

# **Agency Agreement between the Secretary of State for Health and Social Care and: the Devolved Administrations relating to the Joint Biosecurity Centre.**

## **1. Parties**

- a) This Agreement is entered into between the following four parties (“the Parties”):

The **Secretary of State for Health and Social Care** (the “**Secretary of State**”);

The **Scottish Ministers**;

The **Department of Health in Northern Ireland**; and

The **Welsh Ministers**.

## **2. Purpose**

- a) The JBC is a Directorate of the Department of Health and Social Care (DHSC) and is accountable to Parliament through the Secretary of State for Health and Social Care. The JBC is operating on behalf of the Secretary of State, who is a party to this agreement. References to the JBC throughout this agreement should be read in this context.
- b) The JBC has been established to provide evidence-based, independent analysis and to perform certain functions relating to the management of coronavirus, which includes the following core functions:
- i. gathering and analysing information concerning patterns of coronavirus infection to inform analytical products;
  - ii. providing assessment or guidance with a view to informing the provision of advice by officials to their respective Ministers, concerning the measures that it may be appropriate to implement to control the spread of coronavirus; and
  - iii. providing advice on the level of risk of coronavirus infection that may apply from time-to-time to the public of the whole, or part, of the United Kingdom.

These are collectively referred to in this Agreement as the “Purpose”.

- c) In recognition of the mutual benefit to be derived from their involvement, the Ministers of each of the Devolved Administrations (DAs) have agreed that the Secretary of State should, in accordance with this agreement, perform such of those functions as relate to the establishment and operation of the Joint Biosecurity Centre (the ‘JBC’).
- d) Pursuant to section 93 of the Scotland Act 1998, and solely in order to carry out the functions described in the Purpose above, the Secretary of State may perform functions on behalf of the Scottish Ministers which are specified under the Scotland Act 1998 (Agency Agreements) (Specification) (Coronavirus) (No. 2) Order 2020 (S.I. 2020/777).
- e) Pursuant to section 83(1)(a) of the Government of Wales Act 2006, and solely to carry out the functions described in the Purpose above, the Welsh Ministers and the Secretary of State agree that the Secretary of State will exercise certain of the Welsh Ministers’ powers and duties under sections 1, 2 and 3 of the National Health Service (Wales) Act 2006 on their behalf.

- f) Pursuant to section 28 of the Northern Ireland Act 1998, The Department of Health in Northern Ireland agrees that the Secretary of State will exercise on behalf of the Department such of the Department's powers and duties as set out in sections 2 and 3 of the Health and Social Care (Reform) Act (Northern Ireland) 2009 as are necessary in connection with the Purpose of the JBC under the terms of this agreement.
- g) Where appropriate, this Agency Agreement may be supplemented by relevant Memoranda of Understanding (MoU) between the Parties for the purposes of setting out more detailed operational protocols, as well as terms of reference for the various boards' governance, and data sharing agreements in respect of data processing in accordance with the relevant legislation.
- h) Any information disclosed or data shared for the purposes of this agreement is specifically for use in the context of combatting the Covid-19 pandemic and not for any other health or public health purpose.

### **3. Duration and review**

- a) This Agreement shall commence on 5 November 2020.
- b) This Agreement shall be effective from the commencement date until 31 March 2022 (the 'Term') at the latest.
- c) All signatories agree to keep these arrangements under review. This Agreement will be reviewed at least once every six months with the first review to be held within three months of the commencement of this Agreement.
- d) This Agreement may be varied, or the Term extended, by mutual written agreement of all the Parties at any time during the Term. Any of the Parties may unilaterally withdraw from this Agreement by giving reasonable notice in writing to the others to allow the remaining Parties to consider and address any implications of this. The exact arrangements for this shall be as set out in any separately agreed Memorandum of Understanding and/ or data sharing agreements. This Agreement shall continue in full force and effect in respect of the remaining Parties notwithstanding the withdrawal of one of the Parties.

