve, promote and protect the health and welfare of the public.

Functions of HSE

- 4.3 The key functions and powers of the HSE under the 2004 Act include:
- (a) To manage and deliver, or arrange to be delivered on its behalf, Health and Personal Social Services in accordance with Section 7(4) of the 2004 Act, and to perform any functions transferred to it under Section 7(3) of the 2004 Act;
 - (b) to integrate the delivery of Health and Personal Social Services in accordance with Section 7(4)(a) of the 2004 Act;
 - (c) to enter into arrangements with service providers for the provision of Health and Personal Social Services on behalf of the HSE under Section 38 of the 2004 Act ("Section 38 organisations"), and to provide assistance to any person or body that provides or proposes to provide a service similar or ancillary to a service that the HSE may provide under Section 39 of the 2004 Act ("Section 39 organisations"). Section 38 organisations and Section 39 organisations are frequently charities registered with the Charities Regulator.

Relevant powers of HSE

- 4.4 The HSE is empowered to enter into the MoU by virtue of the 2004 Act and in particular:
- (a) Section 7(5)(b) which requires the HSE in the performance of its functions to co-operate with, and co-ordinate its activities with those of, other public authorities if the performance of their functions affects or could affect the health of the public; and
 - (b) Section 7(8) which provides the HSE with all powers necessary or expedient for it to perform its functions.
 - (c) Section 38 of the 2004 Act which provides specifically for the HSE to monitor the expenditure of and services provided by service providers.
 - (d) Section 39 of the 2004 Act which provides that the HSE may give assistance on such terms and conditions as it sees fit to impose and it is required to monitor compliance with those terms and conditions.
 - (e) Part 9 of the 2004 Act which provides a role for the HSE in establishing procedures for dealing with complaints made against service providers, as well as oversight over complaints procedures established by service providers themselves.

5. Primary Areas of Co-operation

- 5.1 Both parties are engaged in the discharge of their respective regulatory functions in the public interest with particular focus on:
- (a) in the case of the HSE, the protection and enhancement of public Health and Personal Social Services which may be provided by service providers to the HSE and organisations funded by the HSE and
 - (b) in the case of the Charities Regulator, the proper operation of charities (many of whom are active in health and social care work).

5.2 The parties agree that their respective functions as they relate to charities will be best discharged in a spirit of mutual cooperation and therefore agree to cooperate in relation to the following matters,

- (a) Cross-referral of concerns: the parties will co-operate with regard to the cross referral of concerns (appropriately redacted) where one party believes that the matter falls within the remit of the other; in this regard, both parties will respect, maintain and adhere to all requirements of the relevant legislation;
- (b) Providing assistance: while each party remains responsible for supervision and enforcement activities for which it is the competent authority, it may in particular circumstances be appropriate for the parties to co-operate and collaborate or provide assistance to each other in the enforcement and execution of their respective statutory functions; such occasions will be determined and agreed on a case-by-case basis by the appropriate persons in each party;
- (c) Information sharing: as set out in Section 6 of this MoU.

6. Exchange of Information

6.1 Information may be shared between the parties in special circumstances in accordance with and subject to the terms and conditions of this MoU, and applicable law, where the following apply;

- (a) One party believes that the matter falls within the statutory remit of the other:
 - (i) In the case of the HSE, it is of the opinion that the information which it is proposed to disclose relates to the management or governance of registered charities;
 - (ii) In the case of the Charities Regulator, it is of the opinion that the information which it is proposed to disclose relates to the governance and/or funding of providers to the HSE or organisations in receipt of HSE funding which are registered charities;
- (b) The information shared is the minimum necessary for the purpose, and where necessary any information which is not required for the purpose for which it is shared is redacted;
- (c) Disclosure of the information will not breach any legal obligation owed by the discloser to a third party;
- (d) In the case of the HSE, this information includes but is not limited to circumstances where the HSE through its monitoring processes becomes aware of concerns which may relate to the management and governance of a charity or which may lead to a suspicion of unlawful activity involving such a charity or a person responsible for its management.
- (e) In the case of the Charities Regulator, this information includes circumstances where the Charities Regulator, through its investigations and its compliance processes becomes aware of information which may relate to potential deficits in the safety, quality and standard of the service or context of care of a particular charity conducting activities which come within the HSE's remit, or which may relate to suspected concealment, misinformation or fraud involving such a charity or a person responsible

for its management that may lead to a suspicion of risk to the safety of HSE service users or to the proper use of HSE provided funding.

