

# Legal Forms Factsheet

The table below sets out some of the key characteristics of the most common types of legal form used by Scottish charities. This comparison may help you consider which legal form is suitable for the proposed charity.

Each organisation should decide for itself which legal form suits it best. You should consider whether the key characteristics of each legal form will be suitable for your organisation’s size and what it plans to do.

As a regulator, OSCR cannot offer advice on which legal form is the right choice for a particular charity. Any body considering applying for charitable status in Scotland should consider taking [advice from intermediary bodies, support organisations and/or professional advisers](#) before making an application to OSCR. [SCVO’s website](#) provides advice to new organisations to help them decide on the most suitable structure for their needs.

**Table of key characteristics of SCIOs and other common charitable forms**

	<b>SCIO</b>	<b>Unincorporated Association</b>	<b>Company</b>	<b>Trust</b>
<b>Regulator</b>	<b>Single regulator</b> OSCR	<b>Single regulator</b> OSCR	<b>Dual regulators</b> OSCR and Companies House	<b>Single regulator</b> OSCR
<b>Key legislation</b>	Charities and Trustee Investment (Scotland) Act 2005	Charities and Trustee Investment (Scotland) Act 2005	Charities and Trustee Investment (Scotland) Act 2005  Companies Act 2006	Charities and Trustee Investment (Scotland) Act 2005  Trusts (Scotland) Act 1921
<b>Legal status</b>	<b>Legal personality</b>  Can undertake transactions in its own right  Title to land and buildings will be held in the name of the SCIO (advantage in terms of succession)  Liability of charity trustees is limited (in most cases) providing they act lawfully  Members are not liable to contribute to the assets if it is wound up	<b>No legal personality</b>  Some or all of the charity trustees must undertake transactions on behalf of the body  Title to land and buildings must be held in the name of one or more individuals on behalf of the charity  The charity trustees may have personal liability for the body’s actions and unlimited liability if it is wound up	<b>Legal personality</b>  Can undertake transactions in its own right  Title to land and buildings will be held in the name of the company (advantage in terms of succession)  Liability of charity trustees is limited (in most cases) providing they act lawfully  Liability of members is usually limited in the Articles of Association to £1	<b>No legal personality</b>  Some or all of the charity trustees must undertake transactions on behalf of the body  Title to land and buildings must be held in the name of one or more trustees (deed of assumption required to evidence new trustees)  The charity trustees may have personal liability for the body’s actions although there are certain protections for trustees in trust law and common law

	<b>SCIO</b>	<b>Unincorporated Association</b>	<b>Company</b>	<b>Trust</b>
<b>Accounting requirements</b>	<p><b>Charity accounting requirements</b></p> <p>Preparation of receipts &amp; payments or accrued accounts depending largely on body's income level</p> <p>Discretion for charity trustees to choose to exceed minimum requirements if accrued accounts are more suited to the body's operations</p>	<p><b>Charity accounting requirements</b></p> <p>Preparation of receipts &amp; payments or accrued accounts depending largely on body's income level</p> <p>Discretion for charity trustees to choose to exceed minimum requirements if accrued accounts are more suited to the body's operations</p>	<p><b>Charity and company accounting requirements</b></p> <p>Accrued accounts only regardless of income level</p>	<p><b>Charity accounting requirements</b></p> <p>Preparation of receipts &amp; payments or accrued accounts depending largely on body's income level</p> <p>Discretion for charity trustees to choose to exceed minimum requirements if accrued accounts are more suited to the body's operations</p>
<b>Extent of powers</b>	<p><b>Unlimited powers in furtherance of purposes</b></p> <p>Subject to any restriction in the governing document</p>	<p><b>Unlimited powers in furtherance of purposes</b></p> <p>Subject to any restriction in the governing document</p>	<p><b>Unlimited powers in furtherance of purposes</b></p> <p>Subject to any restriction in the governing document</p> <p>Subject, in certain circumstances, to any restrictions in company law</p>	<p><b>Limited powers</b></p> <p>Powers set out in governing document – these vary from very restrictive to very wide</p> <p>Powers may be supplemented by those set out in trust law</p>

	<b>SCIO</b>	<b>Unincorporated Association</b>	<b>Company</b>	<b>Trust</b>
<b>Membership</b>	<p>Must have at least two members (who may also be charity trustees)</p> <p>May have a single-tier structure (governed by charity trustees with no additional members) or a two-tier structure (governed by charity trustees with a membership body which has certain powers or duties)</p> <p>Resolutions of members are required before certain actions can be taken</p> <p>Members are subject to some of the duties of charity trustees</p> <p>Meeting of members must be held at least every 15 months</p> <p>Membership cannot be transferred</p>	<p>Must have at least two members (who may also be charity trustees)</p> <p>May have a single-tier structure (governed by charity trustees with no additional members) or a two-tier structure (governed by charity trustees with a membership body which has certain powers or duties)</p> <p>Governing document sets out the powers that members have and how decisions may be taken</p> <p>Members are not subject to any of the duties of charity trustees</p>	<p>Must have at least one member</p> <p>May have a single-tier structure (governed by charity trustees with no additional members) or a two-tier structure (governed by charity trustees with a membership body which has certain powers or duties)</p> <p>Resolutions of members are required for certain decisions</p> <p>Members are not subject to any of the duties of charity trustees</p>	<p>Does not have a membership structure</p>
<b>Specific duties and requirements</b>	<p>Duty to keep registers of members and charity trustees, and to make these publicly available in certain circumstances</p> <p>Governing document must contain a number of basic elements in relation to the body's governance</p>	<p>No specific duties or requirements, other than those set out in the governing document or in policies and procedures adopted by the charity trustees</p>	<p>Wide-ranging duties and requirements set out by company law including duty to keep registers of members and directors</p>	<p>Duties as set out in the governing document</p> <p>Trustees are subject to the requirements of trust law</p>

	<b>SCIO</b>	<b>Unincorporated Association</b>	<b>Company</b>	<b>Trust</b>
<b>Removal from the Register and dissolution</b>	<p>Removal from the Register results in dissolution</p> <p>Dissolution by solvent or insolvent route</p> <p>Requirement for public notice of dissolution</p> <p>Option for creditors to instigate sequestration and subsequent dissolution</p> <p>No option for the body to be restored following dissolution</p>	<p>Removal from the Register does not lead to dissolution; body can continue to exist without charitable status but must use remaining charitable assets solely for charitable purposes</p> <p>Dissolution takes place in line with requirements set out in the governing document</p> <p>No requirement for public notice of dissolution (subject to any requirement set out in the governing document)</p>	<p>Removal from the Charity Register does not lead to dissolution; body can continue to exist without charitable status but must use remaining charitable assets solely for charitable purposes</p> <p>Dissolution takes place in line with constitutional requirements (normally following a resolution of the members) or at the instigation of Companies House</p> <p>Companies House dissolves the body by removing it from the Companies Register after a public notice period</p> <p>Option for creditors to instigate liquidation and subsequent dissolution</p> <p>Option for the body to be restored (through a court procedure) following dissolution to allow outstanding transactions with the body to take place</p>	<p>Removal from the Register does not lead to dissolution; body can continue to exist without charitable status but must use remaining charitable assets solely for charitable purposes</p> <p>Dissolution takes place when all trust property is expended or at the discretion of the charity trustees if their powers permit</p> <p>No requirement for public notice of dissolution</p>