



**OSCR**  
Scottish Charity Regulator

**MEMORANDUM OF UNDERSTANDING BETWEEN THE  
SCOTTISH CHARITY REGULATOR AND  
HM REVENUE & CUSTOMS (CHARITIES)**

## **Section 1 – Purpose of Memorandum**

- 1.1 This Memorandum provides a framework to support joint working between the Scottish Charity Regulator (OSCR) and HM Revenue & Customs (HMRC) so that charities may continue to enjoy public support and confidence.
- 1.2 References in this Memorandum to a ‘charity’ or ‘charities’ are references to a ‘recognised body’ as defined in s3 (6) (c) of S I242/2006 (The Charities and Trustee Investment (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2006) – see appendix A.
- 1.3 Both OSCR and HMRC are fully committed to the aims of this Memorandum, which are to:
  - promote a common understanding of OSCR and HMRC responsibilities, working procedures, legal powers and constraints;
  - promote co-operation between OSCR and HMRC staff at a strategic, policy and operational level;
  - facilitate and provide the necessary safeguards for the effective investigation and the exchange of information, with the objective of preventing, detecting and remedying misconduct or mismanagement in the administration of charities and charitable funds;
  - ensure appropriate consultation and co-operation on matters of mutual interest to ensure that charities may be encouraged to comply fully with their legal responsibilities under both charity and tax laws and adopt best practice and governance; and
  - facilitate and undertake joint working where appropriate, where there are issues of joint regulatory interest, and run joint training and development initiatives, training courses and seminars.

## **Section 2 - The Role and Functions of OSCR**

- 2.1 OSCR is established under the Charities and Trustee Investment (Scotland) Act 2005 (2005 Act) and is the regulator of charities in Scotland. Section 1(5) of the 2005 Act sets out OSCR’s general functions:
  - To determine whether bodies are charities
  - To keep a public register of charities
  - To encourage, facilitate and monitor compliance by charities with the provisions of the 2005 Act

- To identify and investigate apparent misconduct in the administration of charities and take remedial or protective action in relation to such misconduct
- To give information or advice, or to make proposals, to the Scottish Ministers on matters relating to OSCR's functions.

### **Section 3 – The Role and Functions of HMRC, and specifically HMRC Charities**

- 3.1 HMRC is established and governed by the Commissioners of Revenue and Customs Act 2005 (CRCA).
- 3.2 HMRC is responsible for the tax reliefs provided to encourage giving to charities and the tax treatment of charities themselves. HMRC working with HM Treasury is responsible for the development of charity tax policy and technical aspects of the applicable reliefs and exemptions.
- 3.3 In considering eligibility of bodies for the charity tax exemptions HMRC applies the definition of 'charity' in Part 1 of Schedule 6 to the Finance Act 2010 (FA2010) which applies additional criteria over and above those in the 2005 Act.
- 3.4 HMRC also considers entitlement to the exemptions for those charities not required to register with OSCR, those in England, Northern Ireland, the EU and relevant territories again by reference to FA2010.

### **Section 4 - Legal Authority for Exchange of Information**

- 4.1 Both OSCR and HMRC will ensure that any disclosure of information under the terms of this Memorandum is carried out in a manner that is prompt, efficient, proportionate and fully in compliance with the Human Rights Act 1998, the Data Protection Act 1998 and the Freedom of Information Act 2000.
- 4.2 Section 24 of the 2005 Act permits OSCR to disclose information to any public body or office holder for purposes connected with the exercise of OSCR's function or the functions of that body. OSCR cannot under section 24(4) disclose information subject to any obligation as to secrecy or other restriction on disclosure of the information however imposed.
- 4.3 OSCR is able to handle classified material. 'OFFICIAL' material can be handled and shared using our normal email systems (@oscr.org.uk). Material classed any higher, for example 'OFFICIAL –SENSITIVE' can only be shared using the GSI email account. It is expected that the majority of information provided by HMRC to OSCR will be sent to the OSCR GSI email account.

- 4.4 Section 18(1) of the CRCA 2005 (“CRCA”) lays down the general principle that HMRC may not disclose information that it holds in connection with its functions. However, subsection 3 of section 18 of the CRCA provides that subsection 1 is subject to any other enactment permitting disclosure. Section 3 of the Charities and Trustee Investment (Scotland) 2005 Act (Consequential Provision and Modification Order) 2006 states that for the purposes of enabling and assisting OSCR to exercise its functions, HMRC may disclose to OSCR any information concerning a charity which they have acquired in the performance of their functions. It is considered that any disclosure by an official of HMRC made in accordance with section 3 of the Charities and Trustees Investment (Scotland) 2005 Act (Consequential Provision and Modification Order) 2006 will not constitute a breach of the confidentiality requirement imposed by section 18(1) of the CRCA.
- 4.5 Neither OSCR nor HMRC will disclose information received under the terms of this Memorandum to any other person or body without first consulting the disclosing party.
- 4.6 Any onward disclosure of HMRC information without the consent of HMRC may constitute a criminal offence.
- 4.7 When exchanging information the provider must mark it with the appropriate Government Protective Marking Scheme security classification and the recipient will treat the information received accordingly and apply the necessary controls that arise as a result of the marking given.
- 4.8 In appropriate cases, where there is clear justification for so doing, information will be disclosed in a form that maintains the anonymity of one or more persons referred to in it or as the original source of the information, to whom confidentiality is otherwise owed.

## **Section 5 – Liaison at Strategic Level**

- 5.1 Representatives of OSCR and HMRC will hold senior level strategic meetings at least once a year. This aims of this meeting will be to:
- discuss common policies and strategic issues arising from operational matters and areas of joint regulatory interest;
  - discuss problem areas and developing trends in charity abuse and exploitation;
  - update or consult on the development of relevant law, policy and practice; and
  - discuss how joint working under the MOU is working and the overall effectiveness of the liaison and collaboration between the agencies.

## **Section 6 – Liaison at Policy Level**

- 6.1 Where appropriate (and in the case of HMRC only, where necessary subject to Ministerial agreement) when developing policies which may affect the definition of charity, or charity trustees' duties, or the role and function of the other department, OSCR and HMRC will inform and discuss the same with the other.
- 6.2 OSCR and HMRC also agree to discuss any new significant policy changes or new proposals and provide relevant information, advice, and guidance on them.

## **Section 7 – Liaison at Operational Level**

- 7.1 Relevant operational officers in OSCR and HMRC will meet as required, and ideally at least twice a year, to monitor the effectiveness of liaison on operational casework, to discuss operational issues generally and identify if any issues connected with these give rise to broader policy considerations. Both SPOCs and relevant operational officers from both authorities will be invited to attend.
- 7.2 Amendments to the procedure for the day to day operational exchange of information may be agreed and signed by the designated senior managers without the need for the overarching Memorandum to be revisited.

## **Section 8 – Other Designated Points of Contact**

- 8.1 Operational referrals and requests for information should be channelled through the operational Single Points of Contact (SPoCs). However, in order to ensure that other matters are handled at the appropriate level, and that policy considerations are taken fully into account, contact between OSCR and HMRC may also take place between designated points of contact. If exchanges are made through the designated points of contact about individual cases, the information exchanges must be copied or forwarded on to the Operational SPoCs to record the exchanges.
- 8.2 Other designated points of contact for specific areas of the business are detailed at Appendix C. Ongoing liaison between staff from either authority may be delegated to other members of staff as agreed between both OSCR and HMRC.

## **Section 9 – Other Assistance and Joint Working**

- 9.1 OSCR will, where appropriate, and subject to available resources provide guidance to HMRC in the interpretation of charity law and, where appropriate, and if resources are available HMRC will provide guidance on intelligence collation, product development, points of law and procedure and operational action.

