

**Memorandum of Understanding between the Charity Commission for England and Wales (the Commission) and the Department for Culture, Media and Sport ("the DCMS") as principal regulator of sponsored national museums and galleries**

**Section 1 What is the purpose of this memorandum of understanding?**

1.1 This Memorandum of Understanding (MoU) sets out how the Commission and the DCMS propose to work together both in coordinating our respective regulation roles and formulating the policy which underpins how we work. It is intended to facilitate effective working relations by clarifying our respective responsibilities; and it is intended to aid better communication and understanding generally.

1.2 This MoU may be amended or revised at any time by agreement between the Commission and the DCMS.

**Section 2 Our roles**

The Commission

2.1 The Commission is established by the Charities Acts 1993 and 2006 ("the Charities Acts") as the non-ministerial Government department that regulates and registers charities in England and Wales. It fulfils this role by:

- securing compliance with charity law, and dealing with abuse and poor practice;
- enabling charities to work better within an effective legal, accounting and governance framework, keeping pace with developments in society, the economy and the law; and
- promoting sound governance and accountability.

Its aim is to provide the best possible regulation of charities in England and Wales, in order to increase their efficiency and effectiveness and public confidence and trust.

2.2 A list of the Commission's statutory powers is at Appendix A.

The DCMS

2.3 The DCMS sponsors the museums and galleries listed in Appendix B (sponsored museums and galleries), which are exempt charities under the provisions of the Charities Acts. Its stewardship of its sponsored museums is on the "arm's length" principle and is described in detail at Appendix C.

2.4 Regulations made under the Charities Act 2006 appoint the Secretary of State for Culture, Media & Sport as 'principal regulator' of the sponsored museums and galleries (including any institution administered by or on behalf of a sponsored museum or gallery and which is established for purposes within the scope of that museum or gallery's purposes). Principal regulators have a 'compliance objective', which is to do all they reasonably can to promote compliance by the trustees of the relevant charities with their legal obligations in exercising control and management of the administration of their charity. If the DCMS identifies a concern about a charity it may invite the Commission to use its powers of investigation and intervention under the Charities Acts. This does not affect the principal regulator's existing oversight relationship with the bodies concerned as sponsor department.

2.5 The DCMS already has an existing role to play in exercising a degree of oversight as sponsor department with regard to the administration and governance of the charities involved here, albeit at arms-length. The new principal regulator role lies alongside these existing duties and complements it.

2.6 The role of principal regulators is to promote compliance with charity law obligations. The role can be considered to have two aspects. First, a principal regulator can work with the relevant exempt charities and the Commission to identify particular issues on which charity law guidance is required and disseminate such guidance. Second, where there is a breach of charity law by an exempt charity, the principal regulator will, if considered appropriate, be able to inform the Commission and invite the Commission to investigate as stated above.

### **Section 3 Working together**

#### **3.1. Regulating charities and points of contact**

3.1.1 The DCMS and the Commission are both committed to the Better Regulation Executive's principles of good regulation. A list of the key principles of an effective charity regulation framework is at Appendix D. In particular a risk based approach is adopted in our operations and the type and degree of any direct regulatory engagement correlates with our assessment of the risk at issue.

3.1.2 In order to ensure that issues are handled at the appropriate level and that developing policy considerations are taken fully into account, contact between us shall be established through designated points of contact (see Appendix E). Where they consider it appropriate, designated points of contact may:

- delegate ongoing liaison to members of their staff; and
- agree detailed working arrangements or protocols that are relevant to their particular area of responsibility or in relation to a particular case, charity or group of charities.

#### **3.2 Collecting information and monitoring**

3.2.1 The DCMS and the Commission both collect information about the bodies for which we are each responsible.

3.2.2 All the charities for which the DCMS is appointed as principal regulator must submit an annual report and accounts to the DCMS and they must make that information publicly available.

3.2.3 As a principal regulator the DCMS will work to ensure as far as it can that the information it collects from the sponsored museums and galleries includes that required by the Charities Acts and any regulations made under those Acts. We will work together to ensure that the information provided complies with those requirements.

#### **3.3 Public information**

3.3.1 The Register of Charities includes such information about the charities included on it as the Commission thinks fit. The DCMS and the Commission will work together to ensure that similar information about sponsored museums and galleries is available through the DCMS website with suitable links from the Commission's website.

#### **3.4 Sharing information**

3.4.1 Sections 10 to 10C of the Charities Act 1993, as amended by the Charities Act 2006, permit the Commission to share information with a principal regulator in relation to a charity within the principal regulator's jurisdiction. A principal regulator can in turn share information with the Commission having regard to its role. However there is no positive duty on either the DCMS or the Commission to disclose information to each other.

3.4.2 The DCMS and the Commission will:

- establish effective and constructive channels of communication between our operational staff to enable them to offer what they believe to be relevant information when they consider it reasonable to do so, and to respond positively and promptly to requests for such information;
- encourage the disclosure and exchange of information, where appropriate, in order to maximise the efficiency of our respective functions;
- ensure that information is disclosed in a manner that is efficient, proportionate and fully in compliance with the Human Rights Act 1998, the Data Protection Act 1998 and the Freedom of Information Act 2000.

3.4.3 Where information is disclosed about an ongoing investigation, the approach to be taken by both the DCMS and the Commission will be to ensure that no assumptions or pre-judgements are made about the eventual outcome of that investigation. Further no action will be taken on the basis of any pre-judgments.

3.4.4 Neither the Commission nor the DCMS will disclose information received from the other to any third person or body without first consulting the party from whom the information originally came.

3.4.5 When exchanging information both the provider and receiver will mark it with the appropriate security classification and deal with it appropriately and in accordance with that classification.

### 3.5. Use of statutory powers

#### *Regulatory powers*

3.5.1 The DCMS and the Commission have overarching powers that we can use if there are serious concerns about the administration of a sponsored museum or gallery. This section relates to how we will each use our respective powers and how we will enable clear and timely communication.

3.5.2 Where the DCMS identifies concerns about the administration of a sponsored museum or gallery it will notify the Commission in writing of those concerns as soon as possible including any charity law issues that may arise. At the same time the DCMS will advise the sponsored museum or gallery of any action it proposes to take unless it is considered inappropriate and unhelpful in the circumstances of the particular case to inform the museum or gallery at this stage. The notification to the Commission is to enable the Commission to consider whether it should use any of its regulatory powers or take a view on whether those powers may be required at some later stage during the conduct of the case. The Commission is at liberty to form its own view of the case and, it will explain to the DCMS in writing why it has decided to take any particular course of action including why it has decided not to use its powers and if it proposes to take any action that does not require the use of its statutory powers. The Commission's response will have regard to relevant published statements by the Commission or by the DCMS about their respective approaches to regulation and/or oversight.

3.5.3 The Commission will provide the DCMS with any advice or observations it wishes to make on charity law issues, in particular it will advise the DCMS of whether it believes that there may be any aspects of any particular case that require the Commission's intervention.

3.5.4 The Commission must consult the DCMS before using any of its regulatory powers in respect of sponsored museums and galleries. Unless it has identified a

significant risk to a charity's property and/or reputation the Commission's method of consultation will usually be in writing. The DCMS will respond to such a consultation within a reasonable period that may be agreed between the points of contact.

3.5.5 If the Commission has identified a clear risk to charity property and/or reputation the consultation method and period will be of such type and length as the Commission shall decide, to enable it to take the action it considers to be necessary. Information that may cause such action to be taken may have been acquired through the Commission's own evidence gathering operations. When the action has been taken the DCMS and the Commission will jointly consider what further action is needed and which body would be best placed to take such action.

3.5.6 Where the DCMS and the Commission have a mutual interest in a charity or charitable assets we will aim to agree a written protocol at the earliest opportunity to cover case strategy, the role of each body in the case; respective areas of responsibility and liaison arrangements. The protocols will build on the terms set out in this MoU.

3.5.7 The outcome of any investigation will be made available to both organisations and placed on, or linked to, the respective websites in accordance with our respective published policies on disclosing inquiry and regulatory case reports.

#### *Support powers*

3.5.8 All charities can use the Commission's support powers, for example they can apply for orders that will enable them to take an action, such as:

- making payments they have no legal obligation to make and not otherwise allowed by their governing document (ex gratia payments);
- seeking the Commission's advice on charity law issues.

3.5.9 To ensure that no breach of the DCMS's oversight functions occurs, when using the Commission's support powers, for example in ways that affect the use of the assets of a sponsored museum or gallery; or where the Commission thinks it would otherwise assist the DCMS, the Commission will advise the DCMS of:

- any action it is proposing to take with respect to any sponsored body; and
- how it has been demonstrated to the Commission that the proposed action is in the best interests of the museum or gallery.

3.5.10 The Commission will aim to provide such information to the DCMS in good time so that the DCMS has a full and proper opportunity to consider it.

### 3.6 Policy development and liaison

3.6.1 The DCMS and the Commission are both key stakeholders in the overall regulatory regime that applies to sponsored museums and galleries. The DCMS and the Commission are also involved in the development of the law and policy in our respective areas of expertise. We will work together to ensure as far as we can that the relevant law and policy is developed, interpreted and applied in a way that is consistent with the key principles of charity regulation set out at Appendix D with the aim of minimising the administrative burden on those charities.

3.6.2 In order to ensure that this aim is achieved we will:

- have meetings at least twice a year to identify areas where we need to work jointly;
- provide annual updates, including reports to our Boards, on the operation of the principal regulator relationship; and

- review the provisions of this MoU every two to four years and where necessary amend or revise its terms.

3.6.3 Work that may be developed jointly may include working practices and public and operational guidance.

3.6.4 Where the Commission and the DCMS are developing policy that impacts on both bodies, the lead individual responsible for that work in each organisation will also be responsible for ensuring at an early stage that they establish appropriate liaison with their counterpart and identify their respective responsibilities. In addition the respective officials must set out how they will deliver the key objectives and identify the way in which both the DCMS and the Commission will approve such work (for example, at Board or executive level) and the timetable for doing so.

3.6.5 In order for this to be effective, we will provide information on our respective structures and individual staff responsibilities in relevant areas of our organisations, and update these as they change.

### 3.7 Staff development and training

3.7.1 As part of our respective staff development and training programmes, both the DCMS and the Commission will ensure that our staff are made aware of the differing organisational, operational and legal frameworks. In order to facilitate this, appropriate staff may be offered familiarisation visits to each other's offices.

3.7.2 The DCMS and the Commission will also explore the possibility of providing joint training and development initiatives and, where practical, will offer places to each other's staff on relevant internal training courses and seminars.

### 3.8 Responding to complaints from sponsored museums and galleries

3.8.1 This section is about the DCMS's and the Commission's performance in relation to matters covered by this MoU, but distinguishes between complaints that should be routed through the Commission's or the DCMS's complaints procedure and complaints that are about how we interact:

- Each of us will maintain separate responsibility and accountability for complaints about the services we each provide within our own complaints procedures.
- Where the correspondence is concerned with complaints, feedback or suggestions concerning how we interact with each other, the recipient will notify the other party of the information so received that is relevant to their responsibilities. We will ensure that there is a prompt exchange and analysis of information and, where appropriate and practical, take a joint approach to resolving any issues raised. We anticipate that this situation will most probably result from a review of individual complaints or a joint review of complaints.

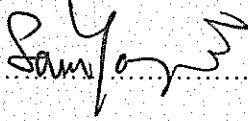
### 3.9 General

3.9.1 Whilst it is intended that the arrangements in this MoU should apply generally, the DCMS and the Commission recognise that some circumstances will require special handling and nothing prevents such an approach – namely, making exceptional arrangements to meet specific needs in relation to a particular case, charity or group of charities.

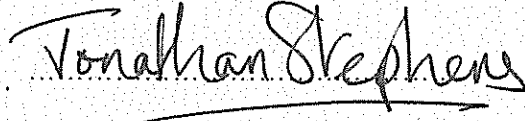
3.9.2 Any disagreement arising from the interpretation of this MoU will be referred to our respective Senior Accounting Officers for resolution within the spirit and intent implicit in this MoU. If necessary, this MoU will be amended to reflect the agreed outcome of the referral.

3.9.3 Nothing in this MoU is intended to create a legally binding obligation or to confer legal rights on either party.

Signed



Sam Younger  
Chief Executive  
Charity Commission for England



Jonathan Stephens  
Permanent Secretary  
On behalf of the Secretary of State for  
Culture, Olympics, Media and Sport

18 November  
October 2010

**The Commission's powers**

The Commission's powers include those listed below. It may only apply most of these powers to the sponsored museums and galleries that are exempt charities after consultation with the DCMS as Principal Regulator. It may only exercise its power to institute inquiries if requested to do so by the Principal Regulator. The Commission's support powers are usually only exercised at the request of the charity.

<b>Protective Powers</b>	<b>Statutory reference</b>
Require a charity to change its name in certain specified circumstances	S42-45 CA 2011
Institute inquiries into the administration of a charity	S46 CA 2011 <sup>1</sup>
Call for documents and search records	S52-53 CA 2011
Suspend or remove any trustee, charity trustee, officer, agent or employee of a charity	S76, <sup>2</sup> 79, <sup>2</sup> 80(1), CA2011
Make a scheme for the administration of a charity	S79(2)(b) CA 2011 <sup>2</sup>
Appoint new trustees	S76(3)(b) CA 2011 <sup>2</sup> and S80(2) CA 2011
Vest charity property in the Official Custodian for Charities	S76(3)(c) CA 2011 <sup>2</sup>
Order individuals not to part with charity property without its approval ("freezing orders")	S76(3)(d) CA 2011 <sup>2</sup>
Order individuals not to pay debts owed to the charity without its approval	S76(3)(e) CA 2011 <sup>2</sup>
Restrict transactions that can be entered into on behalf of a charity	S76(3)(f) CA 2011 <sup>2</sup>
Appoint an interim manager for a charity	S76(3)(g) CA 2011 <sup>2</sup>
Suspend or remove trustees etc from membership of a charity	S83 CA 2011 <sup>2</sup>
Give specific directions for protection of a charity	S84 CA 2011 <sup>2</sup>
Direct the application of charity property	S85 CA 2011 <sup>2</sup>
Give directions about dormant bank accounts	S107-109 CA 2011
Determine the membership of a charity	S111 CA 2011
Ensure the safekeeping of charity documents	S340 CA 2011
Enter premises and seize documents	S48-49 CA 2011 <sup>2</sup>
Exercise the same powers as the Attorney General with respect to taking legal proceedings, except for petitioning for the winding up of a charity	S114 CA 2011

<sup>1</sup> This power may only be exercised on request of the Principal Regulator

<sup>2</sup> Powers only exercisable pursuant to an inquiry under s.46

Order a disqualified person to repay sums received from a charity while acting as charity trustee or trustee for the charity	S184(2)-(4) CA 2011
Disqualify trustees who are receiving remuneration by virtue of sections 73A CA 1993	S186 CA 2011

<b>Support powers</b>	<b>Statutory reference</b>
Authorise cy-près application of gifts belonging to unknown or disclaiming donors	S63-66 CA 2011
Make a scheme in relation to a charity governed by charter or by or under statute, subject to Order in Council	S68 CA 2011
Make a scheme for the administration of a charity (including alteration of purposes cy-près)	S69 (1)(a) CA 2011 (see also S62 and 67 CA 2011)
Appoint or remove trustees; remove officers or employees	S69 (1)(b) CA 2011
Vest or transfer property, or require or permit any person to call for or make any transfer of property or any payment	S69 (1)(c) CA 2011
Alter provisions in Acts of Parliament establishing or regulating a charity, subject to Parliamentary approval	S73 CA 2011
Establish common investment funds and common deposit funds	S96-103 CA 2011
Authorise dealings with charity property or other actions in the interests of the charity	S105 CA 2011
Authorise ex-gratia payments	S106 CA 2011
Give advice and guidance to a charity trustee or trustee for a charity	S110 CA 2011 (see also S15(2)-(3) CA 2011)
Authorise regulated amendments to memoranda and articles of charitable companies	S198 CA 2011 (as amended)
Grant a waiver to a person disqualified from acting as a charity trustee	S181 CA 2011
Relieve trustees, auditors etc from liability for breach of trust or duty	S191 CA 2011

Appendix B

**Museums and Galleries sponsored by the DCMS that are exempt charities and the relevant non-charity primary legislation**

Sponsored Body/Exempt Charity	Primary legislation
British Library	British Library Act 1972
British Museum	British Museum Act 1963
Imperial War Museum	Imperial War Museum Acts 1920 and 1955
National Gallery	Museums and Galleries Act 1992
National Maritime Museum	National Maritime Museum Act 1934
National Portrait Gallery	Museums and Galleries Act 1992
National Museum of Science & Industry	National Heritage Act 1983
National Museums Liverpool	Merseyside Museums and Galleries Order 1986
Natural History Museum	British Museum Act 1963
Royal Armouries	National Heritage Act 1983
Tate Gallery	Museums and Galleries Act 1992
Victoria & Albert Museum	National Heritage Act 1983
Wallace Collection	Museums and Galleries Act 1992

## Appendix C

### The DCMS's sponsorship of Museums and Galleries that are exempt charities

The DCMS-sponsored museums and galleries that are exempt charities are Non Departmental Public Bodies (NDPBs) and their public nature and responsibilities are set out in legislation (see Appendix B) and in their Framework Documents, or Management Statements. Their Trustees are accountable through Ministers to Parliament for the public money that they spend, including money that comes from the taxpayer through grant-in-aid or from charitable donations and bequests. In doing so, they follow the guidance *Managing Public Money* issued by HM Treasury which covers a wide variety of issues relating to the proper handling and reporting of public money.

The respective responsibilities of the Trustees and the Senior Executive of the NDPB are set out in the legislation and in the institution's Framework Document or Management Statement, which defines the nature of its relationship with the DCMS at a strategic level and explains the role and responsibilities of all parties and their lines of accountability. More detailed financial arrangements are also set out in the Framework Document or in a Financial Memorandum, which describes the framework within which the body receives grant-in aid or incurs public expenditure. The Funding Agreement sets out what the Department expects the sponsored body to achieve in return for the public funding it receives, within the framework of the reform priorities set out in the Department's Business Plan.

The Senior Executive of the NDPB is appointed as Accounting Officer by the Accounting Officer (Permanent Secretary) of the DCMS. The particular rules that apply to this appointment are set out in the letter issued to each Accounting Officer on appointment, together with the HM Treasury publication, *Regularity, Propriety and Value for Money*. 'Dear Accounting Officer Letters' (DAOs) issued by the Treasury Officer of Accounts team in HM Treasury also provide specific advice on issues of accountability, regularity and propriety and annual accounting exercises.

Most appointments of Trustees to the Boards of the national museums and galleries that are exempt charities are the responsibility of the Prime Minister or the Secretary of State and as such, are subject to the detailed rules and procedures laid down by the Office of the Commissioner for Public Appointments (OCPA). All appointments made by the Prime Minister or the Secretary of State are subject to audit by an auditor appointed by the Commissioner for Public Appointments.

In preparing their annual report and accounts, NDPBs that are exempt charities comply with the Statement of Recommended Practice (SORP) *Accounting by Charities* issued by the Charity Commission and also follow the principles in the HM Treasury Financial Reporting Manual (FRM) where these go beyond the SORP.

**Key principles of an effective charity regulation framework**

An effective framework of charity regulation should:

- A be consistent with the principles in the government's better regulation strategy<sup>3</sup>, the Charity Commission's statutory objectives and other principles that the Commission applies to charity regulation.
- B cover all the assets of a charity and ensure that they are only used to further the purposes of the charity (which must be for the public benefit);
- C promote standards of governance that ensure the effective and efficient furtherance of the charity's purposes;
- D ensure that the charity complies with relevant legal and statutory requirements;
- E require the charity to provide to stakeholders adequate financial information about the use and application of its resources.

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<sup>3</sup> <http://www.bis.gov.uk/policies/bre>

**Designated points of contact**

<b>Area of Liaison</b>	<b>Charity Commission</b>	<b>DCMS</b>
Development of policy	Head of Policy	Head of Museums
Development of legal framework	Head of Legal Services	Director, Legal Services
General approach to operational liaison	Head of Operations London	Head of Museums
Initial contact at individual casework level	Head of Operations London	Head of Museums
Contact for supervision / investigation / statutory action.	Head of Investigations and Enforcement	Head of Museums