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**Operating Framework:  
Healthcare Improvement Scotland and  
Scottish Government**

**December 2018**



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## **Introduction / purpose of document**

1. This Operating Framework sets out the framework within which Healthcare Improvement Scotland (HIS) and the Scottish Government (SG) will work together. It defines the key roles and responsibilities which underpin the relationship between HIS and the SG. The framework describes the detail of the relationship between HIS and SG. HIS retains functional independence and its executive directors are accountable to the HIS board through the Chief Executive.
2. HIS is required to provide assurance to the people of Scotland about the quality of care within a health setting. It must be seen as robust, transparent and independent if it is to fulfil this requirement.
3. We recognise our respective statutory roles, responsibilities and independence but will always seek to collaborate and co-operate in the public interest, in delivering our core functions and in the course of our day to day working relationship. This Operating Framework acknowledges the importance of the clear separation of roles and the need to avoid real or perceived conflicts of interest.
4. This Operating Framework forms a key part of the accountability and governance framework and should be reviewed and updated as necessary, and at least every 3 years. Any proposals to amend the framework either by the SG or HIS will be taken forward together and with due consultation, taking account of priorities and policy aims.
5. The Operating Framework will support:
  - an effective, strategic working arrangement between HIS and SG based on a shared understanding of respective roles and responsibilities;
  - risk management arrangements that allow both parties to effectively identify and alert the other to risks and potential areas of tension;
  - a clear two-way communication channel between the organisations;
  - a robust system for agreeing HIS's priorities, which includes a view of the priorities and resources for the future;
  - a constructive dialogue and input to the formulation of SG policy and initiatives based on HIS's evidence and intelligence; and
  - the further strengthening of our relationship based on openness, honesty, learning support and constructive challenge.

## Healthcare Improvement Scotland purpose

6. HIS was established in 2011 as a health body, constituted by the National Health Service (Scotland) Act 1978, as amended by Public Service Reform Scotland Act 2010 and the Public Bodies (Joint Working) Act 2014. HIS's key statutory duties are as follows:
  - a general duty of furthering improvement in the quality of health care
  - a duty to provide information to the public about the availability and quality of services provided under the health service
  - when requested by the Scottish Ministers, a duty to provide to the Scottish Ministers advice about any matter relevant to the health service functions of HIS.
7. Specifically, HIS is to exercise the following functions of Scottish Ministers:
  - to support, ensure and monitor the quality of healthcare provided or secured by the health service
  - to support, ensure and monitor the discharge of the duty on NHS boards to encourage public involvement (through the establishment of the Scottish Health Council as described in annex 3)
  - to evaluate and provide advice to the health service on the clinical and cost effectiveness of new and existing health technologies including drugs
8. In furtherance of HIS's duty to improve the quality of health care, these functions – broadly, quality assurance (through inspections and reviews), supporting the engagement of people and communities, and the provision of evidence (including advice, standards and guidelines) – are co-located with the delivery of improvement support.
9. This co-location enables HIS to use a combination of these functions, in a co-ordinated and balanced way, to support better quality health and social care.
10. The diversity of functions within HIS requires a differentiated approach. In undertaking assessments of the quality of care, HIS will operate independently of SG, health boards and Integration Authorities. In relation to other functions, HIS will work in partnership with SG and other stakeholders. Here a close, mutually supportive working relationship is essential in order to deliver improvement.

## **Contribution to Scottish Government priorities**

11. HIS supports the delivery of the Scottish Government's Quality Strategy and specifically the outcomes of the Health and Social Care Delivery Plan<sup>12</sup>. This is set out in HIS' Strategic Plan, *Making Care Better*, and through its five strategic priorities:

- Enable people to make informed decisions about their own care and treatment.
- Help health and social care organisations to redesign and continuously improve services for people.
- Provide evidence and share knowledge that enables people to get the best out of the services that they use and help services to improve.
- Provide and embed quality assurance that gives people confidence in the quality and sustainability of services and supports providers to improve.
- Help to make best use of all the resources committed to health and social care.

## **Healthcare Improvement Scotland powers**

12. HIS has the following statutory powers:

- Powers of access and right of entry (for the purposes of inspection) in relation to the health service and independent healthcare services
- The power to direct a Health Board to close a ward to new admissions where there is a serious risk to the life, health or wellbeing of persons
- The power to require documents in relation to the functions of the Death Certification Review Service
- Regulatory powers in relation to the independent healthcare sector.