- (f) Without prejudice to the generality of the foregoing, it is envisaged that the type of information to be shared by the parties with regard to a charity in accordance with this MoU may include information concerning
 - (i) the registration status of a charity;
 - (ii) reports of investigations/audits into the activities of a charity;
 - (iii) information on the financial management or affairs of a charity;
 - (iv) information on the services being provided by a charity;
 - (v) information regarding a charity received from third parties, such as complaints;
 - (vi) any other matter relating to a charity in respect of which the parties agree that their cooperation would be in keeping with the spirit of this MoU or otherwise desirable in the public interest.
- 6.2 The parties will implement internal processes for sharing information under this MoU. Information may be shared where:
 - (a) either party requests information covered by this MoU from the other via the designated liaison persons; or
 - (b) either party is of the opinion that information covered by this MoU should be disclosed to the other for the purposes set out in this MoU.
- 6.3 The parties will ensure that any disclosure of information under the terms of this MoU is carried out in a manner that is proportionate and fully in compliance with applicable law, including in particular Data Protection Legislation, the 2009 Act, the Health Acts and the Protected Disclosures Act 2014 (as amended).
- 6.4 Neither the Charities Regulator nor the HSE will use any information disclosed under this MoU for any purpose other than for the purpose of performing its applicable statutory functions.
- 6.5 Without prejudice to any obligations under the Freedom of Information Act 2014, Data Protection Legislation or any other statutory obligations that either party may have, neither the Charities Regulator nor the HSE will disclose any confidential information received under the terms of this MoU to any third party without first obtaining the consent of the party that provided such information.
- 6.6 Nothing in this MoU requires either the Charities Regulator or the HSE to disclose confidential information except in accordance with law.

Data Protection

- 6.7 Where information being shared contains personal data, the parties may share it where there is a legal basis in Data Protection Legislation for doing so, it is being shared in accordance with the purpose for which it was collected or where applicable in accordance with a provision permitting further processing, it is transparent to the Data Subject who has been made aware of their rights under Data Protection Legislation, and is otherwise in accordance with the requirements of Data Protection Legislation.

- 6.8 In respect of the HSE, a Data Protection Policy is available on its website⁶. As noted therein, the HSE processes personal data and special categories of personal data (within the meaning of Article 9 of the GDPR) in accordance with Article 6(1)(b), (c) and (d) of the GDPR, and in accordance with Article 9(2)(h) GDPR and Section 52(1) of the Data Protection Act 2018.
- 6.9 In respect of the Charities Regulator, a Data Protection Statement is available on its website⁷.
- 6.10 Any sharing of personal data undertaken between the Charities Regulator and the HSE will be appropriately documented and will be subject to strict access and security controls, including in the transfer, storage and disposal of shared personal data. Any personal data shared will be limited to that which is necessary and proportionate to the aim being achieved.
- 6.11 While the determination of data protection relationships is a matter of fact, where any personal data is shared under this MoU, it is the view of the parties that their roles, respective responsibilities and independent statutory functions are indicative of an independent Controller relationship. Accordingly, the Charities Regulator and the HSE may agree in writing from time to time such other memoranda, protocols, agreements or other instruments to provide for the manner in which personal data is shared between the parties in connection with the public functions of the parties set out herein and related obligations under Data Protection Legislation such as security of the personal data, management of personal data breaches, and communication of such sharing to Data Subjects.
- 6.12 Each of the parties will implement appropriate technical and organisational security measures (in accordance with Article 32 of the GDPR) to ensure a level of security which is proportionate to the risks involved in processing the personal data in connection or accordance with this MoU. Each party will immediately notify the other party of any actual or suspected personal data breach that is likely to invoke the other party's obligations under Data Protection Legislation.
- 6.13 The parties agree to assist each other in complying with their respective obligations under Data Protection Legislation including providing reasonable assistance to the other party in complying with a request made by a Data Subject to exercise their rights under Data Protection Legislation, as well as dealing with any complaints, notifications or communications from Data Subjects or the Data Protection Commission, which may arise in connection with this MoU.
- 6.14 It is the common intention and understanding of the parties that this MoU shall not apply to any disclosure of information between the parties which is subject to the Data Sharing and Governance Act 2019.
- 7. Liaison and communication**
- 7.1 The parties agree to meet at least once each calendar year to review the effectiveness of this MoU and identify any issues that require to be addressed. Strategic, policy or operational meetings will be arranged as required and as agreed between the relevant liaison persons.
- 7.2 In order to ensure that matters are handled at the appropriate level, contact between the parties will be established between designated liaison persons (as set out in Annex 1).
- 7.3 The designated liaison persons may delegate ongoing liaison to other members of staff, but should ensure that such members of staff have the appropriate authority to agree principles, policy and processes or are in a position to secure that agreement within a reasonable time.

