



FRAMEWORK AGREEMENT

BETWEEN

THE SCOTTISH GOVERNMENT

AND

THE OFFICE OF THE CHARITY REGULATOR

1. Introduction

- 1.1 The Charities & Trustee Investment (Scotland) Act 2005 established a new office to be known as the Office of the Scottish Charity Regulator. A body corporate, referred to in the Act as “OSCR”, is the office holder of the new office, and the Scotland Act has been amended to include the new office as part of the Scottish Administration.
- 1.2 The non Ministerial Department which assumed its full powers in April 2006 succeeded the Executive Agency which was established in December 2003, and already known as OSCR.
- 1.3 The general functions of the Office of the Scottish Charity Regulator are:
 - (a) to determine whether bodies are charities,
 - (b) to keep a public register of charities,
 - (c) to encourage, facilitate and monitor compliance by charities with the provisions of this Act,
 - (d) to identify and investigate apparent misconduct in the administration of charities and to take remedial or protective action in relation to such misconduct, and
 - (e) to give information or advice, or to make proposals, to the Scottish Ministers on matters relating to OSCR’s functions
- 1.4 As an Executive Agency, OSCR had been part of the Scottish Executive, now Scottish Government, but as a non Ministerial Department OSCR is part of the Scottish Administration but no longer formally part of the Scottish Government. In addition, the former Scottish Executive has been significantly restructured and internal policy and operational responsibilities reallocated.
- 1.5 The intention of this agreement is therefore to establish an appropriate framework for the relationship between the non Ministerial Department and the Scottish Government as a whole, providing the overarching framework for policy and corporate engagement, within which OSCR and the Scottish Government will operate.

2. Establishing OSCR

- 2.1 Assets of the Executive Agency transferred to the non Ministerial Department with effect from 1 April 2006. This was achieved by an internal transfer within the Scottish Government SEAS system from balance sheet to balance sheet. OSCR as an NMD is separately audited by Audit Scotland.
- 2.2. All intellectual property generated by OSCR as an Executive Agency transferred to the non Ministerial Department with effect from 1 April 2006. This includes the comprehensive list of charities which forms the

basis of the statutory Register which OSCR has a statutory responsibility to maintain. OSCR has agreed with OPSI appropriate terms and conditions of use taking into account statutory requirements for consistency and transparency, and the Reuse of Public Sector Information Regulations 2005.

3. OSCR and Scottish Government

- 3.1 The body corporate is headed by a Non Executive Board, members of which are all public appointments. The appointment process is regulated by OCPAS, and the appointments are made by Scottish Ministers.
- 3.2 As a public body, OSCR is committed to best principles of corporate governance and practice, including playing an active part in the development of public sector governance and in the public services reform agenda. OSCR also actively contributes to the ongoing development of best regulatory practice, and to the raising of standards across the public and voluntary sectors.
- 3.3 Although OSCR accounts are not formally consolidated with Scottish Government accounts, the budget for OSCR is considered together with that of the Justice portfolio for the purposes of setting the overall Scottish budget. Such an arrangement secures a degree of internal financial scrutiny of OSCR's proposed budget, and OSCR is committed to the maintenance of financial systems which enable that scrutiny to continue, as set out in section 7 below.
- 3.4 Against this background, it is appropriate for OSCR to have a relationship similar to that of a sponsor body, to ensure that OSCR is fully aware of Scottish Government objectives, policies and priorities as well as to secure financial scrutiny and liaison. It is therefore agreed that the Director General of Justice and Communities should have the following responsibilities:
 - To have responsibility for the public appointment process to the OSCR Board, including the process of considering the performance of Board members.
 - To recommend to Ministers the allocation of resources to OSCR in the context of the overall Scottish budget.
 - To provide advice and information to the Board and the Chief Executive of OSCR to ensure that the NMD activities are consistent with wider Scottish Government policy objectives and developments while respecting the independent nature of the body corporate and its regulatory role.
 - To ensure that OSCR has access to relevant information and services including strategic developments such as simplifying the regulatory "landscape" and significant developments within HR.
 - To promote co-operation of senior colleagues in Department/Agencies at strategic and operational levels.

