

Working with SCIOs

Since 2011, Scotland has had a **bespoke legal form** for charities called the **Scottish Charitable Incorporated Organisation**, or **SCIO** for short.

Anyone working with, or planning to work with, charities – including donors, funders, local authorities and banks – should know about SCIOs and understand their characteristics.

This leaflet is produced by the Scottish Charity Regulator (OSCR) to inform you about SCIOs and how they are regulated. We explain what's different about SCIOs, the rules they have to comply with, and what you need to know if you are considering working with a SCIO.

OSCR is a non-ministerial department, set up in 2005. We regulate more than 23,000 charities in Scotland, and are both the regulator and administrator for more than 1,600 SCIOs. Nearly 50% of new charities registered by OSCR are now SCIOs.

What's different about SCIOs?

The SCIO legal form is available only to Scottish charities. The Scottish Government introduced the SCIO form in April 2011 to allow charities the advantages of being incorporated, without the burden of reporting to two regulators.

SCIOs are incorporated but are administered and regulated by a single body, OSCR. This contrasts with charitable companies, which are also incorporated, and report both to OSCR and to Companies House, the official registrar of private and public companies in the UK.

A SCIO's charity trustees generally have limited liability because the SCIO is incorporated. This is not the case for unincorporated associations where individual charity trustees are potentially personally liable for the charity's debts or commitments. Since a SCIO has its own legal personality, there are advantages in terms of its continuity since the charity can continue to own or rent property and hold other contracts whether or not individuals leave or join the organisation.

SCIOs must have a head office in Scotland. They must also keep a register of their members, something other charities do not have to do under charity law.

Unlike other charities, a SCIO can only exist as long as it is a charity entered in the Scottish Charity Register. Unlike other charities, SCIOs cannot carry on operating if they cease to be charities.

Creditors have certain protection when conducting business with SCIOs and when SCIOs are winding up; these are detailed later in this leaflet.

Working with SCIOs – what you need to know

Is a SCIO a charity?

Yes, and the rules under which SCIOs gain charitable status are largely the same as for any other body. To be entered in the Scottish Charity Register, the people setting up a SCIO must apply to OSCR and show the SCIO will meet the charity test by having only charitable purposes and providing benefit to the public. OSCR will monitor a SCIO's compliance with charity law in Scotland, just as it does for other charities.

Anyone can look up the Register on OSCR's website www.oscr.org.uk and check the details of individual charities. A SCIO's Register entry will detail its purpose, contacts and show key figures from its accounts. Charities must provide a copy of their accounts and governing document to anyone who asks for them, subject to a reasonable cost.

Are SCIOs incorporated and what does that mean?

Like companies, SCIOs are incorporated. This means they have a legal personality and may enter into contracts, own property, employ staff and conduct business in their own right. SCIOs may incur debts, sue and be sued. Being a SCIO provides charity trustees with a certain degree of protection from personal liability but is not a blanket protection from liability. There are circumstances, for instance when charity trustees have acted negligently or beyond their powers, when individual charity trustees might be liable for the SCIO's actions.

Are SCIOs regulated?

Yes. OSCR decides whether a body may be a SCIO and SCIOs, like all other charities, must send an annual return and their accounts to OSCR. SCIOs must seek OSCR's consent before making certain changes to their constitution or structure. At the end of its life, a SCIO must apply to OSCR to be dissolved, except when a court orders that a SCIO be wound up.

Unlike charitable companies, SCIOs will not have to report to Companies House. SCIOs will have to comply with the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act), the basis of charity law in Scotland, but will not have to meet the requirements of company law. OSCR will monitor compliance with charity law in Scotland, including the 2005 Act.

What's the difference between the legal responsibilities of SCIOs and other charities?