## **Healthcare Improvement Scotland operating principles and approach**

13. The statutory duties above set out the expectations of Scottish Ministers on HIS. HIS will deliver its functions independently of Ministers and will operate to the following principles:

- HIS will review and inspect the quality of healthcare in any service both in the NHS and independent sector, based on intelligence and evidence and at a time and manner of its choosing; this applies to both one-off reviews and planned programmes of assurance.

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<sup>1</sup> Health and Social Care Delivery Plan, Scottish Government, December 2016

- HIS has access to all relevant information held nationally and locally about the quality of care and services, for the purposes of learning, enquiry and improvement. If the information is withheld HIS has the right to request access to the information.
- HIS will inform SG of investigations it decides to undertake and will operate independently, with the required mix of skills.
- When responding to a request from Scottish Ministers, HIS will engage with the service providers to fully understand the issues involved and will decide which of its functions to use, alone or in combination, to most effectively support improvement.
- HIS may publicly escalate serious concerns about a service to Scottish Government in accordance with our agreed escalation process (annex 5).
- HIS may disseminate information as it deems appropriate and provide advice to Scottish Ministers at any time.
- HIS will respond to requests by the Scottish Parliament's Health and Sport Committee for evidence on the quality of healthcare in any service.
- HIS will carry out its activities transparently, including wherever possible publishing the sources of intelligence that are used to inform its work.

### **Governance and accountability**

14. HIS is a Health Body under the Public Services Reform (Scotland) Act 2010 (although not a Special Health Board, as a health body HIS may be grouped with NHS Special Health Boards in terms of SG initiatives such as shared services).
15. HIS is accountable to Scottish Ministers for the delivery of its strategic objectives. The Chairman of HIS and the HIS Board is appointed by and accountable to Scottish Ministers.
16. The Chief Executive of HIS is employed and appointed by the Board with the approval of Scottish Ministers. The Chief Executive of HIS is a member of the NHSScotland Chief Executives' Group and reports to the Director-General Health and Social Care.
17. The day-to-day link between HIS and Scottish Ministers is provided by the sponsor unit in SG. While a number of other SG business areas have direct relationships with HIS in relation to specific programmes of work and policy issues, the sponsor unit has overall responsibility for ensuring that HIS is adequately briefed about the Scottish Government's policies and priorities and will monitor HIS' activities on behalf of Ministers.
18. The SG and its Ministers are responsible to Parliament for health and social care overall and will take the lead in demonstrating this accountability. HIS will

support SG by, amongst other things, providing information to Ministers to enable them to account to Parliament.

19. In addition HIS has its own responsibilities to account to the public and to Parliament, and will keep the SG advised on its handling of these responsibilities. This may be demonstrated through MSP correspondence and appearances before Parliamentary Committees, the publication of information on HIS's website, as well as through responses to letters from the public and responses to requests under the Freedom of Information Act.
20. SG recognises the need for HIS to maintain an open and positive working relationship with a range of partners in the context of health and social care integration. There will be a need to demonstrate sensitivity in managing these relationships in the context of the very different accountability and governance arrangements for these other partners such as local government and the third sector.
21. Specifically, HIS will have a Memorandum of Understanding (MoU) to provide an agreed Operating Framework between HIS and the Convention of Scottish Local Authorities (COSLA), in relation to HIS's work with Integration Authorities, and in recognition of local government's political investment in, and accountability for, the successful implementation of integration.
22. Given HIS's legal accountabilities to SG, any changes to this MoU will also be agreed with SG to ensure a clear three way agreement and understanding of HIS' dual accountabilities within the integrated space.

## **Performance and Financial Management**

23. Financial Management and performance will be in line with legislative requirements including the Scottish Public Finance Manual (SPFM). The SG continues to work with HIS to establish and maintain funding to support the majority of HIS activities. HIS and SG will mutually agree savings and efficiency targets within the context of HIS delivery of SG priorities.
24. HIS will produce a three year strategic plan and a one year operational delivery plan setting out how it will deliver its strategy. The annual operational delivery plan will be consistent with the priorities for SG, underpinned by a robust financial and workforce plan, and requires to be submitted to SG in accordance with agreed timescales.
25. SG will respond formally with comments and the plan will be agreed by end March each year between the SG sponsor unit and HIS and be approved by the HIS Board. The plan will be published by HIS.