⁶ <https://www.hse.ie/eng/gdpr/hse-data-protection-policy/hse-data-protection-policy.pdf>

⁷ <https://www.charitiesregulator.ie/en/data-protection>

- 7.4 The parties undertake to communicate as appropriate on matters of mutual concern. Communication will take place both formally through scheduled meetings and informally on an ad hoc basis.

8. Miscellaneous matters

Legal status of MoU

- 8.1 This MoU (with the exception of the mandatory obligations of the parties under Data Protection Legislation) does not give rise to legally enforceable obligations on the part of either party. However, both parties will observe and give due respect to the agreed terms of this MoU.

Amendment of this MoU

- 8.2 Any provision of this MoU may be varied by the agreement in writing of both parties.

No disclosure

- 8.3 This MoU does not operate to require either party to disclose information to the other if the disclosure of that information by the party concerned is prohibited by law.
- 8.4 This MoU does not require the HSE to disclose information relating to the HSE itself or its operations to the Charities Regulator, its purpose is solely to facilitate the sharing of relevant information relating to charities which falls within its scope

Exceptional cases

- 8.5 While it is intended that the arrangements in this MoU should apply generally, it is recognised that some circumstances will require special handling. Nothing in this MoU prevents the making of arrangements by either party to meet specific exceptional needs.

Effective Date

- 8.6 This MoU comes into effect upon the date of its signature by both parties and will continue in effect until it is terminated by either party in writing giving not less than four weeks' notice.

Review

- 8.7 This MoU will be reviewed annually on each anniversary of its signing, or at any other time at the request of either party. In particular, the content of the MoU will be reviewed to ensure that it remains relevant.

Joint training

- 8.8 The parties agree that they may engage in joint training or knowledge sharing exercises involving their respective personnel where doing so would support the purposes of this MoU.

Cost and expenditure

- 8.9 Each party will be solely responsible for the administration of, and any expenditure associated with activities carried out by it under this MoU.

Disputes

- 8.10 Any disagreement arising from the interpretation of this MOU will be referred to the Chief Executives (by whatever name called) of each of the parties, who will endeavour to resolve it within the spirit implicit in this MoU.

Publication

- 8.11 This MoU will be made publically available by the parties on their respective websites. The parties will communicate the terms of this MoU internally within their respective organisations.

HSE Audit & Risk Committee

- 8.12 The HSE's Audit & Risk Committee has a specific mandate in financial and compliance matters relating to organisations funded by the HSE of which a substantial number are registered charities. In this context, notwithstanding the terms of this MoU, the HSE's Audit & Risk Committee can, where the circumstances so require, refer matters directly to the Charity Regulatory Authority.

Signed on behalf of the Charities Regulatory Authority

By: Helen Martin
Chief Executive



Date: 20/07/2023

Signed on behalf of the HSE

By: Bernard Gloster
Chief Executive Officer



Date: 21/07/2023

Annex 1 – Designated liaison persons

Area of Liaison	Charities Regulator	HSE
Operational liaison including reporting of concerns	Director of Compliance & Enforcement	Kevin Cleary. Assistant National Director. HSE Compliance Unit