- 9.2 As part of their respective staff training programmes, both OSCR and HMRC will ensure that their teams are made aware of the differing organisational, operational and legal frameworks. In order to facilitate this, familiarisation visits, work shadowing opportunities and secondments may take place at each other's offices.
- 9.3 OSCR and HMRC will also explore opportunities for running joint training and development initiatives and, where appropriate and practicable, should offer places to each other's staff on relevant internal training courses and seminars.
- 9.4 In order to support joint working and outreach, OSCR and HMRC will look out for opportunities to co-present and work collaboratively on external presentations and seminars for charity sector representatives.
- 9.5 OSCR and HMRC will be represented at:
- the UK Regulators Forum, which is usually held at least twice a year; and
  - the International Regulators Forum.
- 9.6 This Memorandum regulates the relationship between HMRC Charities and OSCR. However OSCR's work gives it cause from time to time to engage with other parts of HMRC. HMRC Charities will look out for issues that it may be aware of within HMRC that may be appropriate for OSCR to engage directly with another area of HMRC on (e.g. dealing with a different tax, or the criminal investigation area or specialist services or areas such as the area of HMRC that regulates Money Service Bureaus).

## **Section 10 – General**

- 10.1 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 specific exceptional needs.
- 10.2 Any disagreement arising from the interpretation of this Memorandum will be referred to OSCR's Chief Executive and HMRC's Head of Charities, who will endeavour to resolve it within the spirit implicit in the co-operation arrangements.
- 10.3 If necessary the Memorandum can be amended by agreement between OSCR's Chief Executive and the Head of HMRC Charities to reflect the agreed outcome of the referral.
- 10.4 There may be occasions when each party to this Memorandum encounter difficulties with compliance. This should be resolved locally by

the listed SPoCs in the first instance; however, if this is not possible then the escalation protocol at Appendix B should be followed.

**Signed**

Mary Aiston  
Director  
HMRC – SPT

David Robb  
Chief Executive  
OSCR

Date: January 2015

Date: January 2015

## Appendix A

### Extract from:

## Statutory Instrument 2006 No. 242 (S.2)

### **The Charities and Trustee Investment (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2006**

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#### Information sharing

#### 3. (.....)

##### (6) In this article–

(a) "the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs;

(b) "OSCR" means the holder of the office known as the Office of the Scottish Charity Regulator; and

(c) "recognised body" means a body–

(i) which meets the charity test in section 7(1) of the Act;

(ii) which is recognised by the Commissioners as qualifying for relief under section 505 of the Income and Corporation Taxes Act 1988<sup>[3]</sup>;

(iii) which has at any time applied, or been accepted as qualifying, for such relief and which is managed or controlled wholly or mainly in or from Scotland; or

(iv) such as is described in section 28(1)(b) of the Act.



## Appendix B – Escalation Protocol

### OSCR

Level 1  
Head of Registration, OSCR

Level 2  
Chief Executive, OSCR

### HMRC

Level 1  
Head of Technical, HMRC Charities

Level 2  
Head of HMRC Charities

## Appendix C- List of specific contacts

AREA OF LIAISON	OSCR	HMRC
<b>Development of Regulatory and Strategy Policy</b>	Chief Executive	Head of Charities
<b>Development of Operational Policy.</b>	Head of Registration (Registration Issues) Head of Enforcement (Investigation Issues)	Head of Charities
<b>Legal Issues.</b>	Senior Legal Adviser	Technical Team Leader
<b>Initial Contact at Individual Case Level.</b>	SPOC	SPOC
<b>Conduct of Joint Inquires.</b>	Head of Enforcement (Investigation Issues)	Compliance Team Leader
<b>Business and Operational Issues.</b>	Head of Registration (Registration Issues) Head of Enforcement (Investigation Issues)	Technical Team Leader

