

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

1. Purpose

- 1.1. This Memorandum of Understanding (MoU) sets out how the Department for Culture, Media and Sport (“DCMS”) and the Charity Commission for England and Wales (“the Charity Commission”) work together in relation to sponsored national museums and galleries, both in coordinating our respective regulatory roles and formulating the policy which underpins how we work. This document should be read in conjunction with the overarching framework agreement between both parties (“the Framework Agreement”).
- 1.2. Nothing in this MoU is intended to create a legally binding obligation or to confer legal rights on either party.

2. Roles

Department for Culture, Media and Sport

- 2.1. DCMS sponsors the museums and galleries listed below. They are executive non-departmental public bodies which are exempt charities under the provisions of the Charities Act 2011 (Schedule 3 (paragraphs 12-25)):
 - Victoria & Albert Museum
 - Science Museum
 - Royal Armouries
 - National Museums and Galleries on Merseyside (National Museums Liverpool)
 - British Museum
 - Natural History Museum
 - National Gallery
 - Tate Gallery
 - National Portrait Gallery
 - Wallace Collection
 - Imperial War Museum
 - National Maritime Museum (Royal Museums Greenwich)

- British Library
- 2.2. Regulations made under the Charities Act 2006 appoint the Secretary of State for DCMS as principal regulator of the exempt 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).
- 2.3. The institutions listed at 2.1 do not include the following:
- The Horniman Museum and Gardens
 - Museum of the Home (Geffrye Museum)
 - Sir John Soane's Museum

While these are DCMS sponsored museums, they are also registered charities and therefore do not have the Secretary of State for DCMS as their principal regulator. As a consequence, they do not fall within the scope of this agreement.

- 2.4. Principal regulators have a 'compliance objective' which is to do all they reasonably can to promote compliance by trustees of the relevant charities with their legal obligations in exercising control and management of the administration of the relevant charities.
- 2.5. DCMS exercises oversight as sponsor department of the executive non-departmental public bodies with regard to the administration and governance of the charities, albeit at arms-length. The principal regulator role lies alongside these duties and complements them.
- 2.6. In line with Charity Commission's guidance, Exempt Charities (CC23), a principal regulator:
- must promote charity trustees' compliance with charity law
 - checks charity law compliance
 - can ask the Charity Commission to open a statutory inquiry into an exempt charity
 - works with the Charity Commission to make sure exempt charities are accountable to the public
 - receives any reports of matters of material significance made by the auditor of an exempt charity

3. Working together

- 3.1. DCMS and the Charity Commission take a risk-based approach in our operations. The type and degree of any direct regulatory engagement correlates with our assessment of the risk at issue.
- 3.2. In order to ensure that issues are handled at the appropriate level and that developing policy considerations are taken fully into account, contact between DCMS and the Charity Commission shall be established through designated points of contact. The primary managing points for this relationship in DCMS are the Museums and Cultural Property (MCP) Team in the Arts, Heritage and Tourism (AHT)

directorate, and the Charity Law & Regulation Policy Team in the Civil Society & Youth (CSY) directorate. In the Charity Commission, the point of contact is the Strategic Policy team. Other teams in each organisation may also work together as required. The DCMS CSY and Charity Commission Strategic Policy team will facilitate engagement with the relevant part of their organisation.

4. Information and monitoring

- 4.1. DCMS and the Charity Commission both collect information about the charities for which each is responsible.
- 4.2. All charities for which DCMS is appointed as principal regulator must submit an annual report and accounts to DCMS and must make them publicly available.
- 4.3. As principal regulator DCMS will work to ensure as far as possible 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.

Public information

- 4.4. The Register of Charities includes information about the charities included on it. DCMS will ensure that similar information about sponsored museums and galleries is available through DCMS' website with suitable links from the Charity Commission's website.

Sharing information

- 4.5. Sections 54 to 58 of the Charities Act 2011 permit the Charity 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 Charity Commission. However, there is no positive duty on either DCMS or the Charity Commission to disclose information to each other.
- 4.6. DCMS and the Charity Commission will:
 - establish effective and constructive channels of communication between officials to support the sharing of relevant information when reasonable to do so
 - maximise the efficiency of their respective functions through the disclosure and exchange of information where possible and appropriate, and respond positively and promptly to requests for such information
 - ensure that information is disclosed in a manner that is efficient, proportionate and fully in compliance with the Human Rights Act 1998, the UK GDPR and Data Protection Act 2018 (DPA 2018) and the Freedom of Information Act 2000
- 4.7. Where information is disclosed about an ongoing investigation, the approach taken by DCMS and the Charity Commission will be to ensure that no assumptions or pre-judgements are made about the eventual outcome of that investigation, and no action will be taken on the basis of any pre-judgements.
- 4.8. Neither the Charity Commission nor 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.

- 4.9. 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.

5. Use of statutory powers

Regulatory powers

- 5.1. DCMS and the Charity Commission have powers that can be used if there are serious concerns about the administration of a sponsored museum or gallery.
- 5.2. The Charity Commission must consult DCMS as principal regulator before exercising any specific power in relation to a sponsored museum or gallery (s.28 Charities Act 2011).
- 5.3. Where DCMS identifies concerns about the administration of a sponsored museum or gallery, it will notify the Charity Commission in writing of those concerns as soon as possible, including any charity law issues that may arise.
- 5.4. The notification to the Charity Commission is to enable the Charity 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. The Charity Commission is at liberty to form its own view of the case, and it will explain to 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 Charity Commission response will have regard as appropriate to the relevant published statements by the Charity Commission or DCMS about their respective approaches to regulation and/or oversight.
- 5.5. The Charity Commission will provide DCMS with any advice or observations it wishes to make on charity law issues, in particular it will advise DCMS of whether it believes that there may be any aspects of any particular case that require the Charity Commission's intervention.
- 5.6. The Charity Commission must consult DCMS before using any of its regulatory powers in respect of a sponsored museum or gallery. Unless it has identified a significant risk to a charity's property and/or reputation, the Charity Commission's method of consultation will usually be in writing. DCMS will respond to such a consultation within a reasonable period that may be agreed between points of contact.

Enabling powers

- 5.7. Some charities (subject to individual statute) may use the Charity Commission's enabling powers, such as, seeking the Charity Commission's advice on charity law issues.
- 5.8. To ensure that no breach of DCMS's oversight function occurs, when using the Charity Commission's enabling powers, for example in ways that affect the use of the assets of a sponsored museum or gallery, the Charity Commission will consult DCMS.

6. Signatures

<p>Signed:</p>  <p>Date: 2 June 2023</p> <p>Emma Squire and Nicola Hewer, Interim Directors General for Culture, Sport and Civil Society</p> <p>On behalf of the Department for Culture, Media and Sport</p>	<p>Signed:</p>  <p>Date: 7 June 2023</p> <p>Helen Stephenson, Chief Executive Officer</p> <p>On behalf of the Charity Commission</p>
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