

# **Funding and Management Memorandum of Understanding between The Scottish Sports Council trading as sportscotland (“sportscotland”) and The Scottish Sports Council Trust Company (“Trust Company”)**

## **Purpose**

- 1 The purpose of this Memorandum of Understanding (MoU) is to set out the governance, management and financial arrangements between the **sportscotland** Board and the Trust Company Board.

## **Scope**

- 2 It sets out the:
  - a. Trust Company Board roles and responsibilities
  - b. Executive Management responsibilities
  - c. Financial arrangements
  - d. Accountability arrangements
  - e. Audit process
  - f. Outcomes
  - g. Confidentiality
  - h. Data Protection
  - i. Freedom of Information (Scotland) Act 2002

## **Trust Board Roles and Responsibilities**

- 3 The Trust Company is a company limited by guarantee not having a share capital. The Trust Company is also recognised by the Office of the Scottish Charity Regulator as having charitable status which means that it must comply with charity law in Scotland in order to maintain its charitable status. For the purposes of the Companies Act 2006, as **sportscotland** is the sole member of the Trust Company, the latter is a wholly owned subsidiary of the former. Accordingly, while overseeing and scrutinising the management of the Trust Company remains the responsibility of the Trust Company Board of Directors, **sportscotland** holds all votes which may be cast at a General Meeting of the Trust Company and as such under company law has control over a number of aspects of the Trust Company including changes to its Articles of Association, removal and appointment of Directors of the Trust Company, etc. In this respect two **sportscotland** Board members will sit on the Trust Board, one of whom will serve as Chair, recognising that the remaining Directors will be independent and will always be in the majority to maintain its independence.

The **sportscotland** Board will exercise its management/overview of the Trust Company through:

- a) providing strategic guidance to the Trust Company as set out in the **sportscotland** corporate plan which the Trust Company Board will be expected to take into account when reviewing and endorsing the plans for the three National Centres
- b) considering and approving any proposals which affect the assets, including land, which are used by the Trust Company as these are owned by **sportscotland** and leased to the Trust Company
- c) periodically receive summary minutes and reports from the Trust Company and its Audit Committee, as deemed appropriate and relevant to **sportscotland's** overseeing role
- d) receive an annual report from the Trust Company outlining its activities and contribution to the corporate plan as an adjunct to its annual accounts
- e) seeking assurance as to the effectiveness of the Trust Company and its ability to meet the strategic aims set out in the **sportscotland** corporate plan, as and when appropriate, from its two nominated members who sit on the Trust Board.

In fulfilling its role the Trust Company Board of Directors, in co-operation with the National Centres' Principals and the **sportscotland** Senior Management Team, has the following key responsibilities:

- a. undertake periodic reviews of the activities of the Trust Company to ensure that it complies with charity law in Scotland to maintain its charitable status;
- b. discuss, develop and guide the long term strategic direction for the National Centres which must be aligned to the overall **sportscotland** Corporate Plan and the group's (the group refers to all aspects of **sportscotland's** activities) contribution to 'Reaching Higher';
- c. discuss, develop and guide the National Centre's Principals in developing other activities which comply with the charitable aims and capabilities and resources of the Trust Company and without prejudicing the use of sportscotland investment to achieve the delivery of the **sportscotland** Corporate Plan objectives and the group's contribution to 'Reaching Higher';
- d. discuss, help develop and approve annual business plans for the National Centres in conjunction with the National Centres' Principals so that they align with the overall Corporate Plan outcomes for **sportscotland** and present these for final approval to the **sportscotland** Board;
- e. undertake periodic reviews of the Trust Company annual business plans and performance to ensure that the National Centres are

delivering the agreed objectives and contributing to the delivery of the **sportscotland** Corporate Plan within the agreed annual budget;

