



**Framework Agreement
between
The Scottish Government
and
The Scottish Charity Regulator**

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1. Introduction

1.1 The Scottish Charity Regulator is a body corporate established by section 1 of the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act) and which holds the office known as ‘the Office of the Scottish Charity Regulator’ (OSCR). By virtue of the Charities and Trustee Investment (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2006¹ that office is part of the Scottish Administration. It is not part of the Scottish Government and for administrative purposes it is classified as a Non-Ministerial Office. As such, OSCR reports to the Scottish Parliament.

1.2 This Framework Document has been drawn up jointly by OSCR and the Scottish Government. It sets out strategic relationship between OSCR and the Scottish Government, as well as the agreed terms in relation to the governance, financing and operation of the functions of OSCR. It forms a key part of the governance and accountability framework within which OSCR operates. The document does not create legal obligations or confer legal powers or responsibilities on either party. Legislative provisions shall take precedence over any part of this document.

1.3 This document begins by setting out a number of shared principles to which both Scottish Government and OSCR will adhere. It then summarises the functions of OSCR and sets out the roles and responsibilities of the Scottish Ministers; the Chair and Board Members of OSCR; OSCR’s Chief Executive, including the specific role of Accountable Officer; OSCR staff; and the Scottish Government.

2. Scottish Charity Regulator’s role and functions

2.1 OSCR is the independent registrar and regulator of charities in Scotland. It is responsible for its own strategic direction, operational activities and the decisions it takes. Section 1(5) of the 2005 Act sets out OSCR’s general functions. These 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 the 2005 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 [The Charities and Trustee Investment \(Scotland\) Act 2005 \(Consequential Provisions and Modifications\) Order 2006](#)

2.2 In performing its functions OSCR must have regard, so far as is relevant, to the principles under which regulatory activities should be proportionate, accountable, consistent, transparent and targeted only at cases in which action is needed; and any other principles which appear to OSCR to represent best regulatory practice.

2.3 In performing its functions OSCR must also have regard to the National Outcomes for Scotland which are determined by Scottish Ministers and set out in the National Performance Framework².

2.4 OSCR has a significant role to play in creating and ensuring an environment within which charities directly contribute to the economic and social development of Scotland and in which they continue to be supported by the public. In fulfilling this role OSCR will contribute to the successful delivery of Scotland's National Outcomes.

2.5 OSCR is responsible for setting its own **strategic and business priorities**.

3. Roles, responsibilities and relationships

3.1 Scottish Ministers

3.1.1 The Scottish Ministers are responsible for formulating and implementing third sector policy, including the legislative framework for charity regulation.

3.1.2 Under the 2005 Act:

- Ministers are responsible for appointing and reappointing members of OSCR, including the Chair and Deputy Chair.
- Ministers may remove a member from office under certain circumstances.
- OSCR must prepare and publish a general report on the exercise of its functions during that year; send a copy to Scottish Ministers and lay a copy before the Scottish Parliament.
- OSCR has a statutory function to advise Ministers on matters relating to OSCR's functions. Often, this advice will be offered as part of an on-going dialogue between OSCR and the Scottish Government. This may also take the form of direct advice on particular issues about its functions. OSCR may also, as part of its Annual Report, make general recommendations arising from the exercise of its functions. Scottish Ministers will endeavour to provide a formal response to these recommendations as soon as is reasonably practicable.

² **Section 1 of the Community Empowerment (Scotland) Act 2015**

3.1.3 OSCR is responsible for preparing its own corporate plan. Resourcing requirements to enable OSCR to perform its functions and meet corporate objectives are discussed with Scottish Government officials. Ministers are ultimately responsible for setting OSCR's budget subject to parliamentary approval.

3.2 OSCR Board

3.2.1 OSCR is headed by a Board of Non-Executive members who are appointed by Scottish Ministers through the public appointment process, following all appropriate legal and best practice requirements. The Scottish Ministers similarly appoint a member as Chair and a member as Deputy Chair. Collectively the members of the Board form the body corporate known as the Scottish Charity Regulator.