26. The Annual Review (whether Ministerial or non-Ministerial) will be the focal point for the public accountability of delivery of the previous financial year. HIS will provide SG their self-assessment prior to the review. The SG will formally write to HIS following the Annual Review setting out the key areas covered and agreed actions. HIS will publish this letter.
27. From time to time, SG may request new and/or a change in activities to be undertaken, including ad-hoc investigations. All such requests must be routed through the sponsor unit and accompanied by a formal commissioning letter setting out the background, the terms of the request, the purpose, and the timeline for undertaking the work.
28. HIS will consider the request and in discussion with SG propose its response to the commission. This will be followed with formal terms of reference for the initiative which will be agreed in advance of the work commencing. Funding arrangements for new and/or a change in activities will also be agreed between SG and HIS at the time of the commission.

### **Relationship between the Scottish Government and HIS**

29. HIS will meet with the sponsor Division on a regular basis to: explore priorities; consider resource utilisation; review performance; consider new or existing risks.
30. HIS will keep SG informed of significant announcements by HIS or where there may be matters of public/media/political interest. Similarly, SG will keep HIS informed of any announcements that may directly impact on the areas of responsibility of HIS and where such announcements may impinge on wider strategic relationships.
31. HIS will routinely share its publications with SG in support of a good working relationship with 'no surprises'.
32. Reports on the findings of HIS inspection and scrutiny activity will be shared in advance for information only.
33. HIS will keep SG apprised of the progress of ad-hoc investigations and other commissions. All SG commissioned investigations will be undertaken entirely independently of the SG and the findings/recommendations publicly presented.

## ANNEX 1: Sponsorship Management

1. The National Clinical Director and Deputy Director for Planning and Quality have responsibility for overseeing and ensuring effective relationships between the SG and HIS which support alignment of the business of HIS to the SG's Purpose and National Outcomes and high performance by HIS. They will work closely with the HIS Chief Executive and be answerable to the Portfolio Accountable Officer, who is the Director General, Health and Social Care, for maintaining and developing positive relationships with HIS characterised by openness, trust, respect and mutual support. They will be supported by a sponsor unit in Planning and Quality Division in discharging these functions.
2. The SG sponsor unit for HIS is the Person-Centred and Quality Unit, based in the Planning and Quality Division. It is the normal point of contact for HIS in dealing with the SG. The unit, under the direction of the Deputy Director, is the primary source of advice to Scottish Ministers on the discharge of their responsibilities in respect of HIS and undertakes the responsibilities of the Portfolio Accountable Officer on their behalf.
3. While the sponsor unit is the main point of contact and has oversight of all HIS activities, other SG business areas, including those outwith the Health and Social Care Directorates, have direct relationships with HIS and arrangements to meet with them in relation to specific programmes of work and policy issues. These include but are not limited to:

### HEALTH AND SOCIAL CARE DIRECTORATES

#### Directorate for Health and Social Care Integration:

- Strategy and delivery for dementia, autism and learning disabilities
- Integration
  - Partnership support & development
- Care, Support and Rights:
  - Adult social care reform
  - Sponsorship of Care Inspectorate & If Scotland

#### Directorate for Healthcare Quality and Improvement:

- Planning and Quality :
  - Openness and Learning
  - Person-centred and quality
  - Strategic planning and clinical priorities
  - Strategic and clinical advisors

#### Directorate for Children and Families:

- Improving Health and Wellbeing:
  - Maternal & Infant Health

#### Directorate for Mental Health:

- Mental Health Unit

#### Disclosure Scotland

#### Directorate for Health Workforce, Leadership & Service Transformation

- Service transformation including National Boards Collaborative work

#### Directorate for Chief Nursing Officer

- Chief Nursing Officer
  - Nursing and midwifery policy unit
  - Excellence in care
  - Older people hospital care improvement assurance and inspections
  - Healthcare environment inspections
  - Management, monitoring and inspections in relation to health and care staffing

#### Directorate for Chief Medical Officer

- Pharmacy and Medicines division
  - Medicines Branch

#### Directorate for Population Health

- Chief Dental Officer and dentistry
- Primary Care
  - Contract and implementation

#### Directorate for health finance, corporate governance & value

- Health finance and infrastructure
  - Internal financial performance
  - External financial performance
  - Organisational sustainability and value

#### Directorate for health performance and delivery

- Elective and unscheduled care
  - Unscheduled care national programme
  - Scottish Access Collaborative

