

# MOU with OSCR

## Purpose of the Memorandum of Understanding

The purpose of this memorandum of understanding is to set out the operational arrangements for the Office of the Scottish Charity Regulator (OSCR) and the Charity Commission for England and Wales to work together within their respective policy and legislative frameworks so as to provide better regulation and guidance for charities that operate across England, Scotland and Wales.

A Memorandum of Understanding between OSCR and the Charity Commission was signed in May of 2005. Since then, OSCR has made the transition from an Executive Agency to a statutory body with additional powers, and the Charities Act 2006 has come into force.

This is a revised version of the original memorandum, modified to bring it up to date and to incorporate any lessons learned over the past two years.

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## 1. Introduction and Objectives

1.1 Charities have always been an important part of the British social fabric. In order that they may continue to flourish and enjoy public support and confidence, it is essential that there should be modern and effective charity regulation across England, Scotland and Wales. As regulatory partners, the Commission and OSCR are fully committed to the objectives of this Memorandum, which are:

- to re-affirm and build upon the co-operation that already exists between the Commission and OSCR;
- to ensure appropriate consultation and co-ordination in the interpretation and application of the relevant law and policy; and
- to set out the circumstances in which the Commission and OSCR will share information and collaborate operationally where a common regulatory approach is required.
- to minimise the burden of dual regulation on cross border charities
- to increase effectiveness in dealing with compliance issues in cross-border charities
- to maximise information about charities in the public interest

## 2. Current Statutory Framework

2.1 The Charity Commission (“the Commission”) is established under the Charities Act 1993 (“the 1993 Act”) as amended by the Charities Act 2006 (“the 2006 Act”) as the regulator of charities in England and Wales. Under section 7 of the 2006 Act, which amended Section 1 of the 1993 Act, the Commission has the following general functions:

- i. Determining whether institutions are or are not charities.
- ii. Encouraging and facilitating the better administration of charities.
- iii. Identifying and investigating apparent misconduct or mismanagement in the administration of charities and taking remedial or protective action in connection with misconduct or mismanagement therein.
- iv. Determining whether public collections certificates should be issued, and remain in force, in respect of public charitable collections. (*Provisions yet to come into force*)
- v. Obtaining, evaluating and disseminating information in connection with the performance of any of the commission’s functions or meeting any of its objectives.
- vi. Giving information or advice, or making proposals, to any Minister of the Crown on matters relating to any of the commission’s functions or meeting any of its objectives.

The Commission’s fifth general function includes (amongst other things) the maintenance of an accurate and up-to-date register of charities.

2.2 The Commission’s jurisdiction extends to all charities, whether registered or not, (other than limitations on the use of its powers in relation to exempt charities). The term “charities” includes charitable collections and funds managed on an informal basis by any person or organisation.

2.3 The Office of the Scottish Charity Regulator (“OSCR”) is established under the Charities and Trustee Investment (Scotland) Act 2005 (“the 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 investigation of apparent misconduct and facilitation and monitoring of compliance with the 2005 Act.

2.4 Under section 13 and 14 of the 2005 Act all charities active in Scotland must register with OSCR. There are no unregistered or exempt charities and the term “charities” does not include charitable collections or funds managed on an informal basis. In order to refer to themselves as a “charity” in Scotland, charities which are registered in England and Wales and have significant activities in Scotland will be required to register with OSCR. For ease of reference these organisations are referred to collectively as “cross border charities” but are subject to the same requirements as other charities on the Scottish register.

## 3. Legal Authority For Disclosure Of Information

3.1 The legal basis for disclosure of information between OSCR and the charity Commission is set out at annex 2.

## 4. Development Of Policy And Legal Framework

4.1 Both the Commission and OSCR regard each other as key stakeholders in the development of the law and legal policy in their respective jurisdictions. They will work together to ensure that relevant law is interpreted and applied in a way that achieves, so far as possible within their respective legal and policy frameworks:

- consistency in the application of regulatory principles
- consistency of decision making, especially in areas where there is a UK-wide application; and
- regulatory regimes that promote effective regulation without imposing an unnecessary administrative burden on charities operating in both jurisdictions.

4.2 In order to achieve this, senior representatives of OCSR and the Commission will meet at least twice a year. The purpose of these meetings will be to discuss the development of relevant law and policy and to address issues of principle and consistency from a strategic perspective. These meetings may be held alongside, or as part of, the proposed UK regulators forum

4.3 Additional meetings may be convened as necessary, between appropriate key staff, to address these and other issues arising. When appropriate, OSCR and the Commission may invite HM Revenue and Customs or other third parties to participate in meetings and consultations.

4.4 When they consider it necessary, both OSCR and the Commission will consult relevant umbrella bodies on matters of consistency, particularly in relation to charities operating across the jurisdictions.

## 5. Operational Liaison For Cross Border Charities

5.1 Annex 3 sets out detailed areas of operational liaison between OSCR and the Charity Commission, including:

- \* Charity registration and maintenance of the Registers
- \* The charity test and public benefit
- \* Monitoring
- \* The investigation of charity abuse and misconduct
- \* Fundraising
- \* Public accountability
- \* Liaison at individual casework level

5.2 To ensure co-operation and the pooling of information on operational issues, senior operational staff will meet twice a year.

