

**Memorandum of Understanding (Process)
Between
Social Care and Social Work Improvement Scotland (known as
the Care Inspectorate) (CI), National Savings and Investments
(NS&I) and HMRC**

The purpose of this memorandum is to cover the arrangements under which Care Inspectorate will share information on registered childcare providers with NS&I as part of the government's Tax-Free Childcare scheme.

The reference number of the related Umbrella MoU is: **MoU-U-GC**

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1. Introduction

- 1.1 The parties to this Process Memorandum of Understanding (MoU) are Her Majesty's Revenue and Customs (HMRC), National Savings and Investments (NS&I) and Care Inspectorate.
- 1.2 The Government decided that HMRC will deliver Tax-Free Childcare (TFC) and that NS&I will be the account provider used. NS&I is an Executive Agency of Her Majesty's Treasury (HMT). NS&I may use a third party to process data on its behalf.
- 1.3 TFC provides financial support to working parents with childcare costs. Working parents are able to open an online childcare account for each of their children. They may pay money into these accounts and for every £8 paid in, the Government make a top-up payment of an additional £2, up to a maximum of £2,000 per child per year (or up to £4000 for disabled children). Working parents are only be able to use their TFC account to pay for registered or approved childcare – which is defined as childcare registered with the appropriate national regulator. Up to date information on which childcare providers are registered is needed so that payments can only be made to providers that are suitably registered. So childcare regulators have a key role to play in ensuring the smooth operation of TFC by providing a regular flow of data from their registers.
- 1.4 The disclosure of regulator information to NS&I is necessary and proportionate because it is critical to the delivery of TFC – without the regulator data, parents can't select their chosen Childcare Provider to make payments. NS&I are responsible for receiving and processing the details of childcare providers so that parents in TFC can make payments via their childcare accounts to registered childcare providers.
- 1.5 NS&I is responsible for receiving and processing the details of registered childcare providers, so that parents claiming TFC can only make payments via their childcare accounts to registered childcare providers.

2. Legal Basis

- 2.1 Regulation 5 of The Social Care and Social Work Improvement Scotland (Registration) Regulations 2011, SSI 2011/28 states that the Care Inspectorate must maintain a register of all registered care services, which register must include the address of the provider and the care service, Regulation 6(1) of SSI 2011/28 states that the Care Inspectorate must make the register available for inspection to anyone who requests access to this but subject to regulation 6(2) which obliges the Care Inspectorate to withhold any address if it considers that disclosure “may expose any person to danger”. The Care Inspectorate does not consider that it would expose any person to danger to disclose the address of a care service to HMRC or NS&I.

3. Purpose of the agreement

- 3.1 The purpose of this process MoU is to set out the data sharing arrangements between Care Inspectorate, HMRC and NS&I in respect of TFC.
- 3.2 This is initially envisaged to be a one-way data exchange from Care Inspectorate to NS&I. However, this will not inhibit HMRC and NS&I from sharing information with Care Inspectorate where necessary, for example where they have concerns about fraud, to help Care Inspectorate, NS&I and HMRC to perform their respective regulatory functions

3.3 The data shared under this arrangement must not be used for any other reason(s) other than those prescribed in this process MoU and as stated on the Childcare Service Privacy Notices, without the collective agreement of Care Inspectorate, NS&I and HMRC.

4. Procedure and information to be shared

The File Upload document (appendix 1; technical IT information) sets out the detail of how Care Inspectorate will share the information with NS&I¹.

The information that Care Inspectorate will share with NS&I is set out below. Three data sets have been identified as in scope for this MoU.