### **4. Roles and Responsibilities**

#### *The Joint Biosecurity Centre (JBC)*

- a) The JBC has been established to provide early warning of coronavirus (COVID-19), as defined by section 1 of the Coronavirus Act 2020, outbreaks across the United Kingdom. The JBC has three core functions:
  - i. Gathering and analysing data about COVID-19 infection to inform analytical products;
  - ii. Provision of assessment or guidance to help inform decisions about measures that it may be appropriate to implement to control the spread of COVID-19; and
  - iii. Provision of advice on the COVID-19 alert level: providing a single, clear view on the level of risk of COVID-19 infection.
- b) The JBC's responsibilities include:
  - i. To share information with the DAs, including but not limited to relevant health and relevant non-health data and information; situational awareness, analysis and

- assessment products; and management and other corporate information as necessary;
- ii. To collect and distribute good practice guidance and learning from COVID-19 outbreaks across the United Kingdom;
  - iii. To provide advice to the four Chief Medical Officers of the United Kingdom to assist in determining a single UK-wide COVID-19 alert level, whilst taking account of regional variations in data where relevant. The COVID-19 alert level will be determined under conditions of analytical independence and using an established methodology;
  - iv. To produce analytical products, which under this agreement are defined as any output, including but not limited to reports, papers, presentations, and charts, that are created using data gathered as part of the JBC function to illustrate the local or national Covid situation, trends or potential mitigation. The JBC will not produce products that make substantive or significant reference to a Devolved Administration without approval from the relevant DA. Permission from the DAs will not be required for the JBC to produce products that are focused on England only;
  - v. To disclose information or share data acquired under this agreement only for the purposes set out within this agreement and only then on a need to know basis. Any information or data acquired shall not be shared with any parties outside of the JBC nor used by any party who is a part of or carries out work for the JBC in any other capacity.
  - vi. The JBC shall ensure all parties who are a part of or carry out work for the JBC in whatever capacity are aware of these requirements and shall monitor compliance. Any breach of these requirements shall be investigated and reported to the JBC Steering Board and the original owner of the relevant data.
  - vii. To take all reasonable steps to give prior notice to the DAs where products which incorporate data provided by the DAs (that is not already in the public domain) are likely to be shared with UK Government Ministers or other parties outside of the JBC, save as those bodies that are required by law (for example, the Information Commissioners Office);
  - viii. To handle all JBC products in line with security classifications and relevant handling instructions.
- c) The JBC will not publish any formal assessment products without prior agreement from the Parties, unless required by applicable law or a Court.

#### *The Devolved Administrations (DAs)*

- d) The responsibilities of the DAs:
- i. Where mutually beneficial and where relevant legislation permits, to provide the JBC with access to relevant health and non-health related data held by them to enable the JBC to perform the functions listed above and as set out any agreed Memorandum of Understanding and/or data sharing agreements;
  - ii. Directors (or equivalent) in each DA will be able to commission analytical products from the JBC. The JBC will accept such commissions where reasonably practicable to do so, and shall agree the purpose, scope and timing of those commissions. Where these commissions contain information on the whole of the UK, the purpose, scope and timing of such commissions should be agreed between all of the Parties to ensure the analytical product is of mutual benefit to all Parties. Following this, the commission should be confirmed in writing – via letter or email - between the Commissioning Director to the JBC Director of Analysis and Assessment. Where a commission relates to fewer than all four Parties, the purpose, scope and timing of such commissions should be agreed with the Parties to which the information relates. Where the commission relates

- solely to one DA, that DA shall not be required to secure the agreement of the other Parties;
- iii. To handle all JBC products in line with security classifications and relevant handling instructions; and
  - iv. To not publish any JBC products or the content thereof without consent of the JBC.
- e) All Parties agree to establish mechanisms to ensure the response to outbreaks close to national land boundaries with other UK regions are joined up and mutually reinforcing. These arrangements may be set out in separate Memoranda of Understanding, should all Parties agree this is necessary. The Parties agree to keep these arrangements under review.
  - f) Each of the Parties may produce products that utilise publicly available data without requiring the prior consent of the relevant Parties.
  - g) The DAs may share JBC products with trusted partners in each jurisdiction, except where instructed otherwise by the JBC. Where products are shared, the DAs agree to do so in accordance with the principles at section 4d(iii) and 4(iv).
  - h) All parties enter into this agreement in good faith, noting the intent set out in the Ministerial agreement of mutual collaboration and cooperation, and will uphold the spirit, as well as the letter, of the agreement.

