

## Briefing Note

Scottish Charitable Incorporated  
Organisations (SCIOs)

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### What is a SCIO?

A Scottish Charitable Incorporated Organisation, or SCIO, is the newest type of charitable vehicle available in Scotland. They were created by the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act). SCIOs are specially designed for the charity sector. SCIOs resemble charitable companies in some respects, but unlike charitable companies they are only regulated by the Office of the Scottish Charity Regulator (OSCR) and not by Companies House.

### Why were SCIOs created?

Various reports on company law in the 1990s recommended that there should be a new vehicle created especially for the charity sector. These recommendations were taken up by the Scottish Charity Law Review Commission (McFadden Commission) and were later included in the 2005 Act. Similar vehicles have been created in England and Wales (Charitable Incorporated Organisations – CIOs) and a model will follow in Northern Ireland.

### What are the benefits of SCIO status?

The key benefits of SCIO status are:

- ❖ **Limited liability** – the members of a SCIO are not liable to contribute to the SCIO's debts in the event of a winding up. By contrast, members of a charitable company do have to make a contribution to the company's assets in the event of a winding up, although this is usually nominal. The trustees of a trust, and the trustees and members of an unincorporated association, may be personally liable for their charity's debts, such as pension fund deficits and redundancy payments, and evidence suggests that many are unaware of these risks.
- ❖ **Legal personality** – a SCIO is a legal person: this means that it can enter into contracts, employ staff, own property, sue and be sued, all in its own name. Unincorporated charities and trusts do not have legal personality and these activities must be carried out in the names of individual trustees. The charity trustees of a SCIO may bear less individual risk as a result of the SCIO's separate legal personality.

- ❖ **Lighter regulation** – SCIOs are regulated by OSCR and do not require to be registered with Companies House. In addition, the regulations which are imposed on SCIOs are light-touch compared to charitable companies and result in reduced reporting obligations and less administration. SCIOs are still subject to regulation by HM Revenue & Customs (HMRC) for the purposes of obtaining charity tax relief.

## What are the key features of a SCIO?

SCIOs are membership organisations. Like charitable companies, they have a body of members and a body of charity trustees. The members and charity trustees may be the same individuals, or there can be a partial overlap or no overlap. The model chosen will depend on each SCIO's own circumstances.

### Constitution

SCIOs are governed by a constitution which is flexible in style: it can take on characteristics of an unincorporated association's constitution or it can be similar to the Articles of Association of a charitable company. The constitution must contain provisions relating to: the objects of the SCIO and the powers available in furtherance of those objects; the appointment and removal of members and charity trustees; provisions for the management of meetings; and other governance provisions. SCIOs' constitutions must also set out rules for dealing with conflicts of interest and must say how assets should be used if the SCIO is wound up.

### Charity trustees

Every SCIO must have a minimum of three charity trustees. The charity trustees of a SCIO are responsible for the control and management of the administration of the SCIO and can exercise all of the SCIO's powers in order to manage its affairs.

A register of charity trustees must be maintained and is open to inspection by any member of the public. The home addresses of charity trustees are protected from disclosure to members of the public.

The charity trustees of a SCIO are subject to all of the usual legal duties imposed on charity trustees under the 2005 Act and the common law.

### Members

Every SCIO must have a minimum of two members. The members of a SCIO must meet in general meeting at least once a year. Other than that, the provisions relating to members can be very flexible.

A register of members must be maintained and is open to inspection by the other members and charity trustees of the SCIO, but not by the general public. The home addresses of members are protected from disclosure to other members of the SCIO, but are subject to disclosure to the charity trustees.

The members of a SCIO are under a legal duty to seek to ensure, in good faith, that the SCIO acts in a manner which is consistent with its purposes.

### References in documents

Every SCIO is subject to rules on the disclosure of its status as a SCIO. These rules are similar to the references in documents regulations which apply to all other Scottish charities. The rules extend to, amongst other things, headed notepaper, official documents, emails and certain pages on a SCIO's website, as well as legal contracts, invoices and other materials.

### How is a SCIO created?

SCIOs are created by applying to OSCR. The application must be made by the proposed initial members of the SCIO, together with a draft of the intended constitution. OSCR may request further information about the SCIO's activities and advice should be sought when making an application to ensure that OSCR's requirements are met. Once the OSCR process is complete, new SCIOs should confirm their eligibility for charity tax relief by making a separate application to HMRC.

Existing charities may wish to convert from their current charity vehicle to that of a SCIO. Unincorporated associations and trusts may use the procedure for a change in legal form which OSCR has created. Companies and registered societies are subject to special conversion procedures, which involve consultation by OSCR with Companies House (for companies) or the Financial Conduct Authority (for registered societies).

### Is SCIO status appropriate for every charity?

Not every charity needs to be a SCIO. It is important for each charity or intended charity to consider its own circumstances in order to decide whether or not SCIO status is appropriate for it. The decision will be unique to each charity's own situation.

The SCIO structure may be more appropriate for small to medium sized charities which would benefit from limited liability or legal personality because of contractual or employment commitments, where a charity faces particular types of risk or where the charity trustees require protection from personal liability.

SCIOs are not able to grant floating charges. If your charity requires to borrow money secured against moveable assets, then a SCIO model would not be appropriate: you would need to use a limited company structure.

SCIOs coming to an end may require to go through a full sequestration process through the Accountant in Bankruptcy which also brings additional work and costs. This is an extra factor to bear in mind. Even though SCIOs are subject to relatively light regulation, they will not be suitable for every charity. Lighter-touch options are available and may be more appropriate in individual cases. In other cases, the charitable company structure will still be appropriate. Advice should be taken on the charitable vehicle to be adopted in each case.

### Are SCIOs very different from English & Welsh CIOs?

Yes and no. The underlying principles governing SCIOs and CIOs are the same, but the rules in Scotland around constitutional requirements and governance are much lighter. There are also no fixed or pre-approved model constitutions in Scotland.

For further advice on SCIOs, please contact the Charities Legal Team on 0131 228 8111 or at [charities@turcanconnell.com](mailto:charities@turcanconnell.com).

This document is intended as a summary of Scottish Incorporated Charitable Organisations. No responsibility can be accepted for any action taken in reliance on this document, and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice.  
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