- f. ensure that adequate control systems are in place to secure effective governance through establishing its own Audit Committee to receive and consider Internal Audit reports, other required governance reports and year end accounts prior to being submitted to the **sportscotland** Audit Committee and subsequently to the **sportscotland** Board set out in 13 & 14 below;
- g. ensure the planned and actual activities of the Centres are mutually supportive of the other activities and investments being made by **sportscotland** to maximise their impact on sport while achieving the optimum use of financial, human and organisational resources;
- h. guide the development of the annual capital expenditure budget for the National Centres taking account of the overall strategic plans for the Centres and the **sportscotland** Estates Management strategy, Corporate Plan objectives and budget requirements;
- i. ensure that the plans and activities of the National Centres maximise the Trust Company's charitable aims, in particular by maximising their income generating capacity and potential to provide new monies for investment. This income will be used to enhance the quality and capacity of the Centres, to help further increase their future income generation and to allow the Trust Company to build up its unrestricted reserves to help accommodate any future operating deficits; and
- j. ensure that the **sportscotland** Senior Management Team and **sportscotland** Board are made aware of any possible shortfalls in income and levels of unrestricted reserves, and/or inability to meet agreed budgets at the earliest opportunity.

## **Executive Management Responsibilities**

- 4 Line management of the National Centres' Principals will continue to be the responsibility of the Chief Executive of **sportscotland**. Their annual objectives will be set by the Chief Executive and guided by the Trust Company Chair and Board Members. Likewise the review of their performance will be the responsibility of the Chief Executive of **sportscotland** with input from the Trust Company Chair.
- 5 The Principals will be responsible for managing the day to day operations of the National Centres, preparing annual business plans with guidance from the Trust Company Board within the context of contributing to the delivery of **sportscotland** plans and contributing to the wider strategic planning within **sportscotland**.
- 6 The Secretariat to the Trust Company Board will be provided by the Finance and Governance Team at **sportscotland**.

- 7 All corporate service functions for the National Centres will continue to be provided or supported by **sportscotland's** Corporate Service teams to help ensure best use of resources. These services will include HR, finance, estates management, payroll and ICT, plus other support that may be required periodically.

## Financial Arrangements

- 8 The Trust Company is funded by income from its trading activities and by an annual investment from **sportscotland**. **sportscotland** has confirmed that it will continue to provide financial support to the Trust Company on the basis set out below:
  - a. A budget will be determined and agreed as part of the normal business planning processes against an approved business plan which will deliver specific outcomes aligned to the **sportscotland** Corporate Plan. The level of investment will be agreed in advance to deliver these outcomes.
  - b. The investment will be approved on the basis that the Trust Company will seek to generate other income without prejudicing the achievement of the objectives associated with the **sportscotland** investment and operate within the agreed budget. The aim will be to help maintain unrestricted reserves at a level approved by the Trust Board.
- 9 For the purposes of the Companies Act 2006, **sportscotland**, in its capacity as the sole member of the Trust Company, is obliged to contribute up to £1 to the Trust Company's assets in the event of the Trust Company being wound up. However, in the event of budget overspend by the National Centres **sportscotland** will continue to act as guarantor of any deficit created assuming that all reasonable management actions have been implemented to stay within the agreed budget, every effort has been taken to build up unrestricted reserves which would be used to cover any operating deficit while retaining the agreed level of reserves, and that any potential shortfall is notified and agreed with the **sportscotland** Senior Management Team and the **sportscotland** Board at the earliest opportunity.

## Accountability Arrangements

- 10 The Chair of the Trust Company, a **sportscotland** Board member and the other **sportscotland** member on the Trust Board, will continue to provide a direct line of accountability to the **sportscotland** Board given their dual capacity as Trust Company directors and **sportscotland** Board members.
- 11 As the Trust Company is a wholly owned subsidiary of **sportscotland**, the **sportscotland** Board has overall accountability for the activities of the Trust Company. This will be exercised through the submission of annual business plans, capital expenditure budgets and Board minutes to the **sportscotland** Board for review and approval where appropriate. In addition the Trust

Company's annual accounts, once approved by the Trust Board, will be submitted to the **sportscotland** Audit Committee and subsequently to the **sportscotland** Board.

- 12 As the Trust Company is a wholly owned subsidiary of **sportscotland** and as **sportscotland** is the sole member of the Trust Company and thereby retains 100% of the voting rights, the Trust Company's annual accounts will, after approval by the Trust Board, continue to be consolidated with those of **sportscotland**.