- To ensure that OSCR is able to make an effective contribution to the development of Government policy discussion and development
- To ensure that the appraisal of the Chief Executive is considered as part of the Senior Civil Service performance system

3.5 The Director General will meet with the Chair at least **twice** a year to discuss Government policy and strategic issues as they relate to OSCR, and to consider any governance issues including the appointment and appraisal of Board members and of the Chief Executive. Appropriate matters may be delegated to members of the DG staff and the DG will advise the Chair and/ or Chief Executive of appropriate points of contact

4. **Policy development**

4.1 OSCR has a statutory function to advise Ministers. This may take the form of direct advice on particular issues. OSCR will also produce each year a general report which may include any general recommendations which OSCR may have arising from the exercise of its functions during that year and any previous financial year.

4.2 The OSCR Board will annually extend invitations to the Minister and to the Director General of Justice and Communities to attend at least one Board meeting, to review and discuss strategic developments and expectations.

4.3 In addition, OSCR is committed to contributing to overall policy development at Officer level. The key area of policy engagement is with the Charity Law Team who have continuing responsibility for policy development and implementation of the 2005 legislation and OSCR will work with the Charity Law Team and Scottish Government Legal Division to agree and action a joint implementation plan for remaining Regulations.

4.4 OSCR staff will also work with the Third Sector Team within the Public Service Reform Directorate, and will agree a Memorandum of Understanding which identifies areas of joint interest for development

4.5 With the support of the Director General, the Chief Executive and where appropriate the Chair and Board of OSCR will establish contact throughout the Scottish Government and agree the appropriate level of engagement to ensure that OSCR can contribute to policy discussion development in significant areas. Areas in which charities contribute significantly include:

- Education; through further and higher education as well as schools, after school care and community provision.
- Health; including fee charging care providers, many of whom are registered charities.
- Social Work; where many voluntary organisations are focused.

- Justice; where the voluntary sector has a particular role in relation to the provision of advice and rehabilitation of offenders.
- Local Government; where the creation of local authority “spin out” charities and joint ventures such as regeneration companies are of mutual interest. In addition, most local authorities administer a significant number of individual charities.

5. **Freedom of Information**

- 5.1 From 1 October 2008, OSCR is formally included as a public body for the purposes of the Freedom of Information Scotland Act 2002 and will publish a formal publication scheme. Fol requests will be dealt with by OSCR as an NMD in accordance with the legislation and the publication scheme.
- 5.2 Where a Parliamentary question is given in respect of OSCR’s operational matters, OSCR should brief Ministers directly. If the matter is a broader policy issue, then OSCR responses to the PQ should be co-ordinated with others to relevant units.
- 5.3 As a Non Ministerial Department, OSCR operates at arms length from Ministers and by implication from the Scottish Government in operational terms. However, it is agreed there should be a principle of no surprises and that OSCR and the Scottish Government will co-operate to exchange information including policy positions and major operational developments. Without compromising its regulatory independence, OSCR will ensure the Charity Law Team and any other relevant Units are informed at least 24 hours in advance of any significant public briefings particularly those which might be construed as critical of Scottish Government policies or operations. The Scottish Government will in turn inform OSCR at least 24 hours in advance before any significant public briefing which might be construed as critical of OSCR policies or operations.

6. **Financial Systems**

- 6.1 Although OSCR is not part of the Scottish Government, the Permanent Secretary of the Scottish Government is the Principal Accountable Officer (PAO) for the Scottish Administration and has appointed the Chief Executive as Accountable Officer.
- 6.2 OSCR has established and will maintain appropriate financial procedures in accordance with the principles of the Scottish Public Finance Manual.
- 6.3 OSCR will provide the Finance team within the portfolio of Justice and Communities with relevant information for the purposes of for the purposes of planning future budgets and reporting to Ministers in the context of the overall finances of the Scottish Administration and Public Sector Pay Policy, and The Finance team will generally give a deadline of at least 10 working days for a response.

- 6.4 The indicative allocation for OSCR within the Scottish budget for 2008-2011 is primarily in respect of revenue, with a small capital element. The original Resource Impact Assessment which was the basis for the indicative allocation recognised that legal fees are one of the key variables within running costs, particularly early in the life of the organisation when the legislation is not yet fully implemented and it is not possible to accurately predict legal costs on the basis of past experience. It is therefore agreed that OSCR will budget to cover legal fees to an agreed level within the indicative allocation. Where legal fees exceed this level, OSCR will have the same access to DG or wider SG central funds as would be available to any other part of the DG family. OSCR will not therefore need to allow for an excessive contingency in respect of legal fees, and can maximise use of resources towards its statutory functions of facilitating and encouraging compliance, without compromising the ability to take legal action as and when required.
- 6.5 The original Resource Impact Assessment identified a need for capital investment in a new IT platform from 2010, which did not form part of the annual revenue budget. OSCR will discuss with Justice and Communities in the role of sponsor, to ensure that OSCR has access to funds and/or services where required to upgrade or replace the current IT platform to a standard necessary to meet OSCR's business needs.
- 6.6 At least for the next 2 years of operation, OSCR will continue to use SEAS.
- 6.7 Where OSCR relies on core services such as SEAS, relevant officers of the Scottish Government will provide a Certificate of Assurance to the Accountable Officer to meet the timetable required by Audit Scotland.
- 6.8 The OSCR Board and the Accountable Officer will consider the appointment of Internal Auditors. If the Board and Accountable Officer agree to continue the appointment of Scottish Government Internal Auditors, this would be subject to a separate Service Level Agreement.

7. Procurement

- 7.1 OSCR is responsible for budgetary management, corporate planning, public relations and for all support services in relation to the management, and maintenance of, day to day operations as well as management and financial responsibility for its information systems.
- 7.2 In the interests of Efficient Government, OSCR and the Scottish Government are committed to the principle of shared services. OSCR will continue to use Scottish Government direct services such as Easybuy and SEAS and also to utilise Scottish Government negotiated contracts where the OSCR Board and Accountable Officer consider the options provide Best Value for addressing OSCR business needs and

meeting of OSCR statutory responsibilities. At present OSCR uses the centrally negotiated contacts extensively, including access to:

- Legal services
- Financial services
- IT hardware
- Marketing services
- Print and design
- Temporary staff

7.3 OSCR will contribute to and participate in relevant surveys and projects, including the corporate services baseline study of Executive Agencies and Departments.

8. **HR Provision**

8.1 OSCR staff are Civil Servants within the Scottish Administration and regarded as part of "SE Main." As such, they are employed on the Scottish Government terms and conditions of service.

8.2 OSCR may review the terms and conditions of service of OSCR staff in the business interests of OSCR. Variations to suit OSCR's particular set of circumstances may be introduced in terms and conditions of service with the approval of Scottish Ministers and after full consultation with the Head of Corporate Services, OSCR staff and their representatives. Any pay variations will be in line with Scottish Government Public Sector Pay Policy

8.3 OSCR is responsible for determining the number and levels of staff up to and including C3 level appointed by OSCR, and its management structure. OSCR is responsible for ensuring there are adequate personnel management arrangements within OSCR for Band C staff and below.

8.4 OSCR may agree a separate Service Level Agreement with the Head of Human Resources detailing service options and service standards for services which OSCR sources from Scottish Government HR.

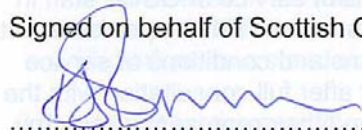
8.5 Where OSCR relies on services from Scottish Government HR the relevant officers will provide a Certificate of Assurance to the Accountable Officer to meet the timetable required by Audit Scotland.

8.6 OSCR adopts and promotes the Professional Services for Government agenda. OSCR can offer experience of front line delivery and resource management to Scottish Government staff and will work with the Interchange Unit and others to facilitate other SE staff access to OSCR. The Interchange Unit and others will in turn offer OSCR staff the opportunity to gain wider experience across the Scottish Government.

9. **Other**

- 9.1 Any difficulties or problems with this agreement if they cannot be resolved at working level to be directed to the Director General/Chief Executive unless the Director General considers it more appropriate to direct to the Chair.
- 9.2 Notwithstanding the date of signing, the Agreement will take effect as from January 2009.
- 9.3 The scope and the effectiveness of the Agreement will be reviewed from time to time and in any event no later than June 2010.

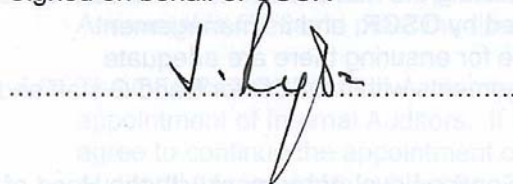
Signed on behalf of Scottish Government DG Justice & Communities



Date:

27 January 2009

Signed on behalf of OSCR



Date: ... 12. 01. 2009