SCIOs must fulfil virtually all the same general duties as other charities. The trustees of all charities, including SCIOs, must ensure their charity observes the law. In addition, there are certain specific rules that apply only to SCIOs, which include:

- ▶ As soon as a SCIO is entered in the Scottish Charity Register, its literature must state that it is a SCIO (if its name does not already do so). OSCR also recommends that the literature includes a SCIO's Scottish Charity Number as a matter of good practice.
- ▶ A SCIO must keep a register of all its members, as well as of its charity trustees.
- ▶ A SCIO must follow specific rules about the way it can merge with other charities, transfer its assets or dissolve because, unlike other charities, it cannot continue operating if it loses charitable status; when it leaves the Register, it ceases to exist. The only ways a SCIO can seek to leave the Register are either by applying to OSCR to be dissolved (either by solvent or insolvent dissolution); transferring its undertaking to another SCIO; or amalgamating with another SCIO. A SCIO cannot convert to another legal form, such as a company, or amalgamate with a body which is not a SCIO.

What can we do if a SCIO owes us money and how will we find out if it is winding up?

The legislation which sets up SCIOs offers certain elements of protection for creditors when trying to recover debts or when a SCIO winds up, as follows:

- ▶ When a **solvent SCIO** applies to dissolve – OSCR must publish a notice about the SCIO's application on its website and the SCIO must write to its known creditors to inform them about the proposed dissolution.
- ▶ When an **insolvent SCIO** (with debts of more than £1,500) applies for bankruptcy (sequestration) – OSCR must publish the application on its website. The Accountant in Bankruptcy (AiB) carries out the process of realising any assets held by the SCIO and enters details of the sequestration into the Register of Insolvencies (available at www.aib.gov.uk).
- ▶ Currently there is no dissolution procedure for insolvent SCIOs whose debts are under £1,500. The preferred route would be for them to seek independent advice and try to reach a voluntary agreement with their creditors.
- ▶ Creditors seeking to recover debts have the right to apply to court for a SCIO to be sequestrated as long as they are owed £3,000 or more. Creditors must first notify OSCR and the SCIO if they intend to do so and, if awarded, OSCR must publish notice of the sequestration on its website.

Can existing Scottish charities become SCIOs?

Yes; existing unincorporated charities may apply to change their legal form to a SCIO, and existing charitable companies and registered societies can also convert to SCIOs. Changing legal form or converting to a SCIO will involve a number of practical steps for the charity, which may include:

- ▶ Transferring property to the new SCIO.
- ▶ Closing existing bank accounts and opening new ones.
- ▶ Seeking consent from other regulators.
- ▶ Contacting funders and service providers such as banks and insurance companies to advise them of the change.

Further information

For OSCR's full guidance on SCIOs, 'SCIOs: A Guide', and our frequently asked questions on SCIOs, go to:

<http://www.oscr.org.uk/charities/becoming-a-charity/scio>

Further information on SCIOs and the legislation which sets up SCIOs is available from the Scottish Government at:

<http://www.gov.scot/Topics/People/15300/Localism/Charities/SCIO>

You can check if an organisation is a SCIO on the Scottish Charity Register on OSCR's website **www.oscr.org.uk**

OSCR can give general information about the SCIO legal form but it does not give one-to-one advice to organisations on whether they should work with a SCIO. Organisations considering working with a charity can seek advice from:

- ▶ A professional adviser, such as a lawyer with experience in charity law, an accountant or an insolvency practitioner.
- ▶ A trade body or umbrella group of which they are a member.

SCIOs – a summary

- **A SCIO is a bespoke legal form for Scottish charities**

- **SCIOs must meet the legal criteria to become a charity, showing they have only charitable purposes and provide public benefit**

- **SCIOs are regulated and administered by the Scottish Charity Regulator (OSCR)**

- **The option to become a SCIO allows charities to incorporate without becoming companies**

- **SCIOs have a distinct legal personality and can carry out business, enter into contracts, own property and employ people in their own right**

- **SCIOs can only exist as long as they have charitable status; if they lose this, they must wind up**

- **The rules around how SCIOs wind up or merge differ from other charities**

2nd Floor
Quadrant House
9 Riverside Drive
Dundee DD1 4NY

P. 01382 220446
E. info@oscr.org.uk
W. www.oscr.org.uk
Twitter. @ScotCharityReg