3.2.2 The Board is responsible for the leadership, strategic direction and governance of the organisation, ensuring that it achieves its strategic objectives and carries out its statutory functions effectively and efficiently. The Board will ensure that OSCR has appropriate arrangements in place for corporate, business and workforce planning and monitoring, risk and financial management, and reporting on its performance.

3.2.3 Board members have collective responsibility for the actions and decisions of OSCR. OSCR is designated as an office which is not a ministerial office in the Scottish Administration. OSCR is therefore accountable directly to the Scottish Parliament, rather than to Ministers (however, as noted at sections 3.1.2 and 3.4.3, Scottish Ministers can remove Board members under certain circumstances and the Chair's annual appraisal will be carried out by the Director for Local Government and Communities).

3.2.4 The Chair of the OSCR Board leads the Board in reaching decisions and pursuing its strategy. The Chair has a particular role in representing OSCR to stakeholders, including Scottish Ministers. The Chair will carry out annual appraisal interviews with other members of the Board.

3.2.5 OSCR will work with Scottish Government officials to support recruitment and reappointments to the Board. This will ensure that the Chair and Board members have the range of skills and qualities needed to lead and set the strategic direction so OSCR can achieve its objectives and carry out its functions.

3.3 OSCR's Chief Executive (Accountable Officer)

3.3.1 OSCR's Chief Executive is responsible for the day-to-day operation of the organisation's functions and for leading its staff. The Chief Executive is held to

account by the Board for the efficient and effective management and delivery of OSCR's business, including achieving its objectives.

3.3.2 The Chief Executive is designated as the Accountable Officer for OSCR by the Principal Accountable Officer for the Scottish Administration (in accordance with the terms of the Public Finance and Accountability (Scotland) Act 2000). The Chief Executive (as Accountable Officer) is personally answerable to the Scottish Parliament for:

- the effective and efficient operation of OSCR;
- safeguarding the public funds for which it has charge;
- ensuring propriety and regularity in the handling of those funds; and
- ensuring that OSCR complies with the requirements of the Scottish Public Finance Manual (SPFM), including ensuring that appropriate counter-fraud arrangements and policies are in place.

3.3.3 The Accountable Officer is responsible for ensuring that financial procedures comply with relevant financial guidance issued by the Finance Directorate and the Scottish Procurement and Commercial Directorate. OSCR will engage with the relevant Finance Business Partners (or equivalent).

3.3.4 Within the strategic framework set by the OSCR Board, the Chief Executive is responsible for preparing a corporate plan for the Board's approval. The plan covers the medium to long term business of OSCR and an annual business plan that takes appropriate account of the National Performance Framework.

3.3.5 Copies of finalised corporate and business plans are made available on [OSCR's website](#).

3.4 Director General (DG) for Education, Communities and Justice

3.4.1 The Scottish Government DG with responsibility for third sector policy and charity law (currently DG Education, Communities and Justice), as Portfolio Accountable Officer, is responsible for ensuring that effective and healthy working relationships are maintained between OSCR and Scottish Ministers, and that the financial and other management controls applied by the Scottish Government are appropriate and sufficient to safeguard public funds.

3.4.2 The DG will promote alignment between OSCR and the Scottish Government as appropriate, for example ensuring that:

- the Board and Chief Executive of OSCR are aware of strategic developments and decisions by the Scottish Government which may impact significantly on charities.

- the position of OSCR is taken into account in relevant Scottish Government policy decisions, and that the Scottish Government has due regard for advice provided by OSCR;
- appropriate Scottish Government corporate services are available to support and facilitate the work of OSCR; and
- an appropriate Framework Agreement is in place, and maintained.

3.4.3 The DG will ensure that an annual appraisal interview with OSCR's Chair to discuss and review the Chair's performance takes place. The appraisal will be carried out by the Director for Local Government and Communities.

3.4.4 The DG will ensure that the appraisal of OSCR's Chief Executive is considered as part of the Senior Civil Service pay and performance system. The appraisal will be carried out by OSCR's Chair, and counter-signed by the DG (or an appropriate member of the DG's senior team).