## 6. General Liaison

The Commission and OSCR will liaise on a regular basis to inform each other of emerging trends, and will discuss strategies for the dissemination of advice and best practice amongst charities that operate in both jurisdictions. Where appropriate, this may include the issue of joint guidance and joint statements through the news media.

Staff liaison may also include discussion to co-ordinate responses to government and EU initiatives, for example responding to proposals for tax changes which may impact on charities across the UK.

## 7. Staff Development And Training

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

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

## 8. Designated Points Of Contact

8.1 In order to ensure that matters are handled at the appropriate level and that developing policy considerations are taken fully into account, contact between the Commission and OSCR should be established between designated points of contact (see Annex 1).

Designated points of contact may delegate ongoing liaison to members of their staff, where they consider it appropriate in order to develop operational contact, but should ensure that any

member of staff who is in discussion has the appropriate authority to agree principles, policy and process or can secure that agreement within a reasonable time frame

Operational referrals and requests for operational information should be channelled through the respective Single Points of Contact or SPOCs (see Annex 3)

## 9. General

9.1 Both OSCR and the Charity Commission are committed to achieving recognised service standards when carrying out this MOU, and will deal with requests from each other as promptly as possible in accordance with those service standards.

9.2 Whilst 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 Memorandum prevents the making of arrangements to meet specific exceptional needs.

9.3 Both organisations are committed to the principles of continuous improvement and therefore will monitor the working arrangements contained in this MOU. This MOU will be reviewed towards the end of 2007 in light of the progress of the joint monitoring working party.

9.4 Any disagreement arising from the interpretation of this Memorandum will be referred to the Chief Executives of OSCR and the Commission, 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.

## Annex 1

### Designated Points of Contact

| Area of Liaison                                      | Charity Commission   | OSCR  |
|--|--|---|
| Development and agreement of strategic policy        | Chief Executive  | Chief Executive   |
| Development of Policy and Legal Framework            | Director of Policy & Effectiveness and Director of Legal and Charity Services        | Chief Executive<br>Head of Charities                    |
| General approach to Operational Liaison              | Head of Charity Services & Head of Compliance and Support                            | Head of Charities<br>Head of Monitoring & Investigation |
| Initial contact at Individual Casework Level         | Head of Charity Services & Head of Compliance and Support                            | Head of Monitoring & Investigation<br>Head of Charities |
| Charity registration and maintenance of the Register | Head of Charity Services, Head of Registration, Head of Specialist Casework Division | Head of Charities                                       |
| Conduct of Joint Inquiries                           | Head of Intensive Casework, Deputy Head of Compliance & Support                      | Head of Monitoring & Investigation                      |
| Public accountability                                | Head of Accounting Policy  | Head of Monitoring and Investigations                   |
| Joint monitoring working party                       | Director of Legal and Charity Services & Head of Charity Information                 | Head of Monitoring & Investigation                      |
| Staff induction and training                         | Head of Organisational Development   | Head of Resource Management                             |
| Joint working party on new legal forms               | Head of Legal: Status and Advice   | Head of Charities                                       |
| Cross Regulator Status Group                         | Head of Status Policy  | Head of Charities                                       |

## Annex 2

### Legal authority for disclosure of information

a) Sections 10 to 10C of the 1993\* Act permit the disclosure of information between the Commission and any person, government department, local authority, police officer or body discharging functions of a public nature where the disclosure is made for any purpose connected with the discharge of the relevant person's or body's statutory functions. (The Commission is also

permitted to disclose information to a public authority which is merely relevant to the discharge of that authority's functions). Section 100(3) of the 1993 Act provides that these provisions extend to the whole of the United Kingdom.

\*As inserted by paragraph 104 of Schedule 8 to the Charities Act 2006

b) Section 24(1) of the 2005 Act permits the disclosure of information by OSCR to any public body or office holder for the purpose of enabling the public body or office holder to exercise any functions.

c) Both the Commission and OSCR will encourage the disclosure and exchange of information, 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 in compliance with the Human Rights Act 1998, the Data Protection Act 1998 and the Freedom of Information Act 2000.

## **Annex 3**

### **1. Charity Registration and Maintenance of the Registers**

If, during the process of registering a charity, it becomes evident that the charity is a cross border charity the Commission will notify OSCR and the charity accordingly and vice versa. However it is not the responsibility of the Commission to ensure the charity registers with OSCR. The Charity Commission and OSCR will discuss and agree the method by which this information will be identified and exchanged.

If a charity registered with both OSCR and the Charity Commission applies to change its name, amend its governing documents, amalgamate with another charity or wind itself up, OSCR or the Commission (as applicable) will consult each other and where possible agree a consistent recommendation or decision. The Charity Commission and OSCR will discuss and agree the method by which this information will be identified and exchanged.

### **2. Public benefit**

It is recognised that there are differences between the two legal frameworks in relation to charitable status. However, the objective of the Commission and OSCR is, wherever possible, to reach a common position on the charity test in terms of "purpose" and the public benefit test.

OSCR is under obligation to review entries in the Register under section 3(6) of the 2005 Act, as well as to remove from the Register a charity which no longer meets the charity test (Section 30). The Scottish charity test includes a requirement for the charity to demonstrate that it provides (or in the case of a new applicant provides or intends to provide) public benefit. This test applies to all charities on the Scottish Charity Register i.e. including cross border charities.

The Commission will be developing thinking and guidance on the concept of public benefit in the context of the new Charities Act 2006 throughout 2007, and will use the next review of the MoU to amend this paragraph, if necessary, following its public benefit consultation. However, the Charity Commission does not have a comparable duty to carry out rolling reviews.

### **3. Monitoring**

Both the Commission and OSCR undertake monitoring activities. They will share details of their approach to monitoring and the results of this work. Within the constraints of their respective legislative frameworks, OSCR and the Commission will endeavour to align their monitoring procedures to minimise the burden on cross border charities. A joint working party will be established to consider this issue in 2007.

### **4. Fundraising**

The Commission and OSCR will support the development of good practice in fundraising and in particular will promote the work of the Institute of Fundraising in developing their Codes of Conduct, and with the Fundraising Standards Board in developing their self-regulation scheme.

### **5. Public Accountability**

Both OSCR and the Commission are committed to encouraging openness and transparency in the financial reporting and management of charities so as to maintain public trust and support.

The accounts of charities who are required to produce accruals accounts (including all companies and larger charities) should comply with the methods and principles of the Statement of Recommended Practice ("SORP"). OSCR and the Commission will work together in developing and promoting the charity SORP and underpinning regulations, through their joint appointment as the SORP making body for UK charities by the Accounting Standards Board, so that larger charities throughout England, Scotland and Wales continue to follow the same financial reporting procedures.

Similarly, OSCR and the Commission will, where possible, work together on the standardisation of the format and content of receipts and payments accounts for smaller charities.

## **6. Investigation of Charity Abuse and Misconduct**

6.1 OSCR and the Commission will consult each other about any complaint or allegation of serious misconduct in relation to a cross-border charity. In appropriate cases, joint inquiry, intervention and reporting will be considered.

Where it appears likely that the conduct of a joint inquiry or other form of intervention will generate media interest in both jurisdictions, or, given the profile and substance of the case, that a Ministerial briefing ought to be considered, the Chief Executives of OSCR and the Commission will be consulted as to the appropriate approach.

6.2 Where abuse within a cross border charity results in the Commission or OSCR conducting a formal investigation into a charity, each will provide information to the other about conduct and outcome of that Inquiry, where appropriate.

6.3 Where abuse within cross-border charities raises issues of a criminal nature, the Commission and OSCR will liaise with the police authorities both jointly and separately in accordance with their own regulatory responsibilities.

6.4 Where the Commission is aware of misconduct, mismanagement or any other compliance or monitoring issues in the administration of a cross-border, it will provide, in accordance with the procedures set out in the Memorandum, any evidence of such misconduct or mismanagement considered relevant to the discharge of the functions of OSCR and vice versa.

## **7. Liaison at Individual Casework Level**

7.1 If, during the course of an inquiry or other form of compliance intervention in respect of a charity, it appears that there is or may be a matter of relevance to the other jurisdiction, the case officer will contact OSCR or the Commission (as appropriate) through the designated point of contact (see below).

7.2 Both the Commission and OSCR agree that all operational referrals and requests for information under the terms of this Memorandum will be dealt with promptly by appropriate members of operational staff to be known as Single Points Of Contact ("SPOC"). The SPOCs will ensure that routine referrals are actioned within fifteen working days of receipt, and urgent referrals within five days. SPOCs will consult each other to discuss and agree an appropriate time scale for actioning immediate referrals, regard being had to resource availability and proportionality of action. Referrals should be submitted in the format requested by the relevant SPOC.

7.3 If action on a referral cannot be completed within the relevant time scales, the receiving SPOC will provide the originating SPOC with progress reports every fifteen working days or at mutually agreed intervals.

7.4 Neither the Commission nor OSCR will disclose information received under the terms of this Memorandum to any other person or body without first consulting the disclosing party

7.5 The Commission and OSCR will exchange information where this assists in resolving compliance casework in either organisation. Anonymised information may be provided where there is clear justification for doing so.

7.6 In appropriate cases a meeting may be convened between relevant OSCR and Commission officers, the purpose of which will be to exchange information and to consider any joint action as appropriate. Meetings will be convened at mutually convenient times, in the interests of expediency, meetings should be held within the standard times frames outlined in this Memorandum. Any exchange of information will be carried out in a manner that complies with Annex 2 of this Memorandum.

7.7 Where it appears likely that the conduct of any joint activity or other form of intervention in relation to a charity will generate media interest or relevance to both the Commission and the OSCR or, given the profile and substance of the case, that a Ministerial briefing ought to be considered the Commission's Head of Intensive Casework and OSCR's Head of Monitoring and Investigation will be consulted.