

DRAFT

MEMORANDUM OF UNDERSTANDING

Between

THE KEEPER OF THE RECORDS OF SCOTLAND (The Keeper)

and

THE OFFICE OF THE SCOTTISH CHARITY REGULATOR (OSCR)

PURPOSE

1. The purpose of this memorandum is to set out the understanding between The Keeper and OSCR on the operation of the deposit, storage and access to historical records of OSCR, which are deposited with The National Records of Scotland (the NRS). Deposit in the NRS is pursuant to section 5 of the Public Records (Scotland) Act 1937 (the PR(S) Act 1937).

BACKGROUND

2. The Keeper is responsible to the Scottish Ministers for records transmitted to him under various statutory provisions including the PR(S) Act 1937, and section 3 of the PR Act 1958, as well as for records of the courts and those of independent origin selected for permanent preservation. The Keeper's functions are carried out by the NRS, which is a Non-Ministerial Department and forms part of the Scottish Administration. The NRS aims to preserve, protect and promote the nation's records, and to provide the best possible inclusive and accessible archive that educates, informs and engages the people of Scotland and the world.

3. OSCR is the independent regulator and registrar for Scottish charities. OSCR regulates over 23,500 Scottish charities including community groups, religious charities, schools, universities, grant giving charities and major care providers. OSCR's general functions under the Charities and Trustee Investment (Scotland) Act 2005 (the CTI(S) Act 2005) are:

- 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 CTIS(S) Act 2005;
- to identify and investigate apparent misconduct in the administration of charities and to take remedial or protective action in relation to such misconduct; and
- to give information or advice, or to make proposals, to Scottish Ministers on matters relating to OSCR's functions.

OSCR is a Non-Ministerial Department and forms part of the Scottish Administration. OSCR's vision is for a flourishing charity sector in which the public has confidence, underpinned by OSCR's effective delivery of its regulatory role.

STATUTORY FRAMEWORK

4. Section 5.(1) of the PR(S) Act 1937 states that *“It shall be lawful for any Government Department, board of trustees, or other body or person having the custody of any records belonging to His Majesty and relating exclusively or mainly to Scotland (other than the documents specified in section four of this Act) to transmit such records to the Keeper.”*

RECORDS TRANSFERRED TO THE KEEPER, OWNERSHIP AND TERMS OF DEPOSIT

5. The records defined by this memorandum are OSCR records which are worthy of permanent preservation. The records mainly, though not exclusively, exist in paper format.

6. The Keeper agrees to the deposit of OSCR records on behalf of the Scottish Ministers under the PR(S) Act 1937, s.5(1) as a collection of national importance.

7. Ownership of the records rests with OSCR.

RESPECTIVE OBLIGATIONS, PUBLIC ACCESS AND FURTHER USE

8. OSCR agrees to provide The Keeper with access to its record stores to facilitate identification, appraisal and selection of records considered worthy of permanent preservation in the NRS.

9. OSCR agrees to ensure that records are properly managed to enable appraisal and processing by NRS staff.

10. Where electronic records are deemed worthy of permanent preservation in NRS, OSCR agrees to work with NRS in order to fulfil the requirements of the NRS Deposit Agreement for Electronic Records.

11. The Keeper will place the catalogue of OSCR record information onto the NRS on-line electronic catalogue to permit public access to the collection.

12. The Keeper may refuse to accept for preservation records which have poor explanatory documentation, which are in poor physical condition, or which are not considered suitable for permanent preservation, e.g. published information, library material and records still considered to be current or semi-current. These will remain in the custody of OSCR.

13. The Keeper's staff will handle public enquiries of a non-technical nature about the records transferred to the NRS. These will form part of the normal NRS search room service. Where necessary, OSCR will supply The Keeper with sufficient advice, information, or training to permit NRS to deal effectively with such general enquiries.

14. Enquiries of a more detailed technical nature will be referred to OSCR. The temporary return ("retransmission") of specific records to OSCR will only be undertaken should it prove impossible for NRS staff to deal adequately with enquiries.

15. OSCR agrees to inform the Keeper at the time that the records are transmitted to NRS of any restrictions on public access to records enforced under the Data Protection Act 1998 or the Freedom of Information (Scotland) Act 2002.

16. The Keeper agrees to the periodic temporary retransmission of records, on request, to OSCR. Arrangements for collection and return of such records shall be the responsibility of OSCR. The Keeper agrees to make records available for collection by OSCR within 2 working days of receipt of a request.

17. Unless otherwise stated, OSCR records are subject to Crown Copyright and managed in accordance with the Office of Public Sector Information guidance.

18. OSCR authorises The Keeper to use the records for any purpose which he deems suitable in line with the NRS mission statement, and to improve public access to the records. This may include use for any publicity, marketing or educational initiatives, and include the creation of surrogate digital images to answer public enquiries, for use in NRS search rooms and the ScotlandsPeople Family History Centre, and for use on partner websites operated with others including ScotlandsPeople and ScotlandsPlaces. The Keeper may charge for certain types of access, e.g. supply of digital images or copies in paper form.

REVIEW OF THE MEMORANDUM OF UNDERSTANDING

19. Ad hoc amendments to this memorandum can be made in writing, and by agreement of all parties at any time, with the provision of 2 months advance notice.

20. Formal review of the memorandum should take place every 3 to 5 years.

Signature for OSCR	Signature on behalf of The Keeper of the Records of Scotland
Signed:	Signed:
Name:	Name:
Position:	Position:
Date:	Date: