1. Introduction

The Scottish Charity Regulator (OSCR) is established under the Charities and Trustee Investment (Scotland) Act 2005 (‘the 2005 Act’) as a Non-Ministerial Department (NMD) forming part of the Scottish Administration. OSCR is the registrar and regulator of over 23,500 charities registered in Scotland that includes both Colleges and College foundations (Arms Length Foundations).

The Convenor of the Public Audit Committee has written to OSCR following an evidence session during which the Auditor General for Scotland gave evidence on their report entitled Scotland’s Colleges 2015. During this meeting, a discussion arose in relation to the Arm’s Length Foundations (ALFs) that have been set up by colleges to protect colleges’ financial reserves.

Evidence is requested from OSCR specifically on:
1. What role we play in scrutinising the audited accounts, and operation of ALFs to ensure that they act within the remit of their articles of association.
2. What actions we can take if it is found that an ALF had disbursed funds not in accordance with their articles of association or if an issue arose with any ALF audited accounts.
3. What information we will publish regarding the operation of ALF’s

In forming our view we have considered our overall vision, which is for charities you can trust and that provide public benefit, underpinned by the effective delivery of our regulatory role.

In summary:

- We regulate the ALFs which have charitable status on the same basis as we regulate the other charities on our register.
- The nature of the accounts ALFs are required to prepare and the level of independent examination or audit required will vary according to factors such as the income level, the level of the assets held and the provisions of the governing document of each ALF.
- OSCR monitors the accounts charities submit to us.
- Where we see evidence that charity trustees are not meeting their duties under charity law we have powers to inquire and take action against charities and charity trustees.
- We publish details about charities online, depending on their income, and plan to publish some charity accounts in the near future.

2. Evidence

2.1 Context

There are 15 ALF’s registered with OSCR (see Annex A). In order for them to be registered they were assessed to have passed the charity test. In terms of the 2005
Act a body meets the charity test if its purposes are charitable and it provides public benefit. Many of these organisations registered with OSCR in early 2014 and are established as either a company limited by guarantee or Scottish Charitable Incorporated Organisation (SCIO).

As charities they must comply with the 2005 Act. This sets out requirements for charities and also for their charity trustees (the people in management and control of charities – in the case of ALFs, their board members). OSCR is required to ‘encourage, facilitate and monitor compliance’ with the provisions of the Act.

2.2 Monitoring – question (1)

In respect to what role we play in scrutinising audited accounts and the operations of ALFs, it is best first to outline OSCR’s annual monitoring programme.

One of the duties of the 2005 Act (and Regulations made under the 2005 Act) places on all charities, including ALFs, is to submit annual accounts to OSCR within 9 months of the charity’s financial year end date. Charities are also required to submit an annual return, and where there is a gross annual income of £25,000 or more a supplementary monitoring return.

Under the Charities Accounts (Scotland) Regulations 2006 (as amended) (the 2006 Regulations), where ALFs have been established as companies they are required to prepare accounts on an accruals basis. Where they have been established as SCIOs, and have an income under £250,000, they may prepare accounts on a less detailed ‘receipts and payments’ basis.

We review all accounts to ensure that they meet the basic accounts requirements under the 2005 Act and 2006 Regulations, and any deficiencies are highlighted to the charity for either compliance in the next year or rectification in the case of inconsistent / ambiguous primary statements.

Where charities have to submit a supplementary monitoring return (issued to charities with an income greater than £25,000) we assess it against 32 active triggers used for exception reporting. Any exceptions triggered are considered in a risk based proportionate manner which may ultimately result in correspondence with the charity. The information sought and questions raised in the supplementary monitoring return reflect current OSCR monitoring priorities.

Our current monitoring policy is being reviewed as we move towards a more intelligence-led approach, as detailed within our Targeted Regulation consultation in summer 2014. We are aiming to improve the balance between reactive and proactive work with our new approach. The information we currently gather via the annual return and supplementary monitoring return will change significantly – we expect these changes to take effect in April 2016.

As the ALFs only registered in early 2014 their first sets of accounts are not due to be submitted to us until the end of 2015. We therefore have no information regarding levels of income, expenditure or assets. Since the income levels are partly dependent on the funds being transferred to them by their parent colleges, they are
currently difficult to predict and likely to decrease significantly after the first financial year. It is not possible therefore to accurately predict the level of financial reporting and monitoring individual ALF accounts would receive.

Under the 2006 Regulations, an audit of the charity’s accounts would be required where:

- The gross income was £500,000 or more
- The gross assets were £3.26 million or more
- The governing document of the charity contained a relevant provision
- Any other legislation contained a relevant provision

2.3 Action OSCR can take?

OSCR’s regulatory role in respect of ALFs and other charities is to ensure that charity trustees are undertaking their duties under charity law. In general this means that they must act in the interests of the charity. More specifically, they must ensure the charity acts consistently with its charitable purposes, act with the appropriate degree of care and diligence and deal appropriately with conflicts of interest.

Where it appears to us (on the basis of annual accounts or returns or other information) that there is reason to suspect that charity trustees of an ALF have failed to ensure that it disburses funds or otherwise acts consistently with its charitable purposes, we may use our powers of inquiry into the ALF and its trustees. Where we find that there is misconduct or mismanagement we can suspend trustees, issue directions to the charity or financial institutions holding charity funds or apply to the Court of Session for more far-reaching and longer term action to be taken.

Likewise, if we find that an ALF no longer meets the requirements of the charity test, we can direct it to take remedial action or remove its charitable status.

We note that there was some discussion at the committee’s meeting as to whether ALF’s charitable purposes and constitutions allowed them to use their funds for activities outwith the colleges. The majority of the 15 ALFs on our Register have charitable purposes that confine their activities to support of individual colleges or the college sector. A minority have wider educational purposes. The information submitted to us at registration in these cases indicates that where funds are not disbursed to the colleges themselves the intention is to fund existing educational charities.

2.4 Published information - question 3

Each ALF has a register entry that is viewable at www.oscr.org.uk. This contains basic details about the organisation including their constitutional form and objectives taken from their governing document. We intend to publish the accounts and annual reports of charities that have an income greater than £25,000 and all SCIOs in the future. Depending on their income and constitutional form some of the ALFs may fall into this category.
3. **Conclusion**

We hope the Committee finds this evidence answers the queries raised.
## Annex A – List of charitable ALFs

<table>
<thead>
<tr>
<th>Name</th>
<th>Number</th>
<th>Registered From</th>
<th>Constitutional form</th>
</tr>
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<tr>
<td>West College Scotland Foundation</td>
<td>SC044743</td>
<td>19/03/2014</td>
<td>Company</td>
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<td>The North Highland College Scotland Foundation</td>
<td>SC044619</td>
<td>29/01/2014</td>
<td>Company</td>
</tr>
<tr>
<td>The South Lanarkshire College Foundation</td>
<td>SC044678</td>
<td>20/02/2014</td>
<td>SCIO</td>
</tr>
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<td>Scottish Colleges Foundation</td>
<td>SC044621</td>
<td>29/01/2014</td>
<td>Company</td>
</tr>
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<td>City of Glasgow College Foundation</td>
<td>SC044620</td>
<td>29/01/2014</td>
<td>Company</td>
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<td>Ayrshire College Foundation</td>
<td>SC044627</td>
<td>03/02/2014</td>
<td>Company</td>
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<td>Fife College Foundation</td>
<td>SC044598</td>
<td>20/01/2014</td>
<td>Company</td>
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<td>Forth Valley College Foundation</td>
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<td>Edinburgh College Development Trust</td>
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<td>Company</td>
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<td>Dumfries and Galloway Further Education Foundation</td>
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<td>Glasgow Clyde Education Foundation</td>
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<td>The Dundee &amp; Angus Foundation</td>
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