The data shared will include the personal data of a nominated individual person working for registered businesses or of regulated individuals.

| Dataset | Data Source | Type | Definition | Protective Marking | Data Recipient | Transfer Frequency |
|---------|-------------------|--|---|--------------------|----------------|--------------------|
| 1 | CARE INSPECTORATE | Bulk data transfer to enable the programme to deliver services | <ul style="list-style-type: none"> • the childcare provider's Unique Reference Number (URN) which Care Inspectorate uses to identify the provision ▪ the name of the registered setting/provision ▪ the address of the registered setting/provision ▪ the name of the provider or the nominated person who represents the provider where the provider is an organisation ▪ where supplied (if applicable) to Care Inspectorate, the email address of the provider/nominated person ▪ confirmation of whether a provider is 'sensitive' and therefore their information needs to only be available via parents' Tax-Free | OFFICIAL | NS&I | One-off |

¹ The File Upload document (available on request) is a technical document and will remain a living document, and is therefore subject to change for a period of time after the MoU has been agreed. Any changes will be updated and shared with Care Inspectorate.

| | | | | | | |
|----------|-------------------|---------------------------------------|--|--------------------|------|--|
| | | | Childcare accounts | | | |
| 2 | CARE INSPECTORATE | Case-by-case | <ul style="list-style-type: none"> ▪ childminders and providers of childcare on domestic premises who have chosen not to make their details public (see 5.1 below), ▪ and, on a case by case, basis this may also include particularly sensitive information related to: ▪ the location of childcare provision on military bases (see 5.5 below); ▪ the location of childcare provision within women's refuges and similar settings (see 5.6 below). | OFFICIAL-SENSITIVE | NS&I | As and when required |
| 3 | CARE INSPECTORATE | Routine updates to bulk data transfer | <p>Care Inspectorate will only share data about changes to this initial transfer, which will be changes where Care Inspectorate:</p> <ul style="list-style-type: none"> ▪ grants a provider's application to register or approves additional premises ▪ cancels a provider's registration ▪ removes a provider, or one of their settings, from the register at the provider's request (i.e. the provider resigns their registration) | OFFICIAL | NS&I | Once per calendar month or other frequency based on business need and with agreement by all parties. |

| | | | | | | |
|--|--|--|---|--|--|--|
| | | | <ul style="list-style-type: none"> ▪ suspends a provider's registration or suspends one of their settings from operating ▪ lifts the suspension of a provider's registration or lifts the suspension of one of their settings ▪ Accepts changes to provider or setting details, such as a change to email address or contact name. | | | |
|--|--|--|---|--|--|--|

A definition of what constitutes a 'sensitive' service provider is set out in section 5 below.

4.1 The above dataset is classified as OFFICIAL.

4.2 NS&I and HMRC may disclose information to Care Inspectorate where doing so helps Care Inspectorate to perform its regulatory functions, for example where they have concerns about fraud which may call into question the provider's suitability, so that Care Inspectorate can consider the need to investigate the provider's continuing registration with Care Inspectorate. NS&I may advise Care Inspectorate that certain files have been rejected after transfer to NS&I, which requires Care Inspectorate to review as set out in the process document (Appendix 1). This will be a coded notification and will not include personal data.

4.3 NS&I will hold the information about childcare providers on their systems. At the point NS&I is notified by Care Inspectorate that the childcare provider is no longer operating or regulated, NS&I may hold the data for a period in line with TFC data retention processes.

4.4 Care Inspectorate will transfer the data through a secure portal hosted by NS&I. NS&I will only provide login details to people within NS&I who need access to the information to carry out their role.

4.5 It is for Care Inspectorate to ensure the accuracy and completeness of the Personal Data provided to NS&I under this Process MoU.

5. Providers defined as sensitive providers

5.1 The data described in this process MoU is not special category data as defined by articles 4 and 9.1 of the General Data Protection Regulation.

5.2 The use of the term sensitive category data denotes that the information in question requires specific handling arrangements.

5.3 Care Inspectorate will include in the data feed its data for childminders and providers of childcare on domestic premises that have chosen not to have their details uploaded, Care Inspectorate will indicate in the data transfer the details of providers whose information must not be uploaded by HMRC (as per appendix 1).

5.4 Care Inspectorate will provide data for childcare provision on military bases at its discretion and in agreement with the base(s). Care Inspectorate will not provide data for any military base that the Ministry of Defence has asked Care Inspectorate not to disclose.

5.5 Care Inspectorate will provide data for childcare provision within women's refuges at its discretion and in agreement with the Women's Aid Federation. Care Inspectorate will not provide data for any women's refuge that the Women's Aid Federation has asked Care Inspectorate not to disclose.

5.6 NS&I and HMRC will only make sensitive provider data accessible on the strictest need-to-know basis and under no circumstances will make this sensitive information available outside of the Tax-Free

Childcare account and in the public domain. Sensitive provider data must not be disclosed to anyone without first obtaining consent from Care Inspectorate.

6. Security and Assurance

HMRC and NS&I agrees to:

- only use the information provided by Care Inspectorate for purposes that are set out in law, and covered by the terms of this memorandum
- accept responsibility for the security of the data once received and recognise Care Inspectorate's right to provide responses to the use of the data
- only hold the data while there is a lawful basis to keep it and securely destroy the data when there is no longer a legitimate lawful basis to retain it, in line with the data retention policy in place
- ensure that only people who have a genuine business need to see the data will have access to it and for the more sensitive data that access is controlled on the strictest need-to-know basis
- store data securely and in line with government standards, for example in secure premises and on secure IT systems which are appropriately accredited
- move, process and destroy data securely and in line with the HM Government requirements and the [Security Policy Framework](#)
- ensure that no customer or business data is processed outside of the European Union
- comply with reporting requirements (such as reporting personal data breaches or wrongful disclosure) and make reasonable endeavours in line with the Cabinet Office Checklist for Managing Potential Loss of Data or Information [Cabinet Office Checklist for Managing Potential Loss of Data or Information](#). Report any data losses / breaches, wrongful disclosures or breaches of security relating to information held by NS&I to the designated contacts set out in section 9 immediately (within 24 hours, where possible, of becoming aware). This includes both advising and consulting with Care Inspectorate on the appropriate steps to take, for example notification of the Information Commissioner's Office or dissemination of any information to the data subjects. Should any incidents arise please contact HMRC Customer Services Security & Information Team with mailbox: [REDACTED] and for Care Inspectorate: Care Inspectorate's Information Governance Team [REDACTED].
- allow HMRC Internal Audit to carry out an audit to help in deciding whether Care Inspectorate should continue to provide the data, upon request
- provide written, signed assurance that they have complied with these undertakings regularly upon request
- ensure that any changes to design or implementation, after the data transfer begins, are agreed by HMRC, NS&I and Care Inspectorate

7. General Data Protection Regulation (GDPR) 2018 and Human Rights Act 1998 (HRA)

- 7.1 Nothing in this MoU limits the participants' legal obligations under the General Data Protection Regulation or other legislation, with which all participants will comply.
- 7.2 Care Inspectorate will only make available such information that is relevant, necessary and proportionate to enable HMRC and NS&I to carry out their task or process. Care Inspectorate is only permitted to share data with another public authority where it regards it as appropriate to do so, as is the case in this agreement.
- 7.3 NS&I, Care Inspectorate and HMRC will fulfil our respective obligations under the GDPR and prevailing data protection legislation in regards to this Process Memorandum of Understanding.
- 7.4 This MoU sets out the framework for the processing of Childcare services personal data between Care Inspectorate, NS&I and HMRC. It defines the principles and procedures that the participants shall adhere to and the responsibilities the parties owe to each other.
- 7.5 The Parties acknowledge that for the purposes of the Data Protection Legislation, Care Inspectorate are independent data controllers for the purposes of the personal data being shared and that NS&I and HMRC are joint controllers in respect of the data shared and subsequently processed for the: provision of Childcare services.
- 7.6 As independent Controllers, the parties are required to determine their respective responsibilities for compliance with the obligations under the GDPR.
- 7.7 The parties each acknowledge and agree that they have allocated responsibility between themselves for compliance with the Data Protection Legislation, including:
- 7.7.1 Adhering to the GDPR Article 5 Principles
 - 7.7.2 Providing information to data subjects under Article 13 and 14 of the GDPR.
 - 7.7.3 Responding to data subject requests under Articles 15-22 of the GDPR
 - 7.7.4 Notifying the Information Commissioner (and data subjects) where necessary about data breaches
 - 7.7.5 Maintaining records of processing under Article 30 of the GDPR
 - 7.7.6 Carrying out any required Data Protection Impact Assessment under Articles 34-35 of the GDPR
- 7.8 The agreement must include a statement as to who is the point of contact for data subjects. For HMRC the contact is, [sars, Info \(PT Operations\)](#), and CI [REDACTED]
- 7.9 HMRC, NS&I and Care Inspectorate are public authorities for the purposes of section 6 HRA. It would be unlawful for HMRC and Care Inspectorate to act in a way that is incompatible with European Convention on Human Rights.

8. Freedom of Information (FOI) Act 2000 and Environmental Information Regulations 2004 (EIR)

8.1 HMRC, NS&I and Care Inspectorate are subject to the requirements of the Freedom of Information Act 2000 (FOI) and EIR and shall assist and co-operate with each other to enable each department to comply with their retrospective information disclosure obligations.

8.2 In the event of one department receiving a FOI and/or EIR request that involves disclosing information that has been provided by Care Inspectorate, the participation in question will promptly notify Care Inspectorate to allow it the opportunity to make representations on the potential impact of disclosure.

8.3 All HMRC FOI requests must be notified to HMRC FOI Team who will engage with the central FOI team in the supplying organisation.

9. Contact details

| | For HMRC | For Care Inspectorate | For NS&I |
|--------------------|--|-----------------------------------|-----------------|
| Name | N/A | [REDACTED] | N/A |
| Job Title | Commercial TFC Team | Intelligence and Analysis Manager | Compliance Team |
| Team | Tax-Free Childcare Programme | Intelligence Team | Compliance |
| GSI email | Childcare Services & Help to Save, Commercial Delivery Team (Transformation) [REDACTED] | [REDACTED] | [REDACTED] |
| Telephone | [REDACTED] | [REDACTED] | [REDACTED] |
| Deputy's name | N/A | [REDACTED] | N/A |
| Deputy's GSI email | N/A | [REDACTED] | N/A |
| Deputy's telephone | [REDACTED] | [REDACTED] | [REDACTED] |

10. Reporting and review arrangements

10.1 All participants to this MoU will monitor it to:

- identify, escalate and resolve any issues that, if left unchecked, would impact on any of the participants' ability to deliver a service
- capture and disseminate best practice to benefit participants in future
- ensure that it achieves the outcomes agreed.

10.2 The participants will review this process MoU each year. If the MoU requires a change in the interim, this may be agreed by the participants in writing and included in the next review.

10.3 With the exception of clause 10.2, this Process MoU may only be varied with the written agreement of all parties to this Process MoU.

11. Resolving issues

Participants should raise any issues or problems with the technical aspects of the information exchange with the contacts named in section 9. If participants cannot resolve these issues they will escalate them in writing to the following contacts:

| | For HMRC | For Care Inspectorate | For NS&I |
|-----------|------------------------|--|---|
| Name | [REDACTED] | [REDACTED] | [REDACTED] |
| Job Title | Data Exchange Champion | Interim Executive Director of Strategy and Improvement | NS&I Head of Compliance and Data Protection Officer |
| Team | CSIR | Strategy and Improvement Directorate | NS&I |
| GSI email | [REDACTED] | [REDACTED] | [REDACTED] |
| Telephone | [REDACTED] | [REDACTED] | [REDACTED] |

12. Term

12.1 This MoU shall commence on the 7th May 2020 and shall continue until the provision of Childcare Services support ends. The MoU shall terminate automatically without notice at the end of the Term.