## **5. Governance**

- a) Pending establishment of the new National Institute for Health Protection (NIHP), the JBC is a directorate of the Department for Health and Social Care and is accountable to the UK Parliament through the Secretary of State for Health and Social Care.
- b) A Ministerial Board will be established, comprised of the Secretary of State for Health and Social Care, and one representative each from the Welsh and Scottish Ministers, and the Northern Ireland Health Minister. Each Minister may be accompanied by two officials, with the JBC Director General also attending. Its broad objective will be to ensure the JBC is delivering its objectives as effectively as possible for all four nations of the United Kingdom. Ministers will remain accountable to their respective legislatures. The Ministerial Board's terms of reference will be agreed separately. The Board shall meet at least three times a year and operate on a principle of unanimity.
- c) The Ministerial Board will be supported by a JBC Steering Board, whose role will be to set the JBC's strategic direction and objectives, safeguard its analytical independence, review performance, and hold the Director General to account. The JBC Steering Board will also be consulted on the appointment of future Directors General. The Steering Board's terms of reference will be agreed separately. Responsibility for chairing the JBC Ministerial Board will rotate each meeting according to the following pattern: England, Northern Ireland, Scotland, Wales. The membership and composition of the Steering Board shall be agreed by the JBC Ministerial Board. Each Devolved Administration shall be invited to nominate a Director General or Permanent Secretary level official to join it as full members with full voting rights. The Board shall meet quarterly.
- d) A JBC Technical Board will also be established. Its role will be to ensure the methodologies underpinning the JBC's UK-wide assessment products are clinically and scientifically robust, provide constructive challenge and recommendations for

improvement to those methodologies, identify associated risks and opportunities, and consider future products and methodologies as appropriate. Membership of the Technical Board will comprise the Chief Medical Officers (CMOs), Deputy Chief Medical Officers and the Chief Scientific Advisors of the four nations. Where possible, the Board shall operate on a principle of unanimity.

- e) The Secretariat for each board will be provided by the JBC working in collaboration with the DAs. Agendas, papers and records of meetings will not normally be published, although the methodologies underpinning the Covid-19 Alert Level, the JBC's assessment of the public health risks of direct inbound travel to the UK, and future similar products will be.
- f) A daily four nation situational awareness meeting shall be convened to share information and experiences about local outbreaks in each nation and support coordinated responses to outbreaks along national borders.
- g) Consistent with Section 3 of this Agreement, these arrangements may be reviewed every six months, including to take account of developments in each jurisdiction, such as the establishment of the new National Institute for Health Protection (NIHP).
- h) The JBC Secretariat will, where reasonably practicable, provide an agenda and any papers to members no less than 5 days ahead of Board meetings. Minutes and actions from these meetings will be provided within 3 days.

## **6. Disputes**

- a) The Parties will act transparently and will work in good faith in a practical way in resolving any issues that may arise in a timely manner, in the spirit of co-operation, trust, respect and confidentiality, and at the lowest possible appropriate level of seniority. The Parties will work collaboratively to support the JBC's strategic objectives.
- b) Should issues arise that require urgent resolution or are operational issues, each party can escalate matters at official level via a dedicated Single Point of Contact in each jurisdiction. The party in dispute shall notify the other of the dispute setting out reasonable details of the dispute. Officials of both Parties of at least Grade 5 level shall meet - virtually or in person - within five working days, or as soon as is practicable if circumstances so require. In the event that senior officers are unable to resolve the dispute, it shall be referred to the next senior official who shall meet within five working days to resolve the matter.
- c) The JBC Ministerial Board will act as an escalation point for any issues about the JBC's UK-wide role that cannot be resolved at official level.
- d) This process supplements the current agreement by which each of the four nations can raise a disagreement as a formal dispute as per the process set out in the Memorandum of Understanding and Supplementary Agreements.<sup>1</sup> That Memorandum and Supplementary Agreements are subject to review following the decision of the Joint Ministerial Committee Plenary on 14 March 2018.

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<sup>1</sup> Accessed at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/316157/MoU\\_between\\_the\\_UK\\_and\\_the\\_Devolved\\_Administrations.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/316157/MoU_between_the_UK_and_the_Devolved_Administrations.pdf)

## **7. Financial Arrangements**

- a) As a directorate of the Department of Health and Social Care, budgetary responsibility for the JBC shall rest with the Secretary of State for Health and Social Care. Subject to HM Treasury approval, the JBC's organisational costs shall be met by the UK Government Estimate. The Permanent Secretary of the Department of Health and Social Care, in their role as Accounting Officer, shall be directly accountable to the UK Parliament for the spending.
- b) The Department of Health and Social Care and the Ministers of the DAs remain subject to their overall existing accountabilities to the UK and their national Parliaments, and their associated audit bodies.

## **8. Staffing**

- a) JBC staff recruited directly by the JBC shall be accountable to the Department of Health and Social Care. Employment opportunities within the JBC shall be open to staff at Senior Civil Service and delegated grades within the DAs in accordance with existing rules governing movement of staff between UK Government departments and the DAs, including the Northern Ireland Civil Service and other public sector employers.
- b) Where the relevant Parties agree, staff from the DAs may exchange embedded staff with the JBC. In such circumstances, those staff shall not be formally loaned or seconded to the JBC and shall remain accountable to their respective administration (and in respect of Northern Ireland, they shall remain with their current employer). This arrangement may be underpinned by a dedicated Memorandum of Understanding, if appropriate.