## Audit Process

### Internal

- 13 The **sportscotland** Trust Board will be accountable for all control systems within the Trust Company including taking responsibility for addressing areas of weakness that may be highlighted through internal and external audits. The audit/governance processes will include:
- a. Internal audit reports relevant to the Trust company will be presented to the Audit Committee of the Trust Company Board for consideration including any management responses. The Trust Company Audit Committee and Board will also be responsible for monitoring the implementation of follow up actions.
  - b. The Internal Audit Reports relevant to the Trust Company will be submitted to the **sportscotland** Audit Committee, only if requested or as part of the follow up annual review of actions taken in response to Internal Audit reports. This is to help provide assurance that the Trust Board has taken the necessary actions to respond to any recommendations.
  - c. The Trust Board nominated director on the **sportscotland** Audit Committee will report to the Committee once a year when the annual accounts of the Trust Company are being considered. They will raise any potential issues and give assurance about Internal Audit reviews and follow up actions relevant to the Trust Company.

### External Audit

- d. The externally, audited annual accounts for the Trust Company will be considered by the Trust Company Audit Committee and Board prior to being submitted to the **sportscotland** Audit Committee, before they are presented to the **sportscotland** Board. In practice this means that the Trust Company will consider its audited accounts prior to them being presented to the **sportscotland** Audit Committee.
- e. The Trust's nominated director will attend the **sportscotland** Audit Committee when the annual accounts are being reviewed to provide

assurance directly to the Committee as part of this process. The two **sportscotland** Directors on the Trust Board will provide assurance to the **sportscotland** Board when the Trust accounts are submitted as part of the annual consolidated accounts.

- 14 With these measures in place the **sportscotland** Audit Committee should have the confidence that the Trust Board has control of all of its internal systems and controls. Clearly there is still an opportunity for the **sportscotland** Audit Committee to express an opinion on any issues as it sees fit, albeit on the basis of being informed by the Trust Board which will have taken responsibility and accountability for all of its operations and controls.

## Outcomes

- 15 The outcomes expected by **sportscotland** in return for its investment in the National Centres will be agreed annually as part of the annual business planning process. They will be expected to reflect the overall strategic direction and priorities set out in the current **sportscotland** Corporate Plan and will reflect the core competencies and purpose of the National Centres which include:
  - a. supporting the development of leaders, coaches and instructors by providing training and skills development, defined by the relevant SGBs, and facilitated by the provision of appropriate facilities and equipment;
  - b. providing leadership and innovation in the key areas within which each Centre operates and offer exemplar facilities and services;
  - c. offering expertise and input as required, based on the particular specialisms of each Centre to assist the development of relevant sports;
  - d. developing other activities which help increase opportunities for participation and improving performance in sport;
  - e. maximising the utilisation of the National Centres' assets, including training facilities and accommodation and ensure they are maintained to a high standard; and
  - f. working within the annual revenue and capital investment levels agreed with **sportscotland**.

## Confidentiality

1. The Trust Company acknowledges that it will have access to Confidential Information and shall not (except in the proper course of its duties) improperly use or disclose to any third party any confidential or sensitive information relating to the business of **sportscotland**.

## Data Protection

- 16 **sportscotland** may process personal data in connection with its business. Any access to or processing of any such data by the Trust Company will at all times be subject to the Data Protection Act 1998 and **sportscotland's** Data Protection Policy.

## Freedom of Information

- 17 As a consequence of the structure of **sportscotland** and as stipulated by the requirements of the Freedom of Information (Scotland) Act 2002 ("Act") and the Environmental Information (Scotland) Regulations 2004 ("Regulations"), each division of **sportscotland** (including the Trust Company as a wholly owned subsidiary of **sportscotland**) is treated as a separate legal entity for the purpose of responding to Freedom of Information (FOISA) requests. **sportscotland** and the Trust Company will separately need to disclose any information it holds on a particular topic when requested to do so by a person or body. In certain circumstances some of the information may be subject to an exemption and will not have to be disclosed.
- 18 The Trust Company is fully aware that some or all of the information provided by the Trust Company to **sportscotland**, including any 'sensitive and/or confidential' information may be subject to disclosure under the Act or the Regulations. **sportscotland** agrees that it will consult with the Trust Company fully before the disclosure of any of the Trust Company's 'sensitive and/or confidential' information, but for the avoidance of doubt **sportscotland's** decision with regard to questions of disclosure or non-disclosure shall be final.
- 19 In order to process any FOISA received by the Trust Company, a Freedom of Information Officer will be provided by the Finance and Governance Team at **sportscotland**.