4. Scottish Parliament

4.1 Parliamentary Committee Attendance

4.1.1 The Local Government and Communities Committee is the lead Committee for charity law.

4.1.2 The Scottish Parliament has the power to require the Board Chair or any other Board member, Chief Executive or any member of OSCR staff to attend any Parliamentary Committee.

4.1.3 The Board Chair or any other Board member, the OSCR Chief Executive and members of OSCR staff will give written or oral evidence to Committees of the Scottish Parliament as appropriate.

4.2 Parliamentary Questions and Correspondence

4.2.1 Members of the Scottish Parliament (MSPs), through Parliamentary Questions, may ask Scottish Ministers about their own relations with OSCR and Ministers will answer such questions. However, Scottish Ministers are not accountable for OSCR's operations and where questions are asked about matters that are the responsibility of OSCR, the Minister's answer should state this position and refer the MSP to OSCR.

4.2.2 Should Scottish Ministers receive correspondence about OSCR's operations, including casework, from MSPs, stakeholders, or members of the public, a reply will

be issued advising that the correspondence should be redirected to OSCR for response.

5. Scottish Government Directorates

5.1 The Scottish Government and OSCR are committed to the principle of good communications, especially where the work of one has bearings upon the responsibilities of the other. Given the nature and breadth of the charity sector in Scotland, the work of charities reaches across Government Directorates and policy areas. Scotland's charities are key partners in setting the agenda and delivering across the National Outcomes set out in the National Performance Framework. As legislative and policy changes in many areas can impact on charities it is important that early engagement is made with OSCR prior to policy decisions.

5.2 The Scottish Government will seek advice from OSCR on policy and other developments affecting charities, and where appropriate, the wider third sector. OSCR has particular expertise, knowledge and information that can assist the Government's formulation and implementation of policy. OSCR will draw relevant issues to the Scottish Government's attention.

5.3 Scottish Government and OSCR will maintain effective arrangements for communicating and exchanging information about the charity sector.

5.4 OSCR will ensure where appropriate that the relevant Scottish Government Directorate is informed in advance of any significant OSCR correspondence, announcements or publications that may have implications for the Scottish Government. Scottish Government Directorates will, in turn, where appropriate inform OSCR in advance of any Scottish Government correspondence, announcements or publications which may have significant implications for OSCR or the charity sector.

5.5 The Scottish Government and OSCR will establish and maintain effective working relations through regular contact with each other, including regular meetings.

- The Chair and Chief Executive will meet with the Cabinet Secretary with responsibility for charity law at least once each year.
- The Chair and/or Chief Executive will meet with the Director for Local Government and Communities, or EHRTS senior colleagues on their behalf, as required.

The Government and OSCR will review these meeting arrangements and communications from time to time.

5.6 The DG will advise the Chair and Chief Executive of OSCR of appropriate points of contact. Officials in the Scottish Government will maintain routine contact with OSCR through staff nominated by OSCR for that purpose.

6. Financial regime

6.1 As a Non-Ministerial Office, OSCR's budget will appear separately in the annual Budget Act. When setting budget proposals in a Spending Review, the Scottish Government will liaise with OSCR to identify its resource requirements. The budget for OSCR will be considered together with that of the Communities and Local Government portfolio. It will ultimately be for Scottish Ministers to ensure OSCR has sufficient resources to meet its statutory obligations and to determine the budget proposals to be submitted to the Parliament as part of the Budget Act.

6.2 OSCR is responsible for preparing and managing its budget for each financial year, and for ensuring that expenditure is in line with this budget. Where appropriate, OSCR will provide monitoring information on its expenditure to the Scottish Government Finance Directorate as requested. OSCR's accounts will not be formally consolidated with Scottish Government accounts.

6.3 The Scottish Government and OSCR will consider financial contingency arrangements for dealing with any unforeseen costs associated with the use of the OSCR's statutory functions, the use of other provisions of the 2005 Act or requirements on OSCR as a public authority.

6.4 OSCR's accounts will be prepared in accordance with the accounts direction issued by Scottish Ministers under section 19(4) of the Public Finance and Accountability (Scotland) Act 2000 and in compliance with the principles and disclosure requirements of the Government Financial Reporting Manual (FRoM).

6.5 OSCR is responsible for maintaining a sound system of internal control that supports the achievement of OSCR's policies, aims and objectives and for regularly reviewing the effectiveness of that system. A governance statement will be provided by the Accountable Officer as part of the annual accounts.

6.6 Subject to budgetary limitations, the requirements of the SPFM or its governing legislation, OSCR has full authority to incur expenditure on individual items. However, SG approval must be obtained before incurring expenditure for any

purpose that is or might be considered novel, contentious or repercussive or which has or could have significant future cost implications.

6.7 OSCR will operate financial and other systems that provide the Chief Executive as Accountable Officer with sufficient information to assure them that OSCR's income and expenditure is being handled in a proper and prudent manner, and that it is achieving efficiency improvements and value for money from its resources in delivering its functions. OSCR will use the Scottish Government's accounting system (SEAS), to provide financial information.

6.8 OSCR will report annually on the steps taken during each financial year to improve efficiency, effectiveness and economy (including details of shared services activity), under the terms of the Public Services Reform (Scotland) Act 2010 and the associated guidance.

6.9 OSCR's duties as a public body

6.9.1 OSCR will ensure it complies with any other statutory and non-statutory duties imposed on it as a Scottish public body.

7. Accountable Officer arrangements

7.1 The Chief Executive acts as the Accountable Officer for OSCR. The responsibilities of OSCR's Accountable Officer are set out in the Memorandum to Accountable Officers for Parts of the Scottish Administration, published in the SPFM.

7.2 The Accountable Officer is responsible for promoting the efficient, economic and effective use of staff and other resources by OSCR and has a duty to secure Best Value, in accordance with Scottish Government guidance for Accountable Officers. This includes the concepts of good corporate governance, performance management and continuous improvement: it also includes where appropriate participation in shared services arrangements.

7.3 The Accountable Officer and the Board will be advised by an Audit Committee operating in accordance with the Scottish Government Audit Committee Handbook and with membership and operating procedures determined by the Audit Committee Terms of Reference as determined by the Board and with regard to best practice and proportionality. The remit of the Audit Committee will include supporting the Accountable Officer and the Board with regard to the efficient and effective use of resources and encompassing all overall assurance requirements. The external and internal auditors will be invited to attend the Audit committee and will engage with the Accountable Officer and the Board as required.

8. Procedures for accounting, audit, monitoring and reporting

8.1 OSCR is required to establish internal audit mechanisms, in accordance with the objectives and standards laid down in the Government Internal Audit Manual and in a way that demonstrates best value for money.

8.2 The DG reserves the right to have appropriate representatives (e.g. Internal Audit) undertake any work required to provide independent assurance about OSCR's management and control, if he or she considers it necessary, following appropriate dialogue with the Accountable Officer and/or the OSCR Board.

8.3 OSCR is subject to external audit by the Auditor General for Scotland (AGS) or by auditors appointed by the AGS.

9. Risk management

9.1 OSCR is required to implement and monitor appropriate risk management arrangements - in accordance with the relevant guidance in the SPFM- for the successful delivery of OSCR's functions and projects. OSCR's risks, including public and employer liability, are carried in line with the Scottish Government's policy on insurance.

9.2 The Accountable Officer will keep the relevant Finance Business Partner in the core Scottish Government informed of the level of any contingent liabilities, including where possible an assessment of their values. Where appropriate, s/he will report contingent liabilities to the Scottish Parliament, seeking prior approval where appropriate in line with the Session 5 agreement between the Scottish Government and the Finance and Constitution Committee.

10. Use of Scottish Government services and contracts

10.1 OSCR and the Scottish Government are committed to the use of shared services, and to ensuring that services meet an agreed standard and provide best value. The expectation is that OSCR will continue to use aspects of Scottish Government corporate services and negotiated contracts. Where OSCR is giving consideration to withdrawing from shared service contracts, it will enter into discussions with the Portfolio Accountable Officer prior to making any financial or contractual commitments.

10.2 Specifically the expectation is that OSCR will continue to receive the following direct services from the Scottish Government:

- Financial services (including the Scottish Government Accounting System (SEAS), Easebuy and VAT management)
- Internal audit;
- HR services (One HR, payroll and pension administration);
- Estates services
- Procurement Advice and support (SPCD).

10.3 The Scottish Government will not change the level of service provision provided to OSCR, withdraw services or increase costs (where applicable) without prior consultation with OSCR, and there will be an appropriate period of notice before any changes take effect.

10.4 Scottish Government HR and finance officers will provide annual Certificates of Assurance to OSCR Accountable Officer, within the required timescales for OSCR's audit and assurance processes.

11. Other management arrangements including pay policy and human resources

11.1 OSCR staff are civil servants and their terms and conditions of employment are shared with the Scottish Government, within the Scottish Government Main bargaining unit. As with all Scottish Government employees, OSCR staff will comply with the Civil Service Code (Scottish Government version), which sets out the core values of the Civil Service and the standards expected of civil servants.

11.2 The Chief Executive is a Senior Civil Servant and is subject to the Civil Service Code (Scottish Government version). In accordance with the 2005 Act the OSCR Board retains ultimate responsibility for the Chief Executive appointment. The arrangements for recruiting and appointing the Chief Executive will be managed by the Senior Staff Team within the Scottish Government's People Directorate. The post of Chief Executive may be filled by a managed move within the Civil Service, in the same way as any senior management position within the Scottish Government, or it may be filled by open competition in line with the Civil Service Commissioners' Recruitment Principles.

11.3 As delegated by the Board, the Chief Executive will be responsible for the recruitment of all other OSCR staff, in consultation with the Scottish Government's People Directorate. All recruitment will adhere to the Civil Service Management

Code, the Scottish Government Main Resourcing Policy and procedures and, for external recruitment, the Civil Service Commissioners' Recruitment Principle.

11.4 OSCR will promote and support effective employee relations and, where appropriate, consult with Civil Service Trades Unions in line with either a local Partnership Agreement or the overarching Partnership Agreement that exists between the Permanent Secretary and the Council of Scottish Government Unions.

11.5 The Chief Executive is responsible for the development of OSCR staff, drawing as necessary on Scottish Government staff development resources and activity. The Chief Executive is responsible for ensuring that appropriate promotion arrangements are in place, noting that OSCR staff are usually eligible for promotion opportunities within the Scottish Government Main and vice versa.

11.6 The responsibility for Health and Safety management lies with the Chief Executive, in line with current Health and Safety legislation, guidance and/or best practice. Assurances on Health and Safety management may be sought by the Occupational Health & Safety Branch of the Scottish Government.

11.7 As delegated by the Board, the Chief Executive is responsible for ensuring that OSCR complies with all statutory duties and relevant Scottish Government policies to which it is subject. They are also responsible for ensuring adherence to all Scottish Government equality and diversity policies and relevant equalities legislation, including relevant public sector duties.

12. Freedom of information

12.1 OSCR is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and the Public Records (Scotland) Act 2011, and will comply with that legislation. OSCR has adopted the Model Publication Scheme produced by the Scottish Information Commissioner.

13. Complaints and the Ombudsman

13.1 In respect of the service it provides to charities and the public, OSCR may be subject to investigation by the Scottish Public Services Ombudsman (SPSO) and will have in place a complaints handling procedure which complies with the statement of principles published by the SPSO.

14. Framework agreement – arrangements for review

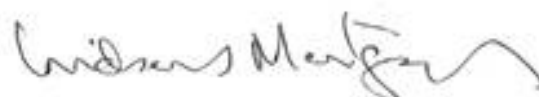
14.1 This Framework Agreement will be reviewed as necessary but no less than every three years.

14.2 Amendments may also be proposed by the Scottish Government or OSCR at any other time, in light of experience or changed circumstances, and any revisions will be agreed by OSCR and the Scottish Government. The framework will be published on the OSCR website.

Signed by:



Stephen Gallagher
Scottish Government Director for
Local Government & Communities



Lindsay Montgomery
OSCR Chair

5 February 2020