## **9. Communications**

- a) Each party to this Agreement shall provide the other three with a reasonable period of advance notice of any public statements that refer to the involvement of the Parties in the JBC and shall do so in accordance with the principles set out in the Memorandum of Understanding and Supplementary Agreements referred to in section 6(d).

## **10. Freedom of Information Requests, Parliamentary Questions, Ministerial Correspondence and 'Treat Official' Correspondence**

- a) Each party is to follow its existing procedures and comply with obligations relating to Freedom of Information or other information requests made to that party, and having regard to the Memorandum of Understanding and Supplementary Agreements referred to in section 6(d).
- b) The Parties shall also agree a protocol for handling Freedom of Information or other information requests to that party, where those requests relate to the JBC. Each party will assist and cooperate with each other where appropriate to help enable the party who is a recipient to such a request to meet its legal obligations.
- c) This agreement does not supersede any legal obligations under the Data Protection Act 2018, Freedom of Information Act 2000 and the Freedom of Information (Scotland) Act 2002.

## 11. Data Access and Control

- a) The JBC and DAs agree to provide mutual access to data for which they are the relevant data owners or which they hold and have the authority to share. Such access is provided for the purpose of assisting with early identification of outbreaks and the development of a range of analytical products to inform local and national decision-makers on the overall level, concentrations and drivers of risk. All Parties agree that such access shall be provided exclusively for the purposes of the effective operation of the JBC in accordance with this agreement, including the principles set out in paras b) to k) below. If personal data is to be shared between any of the Parties (or access provided to it) for the purposes of this Agreement, the relevant Parties will enter into appropriate data sharing agreement(s) setting out those arrangements. It is acknowledged that much of the data to which access will be required for the purposes contemplated in this Agreement will be held by third-party bodies and that where the relevant DA so advises in writing the JBC will be required to enter into separate arrangements, including data sharing agreements, with those third-party bodies on a case-by-case basis.
- b) The JBC will adopt a proportionate, reasonable and accountable and, above all, lawful approach to data processing, which meets robust ethical standards, respects individuals' rights to privacy, and complies fully with the General Data Protection Regulation (GDPR) and the Data Protection Act 2018. The JBC will be fully compliant with any other applicable legislation or regulations relating to data processing which may be enacted or come into force and with due regard to any relevant guidance from the Information Commissioner's Office.
- c) In this undertaking, the JBC will acquire and process the minimum amount of personal data relating to the minimum number of identifiable individuals necessary to produce the required data output, ensuring that all personal data is held securely, with access subject to an appropriate level of control and audit and subject to an appropriate review, retention and deletion policy.
- d) The JBC and DAs will share information, where this is permissible in accordance with the relevant legislation in each jurisdiction, regarding the data available to them or to other relevant health authorities, bodies or private companies that they believe would be useful in the fight against COVID-19.
- e) On a case-by-case (or other appropriate e.g. by category) basis, the JBC and relevant DA will consider whether there would be mutual benefit in sharing (where that is within the control of the JBC or relevant DA) or facilitating (e.g. by putting relevant bodies in contact) access to, or the exchange of, those data sets.
- f) Before data is exchanged between the Parties, or access is given, both the JBC and relevant DAs will ensure that relevant national data protection and other applicable national laws are complied with.
- g) The JBC and DAs will ensure that personal data is only exchanged where absolutely necessary and where aggregated or anonymised data would not be sufficient for the purpose. Where the exchange of personal data is determined to be strictly necessary, care will be taken to ensure strict compliance with all legal and regulatory requirements particularly where this is sensitive personal data such as medical data. Such exchanges will be underpinned by data sharing agreements, with access strictly limited to those which are necessary and permissible under the relevant

legislative regimes (for example, it is recognised that currently the exchange of personal data with the JBC or other DAs is permissible in Northern Ireland in very limited circumstances).

- h) The JBC and the DAs agree to share relevant data to assist in the ongoing management of outbreaks of COVID-19. This is primarily situational awareness and best practice/learning related to the management of outbreaks in particular settings within each jurisdiction.
- i) In addition to whatever requirements are needed by data controllers in any data sharing agreements, the JBC and the DAs agree, on request, to exchange key GDPR required policies with one another when utilising personal data obtained from another Party. This could include, for example, deletion policies for the relevant data exchanged, Data Protection Impact Assessments or other key documentation.

## **12. Signatories**

Signed by:

Date:

Date:

Date:

Date: