

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**THE OFFICE OF THE SCOTTISH CHARITY  
REGULATOR**



**AND**

**THE REGULATOR OF COMMUNITY  
INTEREST COMPANIES**



**COMMUNITY  
INTEREST  
COMPANIES**

## **1. CONTEXT**

- 1.1 The Office of the Scottish Charity Regulator (OSCR) is established under the Charities and Trustee Investment (Scotland) Act 2005 (2005 Act) and is the regulator of charities in Scotland. OSCR is responsible for the operation of an effective regulatory framework in Scotland including the granting of charitable status, maintenance of a public register of charities, the investigations of apparent misconduct and facilitation and monitoring of compliance with the 2005 Act.
- 1.2 The Companies (Audit, Investigations and Community Enterprise) Act 2004 (2004 Act) established the Community Interest Company Regulator (CIC Regulator) as an independent public office holder appointed by the Secretary of State for Trade and Industry. The objective of the Regulator is to encourage the development of CICs and to provide guidance and assistance on matters related to them.

## **2. OBJECTIVES**

- 2.1 The purpose of this memorandum is to establish liaison arrangements between OSCR and the CIC Regulator which:-
  - Ensure appropriate consultation and co-ordination of action when a CIC proposes to convert to a charitable company;
  - Set out the circumstances in which OSCR and CIC Regulator will share information and collaborate.

## **3. LEGAL AUTHORITY FOR DISCLOSURE OF INFORMATION**

- 3.1 Under section 24 of the 2005 Act OSCR may disclose any information to any public body or office-holder (in Scotland, in any other part of the United Kingdom or in a country or territory outside the United Kingdom) for any purpose connected with the exercise of OSCR's functions, or for the purpose of enabling or assisting the public body or office-holder to exercise any functions.
- 3.2 Section 59 of the 2004 Act permits the disclosure of information between the CIC Regulator and any public authority where the disclosure is made in connection with the functions of either the CIC Regulator or public authority.
- 3.3 Both OSCR and the CIC Regulator will encourage the disclosure and exchange of information between them where appropriate, in order to maximise the efficiency of their respective functions. They will ensure that information is disclosed in a manner that is efficient, proportionate and fully compliant with the Human Rights Act 1998 and the Data Protection Act 1998.

#### **4. LIAISON AT OPERATIONAL LEVEL**

4.1 In carrying out their respective functions, both the OSCR and the CIC Regulator will have regard to the likely impact on the other of their actions, and will render all reasonable assistance to overcome or minimise difficulties.

#### **4.2 Charitable Company conversion to a CIC**

4.2.1 Section 40(1) of the 2004 Act states that a Scottish charitable company may not become a CIC. Section 40(3) does state that regulations can be made to repeal such condition and these are expected in the next 12 months. OSCR and the CIC Regulator will liaise over the consultation of such regulations and when they come into force will amend this memorandum appropriately.

#### **4.3 CIC conversion to a Charitable Company**

4.3.1 In order for a CIC to convert to a charity, it must pass a special resolution to change its memorandum and articles of association.

4.3.2 Before conversion can be effected, the CIC should apply to OSCR for charitable status under section 4 of the 2005 Act. OSCR will be able to give a provisional decision confirming, where applicable, that the body can be entered on the Register once the special resolution has been passed. Application to pass the special resolution by the CIC to the CIC Regulator should then include confirmation that the CIC application to OSCR for charitable status would be successful. OSCR will only confirm charitable status by once the special resolution has been passed and by entering the body on the Register.

4.3.3 The CIC Regulator will provide OSCR with the details of all CICs which have applied to convert to charitable company status so that OSCR is able to pursue, if appropriate, any subsequent failure by a company to register as a charity.

4.3.4 Where it appears expedient in the interests of achieving effective and proportionate regulation, OSCR and the CIC Regulator may conduct casework jointly. In conducting such cases, both the CIC Regulator and OSCR will each pursue their respective functions but will share resources and pool information.

4.3.5 OSCR and the CIC Regulator will consult each other prior to issuing or publishing guidance, advice or best practice recommendations relating to the conversion of a CIC to a charitable company or vice versa.

4.3.6 Where it appears likely that regulatory intervention by either OSCR or the CIC Regulator will generate media interest affecting the other party,

or, given the profile and substance of the case, that a ministerial briefing out to be considered, the CIC Regulator and the Chief Executive of OSCR will be consulted.

## **5. LIAISON AT POLICY LEVEL**

5.1 Representatives of the CIC Regulator and OSCR will meet once per year. The purpose of these meetings will be to:

- Consider any new legislation affecting OSCR and the CIC Regulator, its practical application and the emergence of any precedent decisions by the either regulator.
- Discuss the development of relevant law and policy, including public benefit, the community interest test and the charity test;
- Explore possibilities to work collaboratively so as to promote best practice in community enterprise and good causes.

5.2 Additional meetings may be convened as necessary, between appropriate key staff, to address these and other issues arising. When appropriate, other representatives may be invited to participate in meetings and consultations.

## **6. DESIGNATED POINTS OF CONTACT**

6.1 In order to ensure that matters are handles at the appropriate level, and that developing policy considerations are taken fully into account, contact between OSCR and the CIC Regulator should be established between designated points of contact (See Annex 1). Where they consider it appropriate, designated points of contact may delegate ongoing liaison to members of their staff.

## **7. OTHER ASSISTANCE**

7.1 As part of their respective staff training programmes, both OSCR and the CIC Regulator will ensure that their staff are made aware of the differing organisational, operational and legal frameworks relating to CICs and charitable companies, In order to facilitate this, appropriate staff will be offered familiarisation visits to each other's offices.

7.2 OSCR and the CIC Regulator will also explore the possibility of mounting joint training and development initiatives and, where practicable, will offer places to each other's staff on relevant internal training courses, conferences and seminars.

## **8 GENERAL**

8.1 Whilst it is intended that the arrangements in this memorandum should apply generally, it is recognised that some circumstances will require special handling. Nothing in this memorandum prevents the making of arrangements to meet special exceptional needs.

8.2 Any disagreement arising from the interpretation of this Memorandum will be referred to the CIC Regulator and the Chief Executive of OSCR, who will endeavour to resolve it within the spirit implicit in the co-operation arrangements. The Memorandum will be amended if necessary to reflect the agreed outcome of the referral.

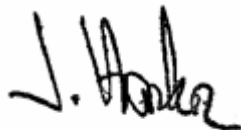
## **9 REVIEW OF MEMORANDUM**

9.1 The memorandum shall be reviewed and amended once Regulations have come into force which allows a Scottish charitable company to become a community interest company.

9.2 There will be a further review in three years time of this memorandum of understanding to ensure that it is achieving its objectives. Whilst it is intended that the arrangements in this memorandum should apply generally, it is recognised that some circumstances will require special handling. Nothing in this memorandum prevents the making of arrangements to meet special exceptional needs.



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**Office of the Scottish Charity Regulator**



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