12.2 A Party may terminate this MoU by giving the other Party at least three months' notice in writing at any time.

12.3 Upon termination, NS&I shall comply with any direction given by HMRC in relation to deletion of the Personal Data provided under this process MoU, unless otherwise required by law to be retained.

13. Signatories

For HMRC

For NS&I

[REDACTED]

[REDACTED]

.....(name)

.....(name)

NS&I Head of Compliance and Data Protection Officer

CSG Security & Information Manager.....(role)

.....(role)

7th May 2020

...28/05/2020.....(date)

.....(date)

For Care Inspectorate

.....(name)

Chief Executive

.....(role)

25/05/2020

.....(date)

14. Glossary of Terms and Abbreviations

| Definition | Interpretation |
|--|---|
| Ad Hoc Transfer | is defined as being bulk data with a protective marking of restricted or above and the transfer is part of a pilot or project with a definitive end date |
| Data Controller | * has the meaning set out in Article 4 GDPR or, in respect of processing of personal data for a law enforcement purpose to which Part 3 of the Data Protection Act 2018 applies, the meaning in that Part if different |
| Data Processor | * has the meaning set out in Article 4 GDPR or, in respect of processing of personal data for a law enforcement purpose to which Part 3 of the Data Protection Act 2018 applies, the meaning in that Part if different |
| Data Processing | shall have the meaning given to them in the Data Protection Legislation |
| Data Protection Regulation GDPR | means the General Data Protection Regulation, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner |
| Data Subject | shall have the meaning given to them in the Data Protection Legislation |
| Direct Access | Covers an information sharing instance where the receiving Department accesses the Information via direct, or browser, access to the source system rather than as an extracted information transfer. This agreement will require specific terms and conditions ensuring that access is appropriate and correctly applied, managed and recorded. |

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| | |
|---|---|
| FOIA | means the Freedom of Information Act 2000 and any subordinate legislation made under this Act together with any guidance and/or codes of practice issued by the Information Commissioner or Ministry of Justice in relation to such legislation. |
| FOISA | means the Freedom of Information (Scotland) Act 2002 and any subordinate legislation made under this Act together with any guidance and/or codes of practice issued by the Scottish Information Commissioner or Scottish Ministers in relation to such legislation. |
| Granting Access | The governance and authority surrounding the authorisation of a person to have access to a system. |
| Human Rights Act 1998 | An Act to give further effect to rights and freedoms guaranteed under the European Convention on Human Rights. Public authorities like HMRC must follow the Act. |
| Information Asset Owner (IAO) | means the individual within a directorate, normally the Director, responsible for ensuring that information is handled and managed appropriately |
| Law | means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body whether in the UK or (where applicable) otherwise |
| Personal Data Breach | means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Services Personal Data. |
| Provisioning Access | The technical channels through which access is made possible, including the request tools associated with this. |
| Public Sector Body | This will generally be another government department (OGD) but could be another public sector body (e.g. Local Authority). Information sharing with a private sector body with which HMRC has a commercial relationship needs to be covered by a commercial contract, not a MoU. |
| Regulatory Bodies | means those government departments and regulatory statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence matters dealt with in this Agreement and "Regulatory Body" shall be construed accordingly |
| Senior Information Risk Owner (SIRO) | Provides high level assurance of compliance with HMRC's Information Asset data protection obligations. HMRC's SIRO is Jacky Wright, HMRC Chief Digital & Information Officer, Director of Chief Digital & Information Officer Group. |

| Abbreviation | Description |
|---------------------|--|
| Care Inspectorate | Social Care and Social Work Improvement Scotland |
| MoU | Memorandum of Understanding |
| FOIA | Freedom of Information Act |
| HMRC | Her Majesty's Revenue and Customs |
| NS&I | National Savings and Investments |
| SPF | Security Policy Framework |
| GDPR | General Data Protection Regulation |