### EDUCATION, COMMUNITIES AND JUSTICE DIRECTORATES:

#### Justice Directorate

## Key mechanisms

<b>Mechanism</b>	<b>Purpose</b>	<b>Frequency</b>
Annual Review	To hold HIS publicly to account for performance	Annual
Mid-Year Review	To assess progress against the Annual Review actions and Operational Plan	Annual
Strategic Meetings between Healthcare Improvement Scotland and Scottish Government	To discuss progress against the strategy of HIS and to share key issues from SG	Quarterly
Sponsor meetings	Regular meetings between the SG sponsor division and HIS to discuss progress in relation to operational delivery and to highlight opportunities and concerns.	Monthly
Finance Meetings	<p>SG provide funding to HIS throughout the year through the allocations system.</p> <p>The HIS Director of Finance attends the monthly Directors of Finance meeting and further meetings are held with Health Finance as required to discuss the HIS financial position and arising finance issues.</p>	<p>Monthly Director of Finance Meetings</p> <p>Further meetings with Health Finance as required</p>

ANNEX 2: Key legislation relating to the functions and powers of Healthcare Improvement Scotland

1. [National Health Service \(Scotland\) Act 1978](#), as amended by the [Public Services Reform \(Scotland\) Act 2010](#)
2. [Certification of Death \(Scotland\) Act 2011](#)
3. [Public Bodies \(Joint Working\) \(Scotland\) Act 2014](#)
4. [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016](#)
5. [The Controlled Drugs \(Supervision of Management and Use\) Regulations 2013](#)
6. [The Public Interest Disclosure \(Prescribed Persons\) Order 2014](#)
7. [SSI 2016 No.86 The Healthcare Improvement Scotland \(Delegation of Functions\) Order 2016](#)
8. [The National Health Service \(Scotland\) Act 1978 \(Independent Clinic\) Amendment Order 2016](#)

## ANNEX 3: Healthcare Improvement Scotland operating arrangements

### HIS Board

The HIS Board is appointed by Scottish Ministers as determined by the Public Services Reform (Scotland) Act 2010 Schedule 1611. The Board of HIS has corporate responsibility for ensuring that HIS fulfils the aims and objectives set by Scottish Ministers.

The purpose of the Board is to:

- ensure efficient, effective and accountable governance of the organisation;
- provide strategic leadership and direction;
- determine the risks the organisation is willing to take in pursuit of its strategic objectives; and
- focus on agreed outcomes.

Membership of the Board is as follows:

- Chairman (non-executive)
- Chairman of the Care Inspectorate (non-executive)
- 11 non-executive members, including the Employee Director (non-executive), and
- Chief Executive (executive member).

The Board will create such sub-committees, as are required by, for example, statute, guidance, regulation and Ministerial direction and as are necessary for the economical efficient and effective governance of its business. These are referred to within the organisation as the governance committees of the Board. In particular:

- HIS will establish a Committee to be known as the Scottish Health Council; Scottish Ministers are to appoint a member of the HIS Board to Chair the Scottish Health Council.
- HIS will establish an Audit Committee to advise the Board on internal control (including corporate governance) and audit matters.

The Chief Executive of HIS is employed and appointed by the Board with the approval of Scottish Ministers, and reports to the Director-General Health and Social Care. The Chief Executive is the Board's principal adviser on the discharge of its functions and is accountable to the Board. Their role is to provide operational leadership to HIS and ensure that the Board's aims and objectives are met and HIS's functions are delivered and targets met through effective and properly controlled executive action. Their general responsibilities include the performance, management and staffing of HIS.

Members of the Board are required to comply with the Board Members' Code of Conduct. Further guidance on how the board should discharge its duties is provided in [On Board – A Guide for Members of Statutory Boards](#).

### Governance of HIS

HIS has in place a Code of Corporate Governance, which is based on the general principles of the UK Corporate Governance Code and the International Framework: Good Governance in the Public Sector (the Framework). The Code is approved by HIS' Audit and Risk Committee and is ratified by the HIS Board. The Code sets out the responsibilities of the HIS Board and governance committees and includes standing financial instructions and arrangements in relation to remuneration, reporting and risk management.

HIS will work to adopt the 'Blueprint for Good Governance' agreed by Scottish Government and the NHSScotland Chairs Group in October 2018.

