

Briefing Note

Briefing Paper: Scottish Charitable Organisation (SCIO) as from April 1st 2011.

The SCIO is an optional new legal form for current registered Scottish charities and organisations applying to become a charity. Scottish Ministers introduced the new SCIO legal form in April 2011 to allow charities to be incorporated but to be administered and regulated by a single body, the Office of the Scottish Charity Regulator (OSCR). Charitable companies limited by guarantee, which are also incorporated, report both to OSCR and to the Registrar of Companies ('Companies House').

The SCIO is a corporate body which is a legal entity having, on the whole, the same status as a natural person. This means it has many of the same rights, protections, privileges, responsibilities and liabilities that an individual would have under the law. As a legal entity, the SCIO may enter into the same type of transactions as a natural person, such as entering into contracts, employing staff, incurring debts, owning property, suing and being sued.

As the transactions of the SCIO are undertaken by it directly, rather than by its charity trustees on its behalf, the charity trustees are in general protected from incurring personal liability. However, as with any other type of corporate body, this protection is not absolute; in some circumstances, charity trustees individually may be held responsible for the actions of the SCIO. Such circumstances are rare but may occur when the charity trustees have been reckless, negligent, have acted illegally or have acted outwith their powers in their management and control of the SCIO.

- The governing document of a SCIO is a constitution

The SCIO must also:

- have its principal office in Scotland
- have at least two members; these may include some or all of the charity trustees subject to the terms of the constitution
- use and apply its property in furtherance of its charitable purposes and in accordance with its constitution.

The SCIO also differs from other charities on the Register in that its existence is dependent upon its charitable status (that is, upon being entered in the Register).

The SCIO cannot choose to convert to another legal form, cannot amalgamate with a body which is not a SCIO and cannot seek removal from the Register other than by dissolving itself. This is an important point to consider before applying to OSCR to incorporate a SCIO.

Main differences between an unincorporated Charity and a SCIO.

SCIO

- Members have some of the same duties as Charity Trustees (act in the best interests of the charity and ensure the SCIO acts in a manner which is consistent with its charitable purposes)
- A register of Charity Trustees and one of members must be kept. The Register of Charity Trustees can be made available to any who request a copy

- References to charitable status must be made immediately the organisation is entered on to the register
- The organisation has a legal identity – a “legal person” – can undertake transactions in its own right and own property, sign contracts, sue and be sued
- Membership cannot be transferred
- Members are not liable to contribute to assets if it its wound up (Companies Limited By Guarantee usually limits contributions to £1)
- Must have at least 3 Charity Trustees and 2 members (who may be one and the same depending on the constitution)

How to apply:

1 For new groups who want to become a SCIO:

- a) Complete the Application for Incorporation as SCIO (available from OSCR’s website, see below).

This must contain:

- The name of the proposed SCIO as set out in its proposed constitution, and any other name by which it wishes to be known
 - The principal office of the proposed SCIO, which must be in Scotland, and the name of its principal contact person
 - The name of the two or more individuals who are making the application and who will therefore become the SCIO’s first members
 - A statement outlining the SCIO’s proposed activities
 - Details of any conditions the proposed SCIO will place on accessing the benefits it will provide.
- b) Each of the three or more proposed charity trustees must sign a ‘Charity Trustee Declaration Form’. The Declaration Forms can be found at the end of the Application for the Incorporation of a SCIO form.

(Please see OSCR’s guidance publication, ‘Guidance for Charity Trustees’ for further details on disqualification from acting as a charity trustee.)

OSCR will make a decision, (as with any application to become a charity), as to whether the application and organisation fulfils the charity test and has public benefit. If the decision is negative, there is a right to appeal within 21 days; if positive, the SCIO will be registered on the OSCR Register.

2 For existing charitable unincorporated organisations wanting to become a SCIO:

- Apply to OSCR to change the legal structure and incorporate as a SCIO (Stage 1)
- Apply to OSCR for the existing charitable unincorporated association or trust to be removed from the Scottish Charity Register at the same time as the new SCIO is incorporated (Stage 2)
- Following the removal of the existing charitable unincorporated association or trust from the Register, transfer all of its assets, liabilities and undertakings to the SCIO and thereafter wind up the existing unincorporated association or trust.

3 For existing dual Charities and Companies Limited by Guarantee (incorporated charities) and Industrial and Provident Societies:

- From **January 2012**, this process of conversion can take place.