

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE SCOTTISH CHARITY REGULATOR



AND
THE REGULATOR OF COMMUNITY
INTEREST COMPANIES



COMMUNITY
INTEREST
COMPANIES

1. PURPOSE

1.1 The purpose of this MOU is to set out the liaison arrangements between OSCR and the CIC Regulator which:

- ensure appropriate consultation and co-ordination of action when dealing with conversions
- set out the circumstances in which OSCR and CIC Regulator will share information and collaborate

2. THE ROLE OF OSCR

2.1 OSCR is established under the Charities and Trustee Investment (Scotland) Act 2005 (the 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 to take remedial or protective action in relation to such misconduct
- to give information or advice or to make proposals, the Scottish Ministers on matters relating to OSCR's functions.

3. THE ROLE AND FUNCTION OF THE CIC REGULATOR

3.1 The Companies (Audit, Investigations and Community Enterprise) Act 2004 (2004 Act) established the Community Interest Company Regulator (CIC Regulator) as an independent statutory office-holder appointed by the Secretary of State for Department for Business, Energy & Industrial Strategy. The Regulator is responsible for:

- ensuring community interest companies comply with the requirements of the 2004 Act and CIC Regulations 2005
- determining eligibility to become and continue as a community interest company
- investigating complaints made against community interest companies
- encouraging the development of community interest companies

4. LEGAL AUTHORITY FOR DISCLOSURE OF INFORMATION

- 4.1 The CIC Regulator is a 'relevant regulator' for the purposes of the 2005 Act, and as such Chapter 3 of the 2005 Act enables OSCR and the CIC Regulator to share information and work together as appropriate.
- 4.2 Furthermore 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.
- 4.3 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.
- 4.4 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, the Data Protection Act 1998, the General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679) and the enabling Data Protection Act 2018, the Freedom of Information Act 2002 and the Freedom of Information (Scotland) Act 2002

5. LIAISON AT OPERATIONAL LEVEL

- 5.1 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.

5.2 Charitable Company conversion to a CIC

- 5.2.1 In order for a company which is a Scottish charity to convert to a CIC an application (form CIC37) must be completed and special resolutions passed or made to change the company's name and articles and to state it is to be a community interest company.
- 5.2.2 Before conversion can be effected the company must apply to OSCR for written consent to be a community interest company under section 40(4) of the Companies (Audit, Investigations and Community Enterprise) Act 2004. On obtaining the said consent the director(s) of the company must make a declaration to that effect. The declaration forms part of the conversion application (form CIC37) to the CIC Regulator

- 5.2.3 Scottish charities which have received consent to become CICs will remain on the Scottish Charity Register until they notify OSCR that they have been registered as a CIC (such notification will be a condition of consent). OSCR will provide the CIC Regulator with the details of all charitable companies which have applied to convert to community interest company status so that the CIC Regulator is able to pursue, if appropriate, any subsequent failure by a company to register as a CIC.
- 5.2.4 The provisions of section 19 of the 2005 Act apply where a Charitable Company converts to a CIC in order to protect the charitable assets held by that body. The assets held by a charity at the point when it is removed from the Scottish Charity Register and any income from these assets must be used for the charitable purposes stated on the Register for that body at the time of removal.
- 5.2.5 The CIC has a duty to prepare accounts under the Charities Accounts (Scotland) Regulations 2006 which must be independently examined or audited before being filed with OSCR. OSCR also retains the power of inquiry and certain powers of direction in respect of the charitable assets held by the CIC.

5.3 **CIC conversion to a Charitable Body**

5.3.1 Conversion to a charitable company

- In order for a CIC to convert to a charity, it must pass a special resolution to change its articles of association.
- 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 once the special resolution has been passed and by entering the body on the Register.
- 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.

5.3.2 Conversion to a SCIO

- There are two options for a CIC seeking to change to a SCIO. CIC's cannot convert to a SCIO like they can to a charitable company as outlined above.

- Option 1: The CIC should follow the process above for conversion to a charitable company. Once this is complete they can they apply to convert to a SCIO following the process set out in section 56-58 of the 2005 Act.
- Option 2: The CIC can apply to set up a SCIO to replace the CIC. Once OSCRC has granted status to the SCIO, the CIC would have to be dissolved and transfer the assets to the SCIO. OSCRC has Incorporation Guidance that can support CIC seeking to follow this option.

5.3.3 Enquires

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

5.4 Other assistance

5.4.1 OSCRC 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.

5.4.2 Where it appears likely that regulatory intervention by either OSCRC 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 OSCRC will be consulted.

6. DESIGNATED POINTS OF CONTACT

6.1 In order to ensure that matters are handled at the appropriate level, and that developing policy considerations are taken fully into account, contact between OSCRC 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.

6.2 Furthermore if required representatives of OSCRC and the CIC Regulator will make contact as appropriate either by phone or email and where major issues arise a formal meeting may be arranged.

7. OTHER ASSISTANCE

7.1 As part of their respective staff training programmes, both OSCRC 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.

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.

8.3 This MOU came into effect in May 2018. The MOU will be reviewed:

- In the event of any significant changes to legislative and regulatory framework of guidance for each organisation
- At the request of either organisation

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