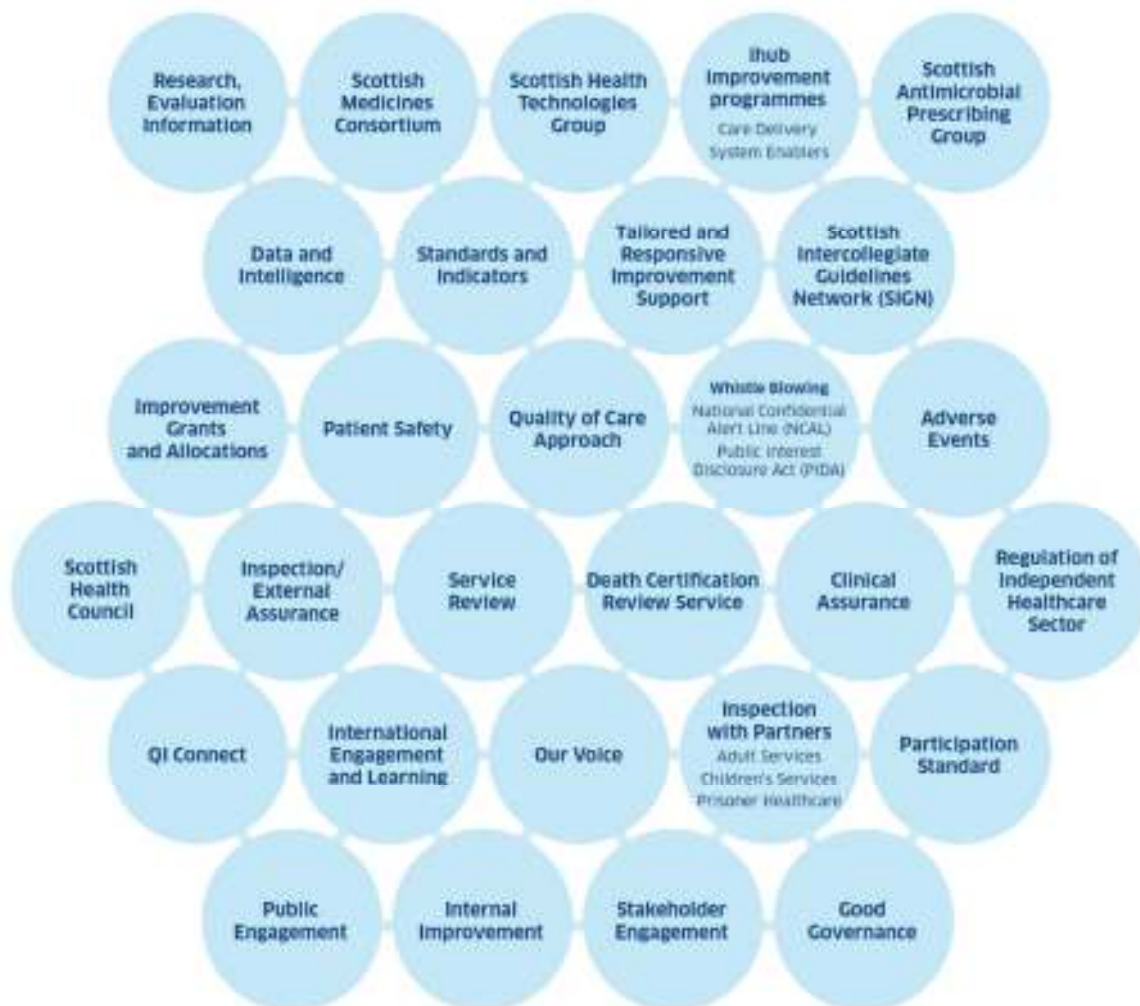
### Transparency

HIS is an open organisation that will carry out its activities transparently.

HIS is required to publish an annual report setting out how it has discharged its statutory duties during the year, together with its audited accounts, after the end of each financial year.

