

Memorandum of Understanding

Putting sport first

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the national agency for sport

sportscotland

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 key principles relative to the governance, management and financial arrangements between **sportscotland** and the Trust Company.

Scope

2. This MOU must be read in the context of the wider legislative and governance rules applicable to **sportscotland** and the Trust Company. Legislative provisions shall take precedence over any part of the document. The MOU addresses the following key areas:
 - 2.1. Trust Company roles and responsibilities
 - 2.2. **sportscotland** roles and responsibilities
 - 2.3. Financial arrangements
 - 2.4. Insurance
 - 2.5. Reporting and Monitoring
 - 2.6. Conflict of Interest
 - 2.7. Approval Protocol
 - 2.8. Outcomes
 - 2.9. Confidentiality
 - 2.10. Data Protection
 - 2.11. Freedom of Information (Scotland) Act 2002

Trust Company 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.
4. Accordingly, the Directors of the Trust Company are both Directors of the limited company and Trustees of the charity. Firstly, as directors of a limited company, the Trust Company Directors are required to comply with their statutory duties under the Companies Act 2006 ("2006 Act"). The statutory duties are outlined in the Letter of Appointment given to each Director on his/her appointment. The Letter of Appointment acknowledges that the Trust Company Directors perform the role of non-executive directors, with their focus being to 'check, challenge and contribute' to the business of the Trust Company.
5. Secondly, the Trust Company and its Directors must comply with The Charities and Trustee Investment (Scotland) Act 2005 ("2005 Act") in order to maintain the Trust Company's charitable status. Under the 2005 Act, the Trust Company Directors are required to act independently and in the best interests of the charity at all times. This means that the Trust Company Directors are expected to put the interests of the charity before their own interests or those of any other person or organisation when carrying out the business of the Trust Company.
6. For the purposes of the 2006 Act, as **sportscotland** is the sole member of the Trust Company, the latter is a wholly owned subsidiary of the former which means **sportscotland** has control over a number of aspects of the Trust Company including implementing certain key corporate actions affecting the Trust Company, including, changes to the Trust Company's Articles of Association, removal and appointment of Directors, change of name and removing an auditor.
7. Additionally, **sportscotland** as the sole member and major funder in the Trust Company will participate in meetings of the Trust Company Directors by way of appointing directors and will monitor the activities of the Trust Company. In recognising this relationship between the two entities, two **sportscotland** Board members will be appointed as Trust Company Directors, one of whom will serve as Chairperson, recognising always that the remaining Trust Company Directors will be independent of **sportscotland** and will always be in the majority to maintain the Trust Company's independence as a registered charity. To ensure adequate balance of roles from a good practice perspective, a Vice Chair shall also be appointed, and this Vice Chair shall be appointed from the group of Trust Company Directors who are independent of **sportscotland**. In default of the appointment of a **sportscotland** Board member as Chair, **sportscotland** may nominate any one of the Trust Company Directors to be the Chair.
8. In fulfilling their role, the Trust Company Directors, in co-operation with the National Centres' Senior Management and the **sportscotland** Senior Management Team have the following key responsibilities:

- 8.1. 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;
- 8.2. discuss, develop and guide the strategic direction for the National Centres which must be aligned to the overall **sportscotland** Corporate Strategy and the group's (the group refers to all aspects of **sportscotland**'s activities) contribution to the Scottish Government's Physical Activity for Health Framework outcomes;
- 8.3. discuss, develop and guide the National Centres' Senior Management 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 Strategy objectives and the group's contribution to the Scottish Government's Physical Activity for Health Framework outcomes;
- 8.4. discuss, help develop and approve annual business plans for the National Centres in conjunction with the National Centres' Senior Management so that they align with the **sportscotland** Corporate Strategy and present these for final approval to the **sportscotland** Board;
- 8.5. 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 Strategy within the agreed annual budget;
- 8.6. ensure that adequate control systems are in place to secure effective governance including implementing sportscotland corporate policies, and receiving and considering internal audit reports and year end accounts prior to being submitted to the **sportscotland** Audit Committee and subsequently to the **sportscotland** Board;
- 8.7. 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;
- 8.8. 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 Strategy and budget requirements;
- 8.9. ensure that the plans and activities of the National Centres maximise the Trust Company's charitable aims by maximising its 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

- 8.10. ensure that the **sportscotland** Senior Management Team and **sportscotland** Board are made aware of any possible shortfalls in income, and/or inability to meet agreed budgets at the earliest opportunity.

sportscotland Roles and Responsibilities

9. The National Centres' Head of Centre/Principal report directly to the Trust Company Board. As the Head of Centre/Principal (and all staff based at the Centres) are employed by **sportscotland**, line management of the National Centres' Head of Centre/Principal is the responsibility of the **sportscotland** Director of Corporate Services. The Head of Centre's/Principal's annual objectives will be set by the Director of Corporate Services and guided by the Trust Company Chairperson and Trust Company Directors. Likewise, the review of their performance will be the responsibility of the Director of Corporate Services with input from the Trust Company Chairperson.
10. The Head of Centre/Principal will be responsible for managing the day to day operations of the National Centres, including preparing annual business plans with guidance from the Trust Company Board within the context of contributing to the delivery of **sportscotland** key strategic objectives and contributing to the wider strategic planning within **sportscotland**.
11. The Company Secretary of the Trust Company will be an employee of **sportscotland**.
12. All corporate service functions for the Trust Company including for the National Centres will also 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, legal, estates management, payroll, data protection and ICT, plus other support that may be required periodically. **sportscotland** re-charge to the Trust Company the cost of personnel employed at the National Centres and may charge for the cost of services provided by the Corporate Services teams.

Financial Arrangements

13. The Trust Company is funded by income from its trading activities and by an annual investment from **sportscotland**. **sportscotland** confirms that it will continue to provide financial support to the Trust Company on the basis set out below:
 - 13.1. 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 Strategy. The level of investment will be agreed in advance to deliver these outcomes.
 - 13.2. 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.

- 13.3. Any potential shortfall in achieving budget targets will be notified by the National Centres' and/or by the **sportscotland** Finance Team to the Trust Company, **sportscotland** Senior Management Team and the **sportscotland** Board at the earliest opportunity.
- 13.4. The pension costs of **sportscotland** staff working for the Trust Company will be reflected in the Trust Company's accounts, along with the pension asset or liability relating to those staff as calculated annually as part of the preparation of the annual statutory accounts. For the avoidance of doubt, **sportscotland** would provide funds to the Trust Company to satisfy any pension liability identified as part of the annual pension valuation.
14. In strict legal terms, in the event of an insolvency event affecting the Trust Company, the extent of **sportscotland**'s membership guarantee is £1.00. However, based on the unique relationship between the Trust Company and **sportscotland** and the monitoring and reporting requirements detailed above, **sportscotland** confirms it will continue to act as guarantor of any balance sheet deficit affecting the Trust Company, including any pension liability as noted in 13.4 above.

Outcomes

15. The outcomes expected by **sportscotland** in return from 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 Strategy and will reflect the core competencies and purpose of the National Centres which include:
- 15.1. 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;
- 15.2. providing leadership and innovation in the key areas within which each Centre operates and offer exemplar facilities and services;
- 15.3. offering expertise and input as required, based on the specialisms of each Centre to assist the development of relevant sports;
- 15.4. developing other activities which help increase opportunities for participation and improving performance in sport;
- 15.5. creating an environment for change and ensuring equality, diversity and inclusion is embedded in our work;
- 15.6. maximising the utilisation of the National Centre assets including training facilities and accommodation and ensure they are maintained to a high standard; and

- 15.7. working within the annual revenue and capital investment levels agreed with **sportscotland**.

Insurance

16. **sportscotland** is subject to the Scottish Government's policy of self-insurance which applies generally to both **sportscotland**, and to the Trust Company, in its capacity as a wholly owned subsidiary of **sportscotland**. Commercial insurance must be taken out by both organisations where there is a legal requirement to do so and may also be taken out in the circumstances described in the insurance section of the Scottish Public Finance Manual where required, with the prior approval of the Scottish Government.
17. In the event of un-insured losses being incurred the Scottish Government shall consider, on a case-by-case basis, whether it should make any additional resources available to **sportscotland**.
18. As a non-departmental governing body and in accordance with the provisions of Paragraph 1 of Schedule 2 of the Employers' Liability (Compulsory Insurance) Regulations 1998 (as amended by the Scotland Act 1998 (Consequential Modifications) No 2 Order 1999), **sportscotland** will be indemnified by the Scottish Ministers against any insurance claim arising in respect of any liability to any of its employees, or any public liability related claim (an "Insurance Claim"), but only to the extent that **sportscotland** cannot meet the Insurance Claim from its own funds. In the instance that the Insurance Claim cannot be met from **sportscotland**'s funds, that claim would be satisfied out of the Scottish Consolidation Fund.
19. The Scottish Ministers would however only satisfy an Insurance Claim against the National Centres if **sportscotland** could not satisfy the Insurance Claim from its own funds.
20. For the avoidance of doubt, **sportscotland** would provide funds to the Trust Company to satisfy an Insurance Claim, but only to the extent that the Trust Company could not satisfy the Insurance Claim by using its pre-existing allocation of resources. The presumption is that an Insurance Claim would be paid out from the Trust Company's existing funds.

Reporting and Monitoring

21. The Chairperson of the Trust Company, a **sportscotland** Board member and the other **sportscotland** appointed director on the Trust Company Board, will provide a direct line of reporting and monitoring to the **sportscotland** Board.
22. The **sportscotland** Board has overall responsibility for the annual investment from **sportscotland** to the Trust Company. This will be exercised through review and approval where appropriate, by the **sportscotland** Board of annual business plans, capital expenditure budgets, quarterly updates and Board minutes. In addition, the Trust Company's annual accounts, once approved by the Trust

Board will be submitted to the **sportscotland** Audit and Risk Committee and subsequently the **sportscotland** Board.

23. As the Trust Company is treated as a wholly owned subsidiary of **sportscotland** for Companies Act accounting purposes, the Trust Company's annual accounts will, after approval by the Trust Company Board, continue to be consolidated with those of **sportscotland** and a single audit process will continue to encompass the consolidated annual accounts of both entities.

Conflict of Interest

24. The Trust Company Board of Directors are charity Trustees who are expected to put the interests of the charity before their own interests or those of any other person or organisation when carrying out the business of the Trust Company. This also applies to the two **sportscotland** Board members who are appointed to the Trust Company Board.
25. The remaining Directors on the Trust Company Board will be independent of **sportscotland** and will always be in the majority to maintain its independence. However, the funding relationship between **sportscotland** and the Trust Company will mean that, on occasion, the two **sportscotland** nominees may find themselves with a conflict of interest, where they consider, or there is a legitimate perception from the other Trust Company Directors, that they are unable to put the interests of the Trust Company before those of **sportscotland**.
26. In such circumstances the following protocol will apply:
 - 26.1. The **sportscotland** nominee(s) will intimate the perceived conflict of interest to the Trust Company Board or it will be considered by the Board if it is raised by one or more of the other Trust Company Directors.
 - 26.2. The Trust Company Board will decide by a majority (excluding the vote of the Director with the perceived conflict of interest) whether the conflict of interest is Level One or Level Two, in which case, the following will apply:

Level One: The conflicted director can remain in the meeting but cannot vote on any such matter (but is counted when considering whether a quorum of directors is present at the meeting); and

Level Two: The conflicted director is to be absent from the part of the meeting at which there is discussion of any arrangement or transaction affecting **sportscotland** (but is counted when considering whether a quorum of directors is present at the meeting);
 - 26.3. For the avoidance of doubt:
 - 26.3.1. If it is agreed that there is a conflict of interest, it will always be treated as Level One or Level Two and the non-conflicted

directors may not authorise the meeting to proceed on the basis that they assume the conflict of interest did not exist.

26.3.2. The **sportscotland** nominees are entitled to give a full report to the **sportscotland** Board.

Approval Protocol

27. The Trust Company Board meets four times a year and papers for meetings are circulated to its Directors at least one week in advance of each meeting. If **sportscotland** wants to table an issue or a contract or document to be considered at a meeting and where applicable, approved, by the Trust Company Board, the necessary paperwork should be prepared with that timing in mind.
28. There is then scope for the Trust Company Board to deal with matters at their meeting or delegate authority to approve and or sign a contract or document to a single Trust Company Director or other authorised individual, to progress matters between their quarterly meetings.
29. Between meetings of the Trust Company Directors, the written resolution procedure set out in the Trust Company's Articles of Association may be utilised to seek approval of a contract or document.
30. The following protocol will apply:
 - 30.1. The Trust Company Board meets in February, May, August and November with the dates set at least quarterly in advance. Papers for meetings are circulated to its Directors one week in advance of each meeting.
 - 30.2. The possibility of issues requiring discussion or documents requiring execution should be intimated to the Company Secretary in time for inclusion on the Agenda, no later than two weeks in advance of the quarterly meeting.
 - 30.3. Subject to point 25.4, documents requiring execution require to be available in final draft form to the Trust Company Board before the quarterly meeting.
 - 30.4. If the document is still in draft form but close to final form, the up to date draft can be tabled at the meeting to allow authority to be delegated for execution of the final version between quarterly meetings.
 - 30.5. If an issue requires to be discussed at the Trust Company Board meeting, a briefing paper will be required no later than two weeks in advance of the quarterly meeting.
 - 30.6. Provided the briefing paper fully explains the issue, it is open to the Trust Company Board to make a final decision on the issue at its quarterly

meeting or delegate authority for matters to be progressed between quarterly meetings.

- 30.7. Any grant of delegated authority to execute a particular contract or document on behalf of the Trust Company Board will be clearly noted in the minutes of the Trust Company Board meeting identifying the contract or document concerned, the identity of the individual to whom delegated authority is granted and any limitations on such authority.

Confidentiality

31. The Trust Company Directors 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

32. The Trust Company shall comply with all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation (EU) 2016/679 (UK GDPR); the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; the guidance and codes of practice issued by the UK's Information Commissioner or other relevant regulatory authority applicable to a party. [In addition, any access to or processing of any such data by the Trust Company will at all times be subject to **sportscotland's** Data Protection Policy.
33. A Data Protection Officer will be provided to the Trust Company by the ICT Team at **sportscotland**.

Freedom of Information

34. Because of the structure of **sportscotland** and as stipulated by the requirements of the Freedom of Information (Scotland) Act 2002 ("FOI Act") and the Environmental Information (Scotland) Regulations 2004 ("Environmental Regulations"), each division of **sportscotland**, including the Trust Company 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 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.
35. The Trust Company is fully aware that some or all the information provided by the Trust Company to **sportscotland** including any 'sensitive and/or confidential' information may be subject to disclosure under the FOI Act or the Environmental Regulations.

36. In order to process any FOISA received by the Trust Company, a Freedom of Information Officer will be provided by the Information Governance Team at **sport**scotland.

Last Updated May2026