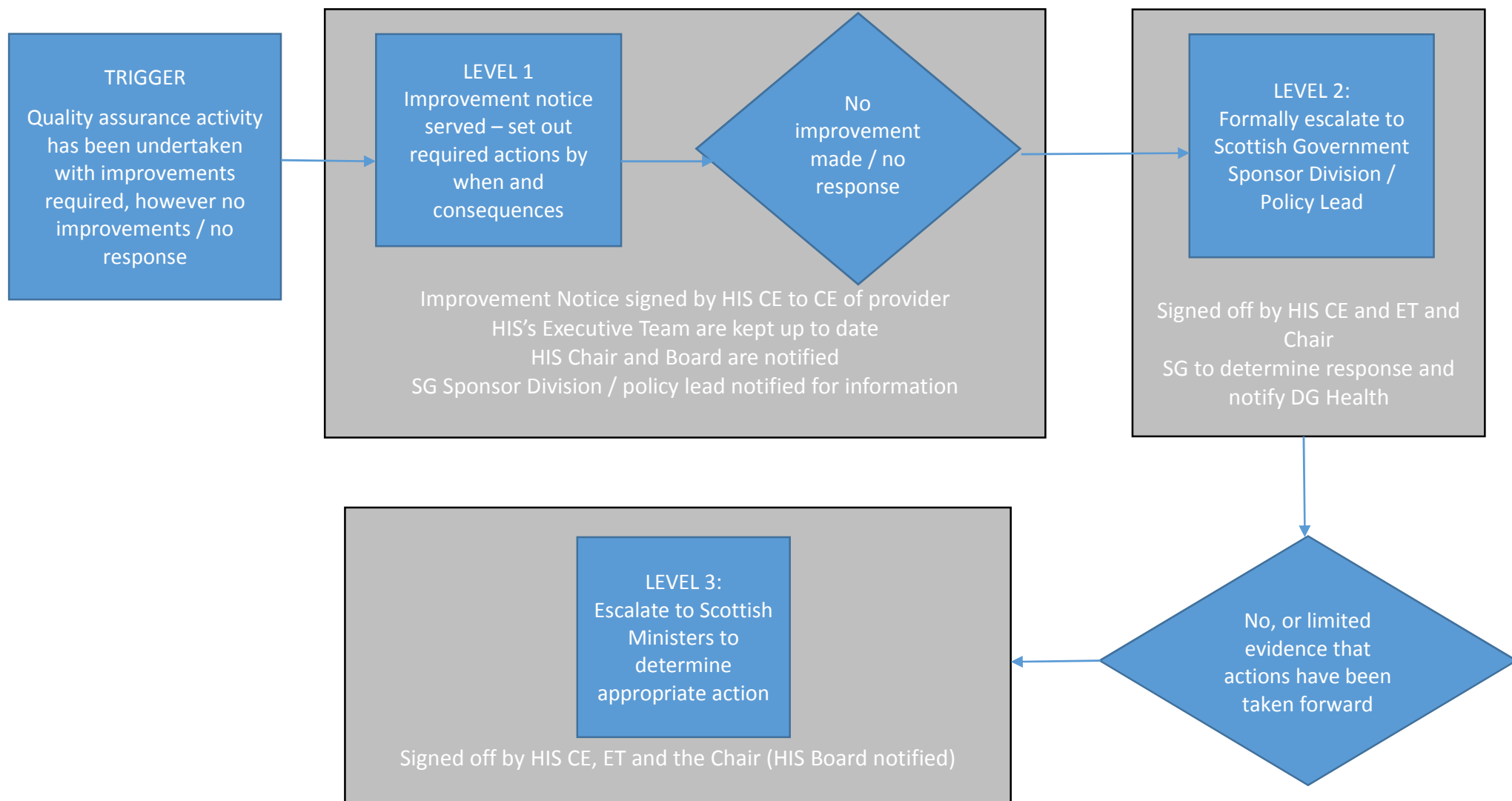
The Auditor General for Scotland (AGS) audits, or appoints auditors to audit, HIS' annual accounts and passes them to the Scottish Ministers who shall lay them before the Scottish Parliament, together with the auditor's report and any report prepared by the AGS. HIS holds board meetings in public and has in place an Employee Code of Conduct, which includes rules on conflicts of interest, gifts and hospitality, openness and confidentiality and whistleblowing.

ANNEX 4: Healthcare Improvement Scotland functions





ANNEX 5: Process for escalation of issues to Scottish Government



## ANNEX 6: Detail/narrative and table to support Annex 5

### **Purpose**

To ensure an organisation-wide, consistent and transparent process for escalation of issues to Scottish Government. This would be undertaken when a lack of progress/response/input has been made by the service provider as a result of the usual HIS processes.

### **Trigger**

A quality assurance engagement by HIS has taken place (either through normal processes or as a referral from the Responding to Concerns process) and identified improvements to be made. These are agreed with the provider and there is a clear expectation with written agreement with the provider that these will be delivered upon.

The improvements at this stage are agreed between HIS and the service in question and are based on the level of risk of harm to the public. These will follow a standard typology, such as:

- No further engagement necessary
- Recommendations made but will be followed up informally by link inspector
- Recommendations made and provider will be asked for an update on progress by a stated date
- Significant recommendations made requiring a follow-up inspection within a clear timescale
- Significant issues identified requiring immediate escalation
- In all cases the timescales will be clear e.g. for a follow-up inspection or for the further reporting of progress by the provider. Further engagement may be required if not all improvements have been made or we are not fully assured. However, any extension to the original timescales will be clearly recorded and new expectations clearly set.

LEVEL	Situation	HIS Action	SG contact and anticipated actions	HIS Governance
TRIGGER	<p>Quality assurance activity has taken place by HIS (through normal processes such as inspection activity or as a referral from the responding to concerns process) and identified improvements to be made. This has been agreed with the provider and clear timescales identified for delivery of improvements.</p> <p>No, or limited, progress has been made by the provider within the agreed timescales.</p>	<p>Escalate to improvement notice stage (Level 1).</p>	-	-

LEVEL	Situation	HIS Action	SG contact and anticipated actions	HIS Governance
LEVEL 1 Improvement notice	<p>There is no, or limited, response from the service provider regarding lack of progress and/or lack of improvement poses a significant risk to patient care.</p> <p><i>Note: Criteria for each level of escalation will be developed.</i></p> <p>Should HIS have used its statutory powers to close a ward to further admissions then this would immediately lead to an improvement notice being issued.</p>	<p>An improvement notice will be served from HIS's CE to the CE of the provider, copied to the Chair of the provider.</p> <p>This would clearly state what improvements are expected, by when and the consequences if no improvement has been made.</p> <p>The improvement notice will be published on the HIS website.</p> <p>HIS will publicly report progress against the improvement notice</p> <p>If joint engagement with another scrutiny body, the MoU with that body will clarify how respective escalation processes will be managed</p>	<p>Sponsor division / policy lead (for information)</p> <p>SG will use this information to support routine monitoring of Boards' performance and to inform its own escalation framework. The information will feed into a rounded assessment by the Scottish Government of where a Board sits within the SG's own escalation framework.</p>	<p>All below notified for information only at this stage:</p> <p>HIS Executive Team through weekly huddles and team meetings.</p> <p>HIS Chair</p> <p>HIS Board via HIS Chair</p> <p>Chair of provider</p>
LEVEL 2: Formally escalate to Scottish Government Sponsor Division and relevant policy lead	<p>Lack of engagement by the service and, or insufficient improvement has been made even after the improvement notice served.</p> <p><i>Note: Criteria for each level of escalation will be developed.</i></p>	<p>A formal external escalation to Scottish Government Sponsor Division and relevant Policy Lead would commence. This would be signed off by the HIS CE (with the support from the Executive Team) and Chair and include a full account of action taken to date.</p> <p>Scottish Government Officials will take action in line with SG escalation processes and keep HIS informed of actions it intends to take.</p> <p>The HIS website will be updated to reflect this further escalation.</p>	<p>Sponsor Division / Policy Lead</p> <p>DG Health</p> <p>SG will share this information internally in line with the processes set out in its own escalation framework and in support of Health and Social Care Management Board's role. In many cases, this will be an opportunity to identify, in conjunction with the Board, what improvement support is required.</p>	<p>HIS CEO for approval</p> <p>HIS Chair for approval</p> <p>HIS Board via HIS Chair for information</p> <p>Chair of provider notified</p>

LEVEL	Situation	HIS Action	SG contact and anticipated actions	HIS Governance
LEVEL 3: Escalate directly to Scottish Ministers	Still no, or limited, evidence that actions have been taken forward, or continued concerns regarding the risk to patient care. <i>Note: Criteria for each level of escalation will be developed.</i>	Our concern is now so significant that escalation is required directly to Scottish Ministers. HIS will provide the Sponsor Team a standard notice period of an intention to escalate along with an account of all action taken by HIS towards resolving the situation. When HIS initiates escalation to Scottish Ministers, this must be done through the Scottish Government sponsor team and policy lead who will ensure the process is coordinated with the Scottish Government's escalation framework. The HIS website will be updated to reflect this further escalation.	Sponsor division notified. Scottish Ministers to determine appropriate action.	Escalation discussed by ET and approved by the HIS Chair. HIS Board via HIS Chair for information

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