

## Scottish Charitable Incorporated Organisation (SCIO)

A Scottish Charitable Incorporated Organisation is a legal structure which has been purpose built for the charity sector in Scotland. It provides limited liability and a separate legal identity to organisations that want to become charities but do not want or need the complex structure of company law. This means that even the smallest charity can access the benefits of incorporation – including limited liability and legal capacity.

### Two tier or single tier?

There are two structures available for the SCIO, two tier and single tier. The two-tier structure is similar to that of a voluntary association and a company limited by guarantee where it is the membership of the organisation that appoint trustees and have decision making powers.

The single tier structure is similar to a trust in that the trustees appoint new trustees and don't have to answer to a wider body.

Both structures require at least two members (in the single tier SCIO the members and the Trustees are the same people) and must have at least three trustees.

### Advantages

Provides the key benefits of becoming a company, such as a defined legal entity and limited liability whilst removing some of the associated burdens.

Can hold property, enter into leases and other contracts, employ people, etc, in its own name.

Less administration – no requirement to notify any regulator about appointments or resignations of board members.

### Disadvantages

Existence is dependent upon charitable status. Loss of charitable status would mean that the SCIO would cease to exist.

Some changes must be notified to OSCR, and some require prior consent, e.g. change of name or charitable purposes.

Members are subject to some of the same duties as charity trustees, specifically, they must act in the interests of the SCIO, and seek, in good faith, to ensure the SCIO acts in

### **Advantages**

Unlike company law, where the volume of legislation and case law can be overwhelming, the law relating to SCIOs is self-contained and very manageable.

It provides creditor protection and reassurance for those entering into contracts.

Only needs to be registered with OSCR, unlike a charitable company, which also needs to register with Companies House.

Is subject to the same accounting thresholds as unincorporated charities, so may not have to produce fully accrued accounts.

Generally regarded by funding bodies and public agencies as a more 'stable' structure than a voluntary association.

### **How is it governed?**

There is no standard format for a SCIO constitution, but some basic elements are required:

- a SCIO should have two or more members and three trustees (in the case of a single tier SCIO the members can also be the trustees)

### **Disadvantages**

a manner which is consistent with its charitable purposes.

There is a duty to keep and supply a register of charity trustees and members (if an organisation has a lot of fluidity in its membership e.g. a Student Union, a SCIO may not be the most appropriate legal form).

Cannot convert or amalgamate with non-SCIO, though assets can be transferred to a non-SCIO charitable organisation.

- it should have the name, purposes, a registered office in Scotland, and include any restrictions on powers
- it should list meeting procedures (convening, recording, quorum, voting, resolution)
- it should list membership rules (eligibility, appointment, withdrawal) and trustee rules (appointment, withdrawal, remuneration restrictions, conflict of interest).
- it should list the purposes for which surplus assets may be used on dissolution

### **Charitable status?**

A SCIO can only be a charity. OSCR is the regulator of a SCIO's legal form, not just its charitable status. Removal from the Register equals dissolution.

### **Does it have a legal status, distinct from those who run it?**

Yes. A SCIO can hold property, enter into leases and employ people in its own right. Title to land and buildings will be held in the name of the SCIO (an advantage in terms of succession). Members' and trustees' liability is limited in most cases, and they are not liable to contribute if the SCIO is wound up.

### **What are the main advantages of being a charity?**

Charities do not normally have to pay income/corporation tax (in the case of some types of income), capital gains tax or stamp duty. Gifts to charities are also free of inheritance tax. Charities pay no more than 20% of normal business rates on the buildings they occupy to further their charitable purposes, they can get special VAT treatment in some circumstances, and are often able to raise funds from the public, grant-making trusts and local government more easily than non-charitable bodies.

Charities can formally represent and help meet the needs of the community, they are able to assure the public that they are being monitored and advised by the charity commission, from which they can seek advice and information.

### **What are the limitations of being a charity?**

There are restrictions on what charities can do, both in terms of the types of work they do, and the ways in which they can operate.

A charity must have exclusively charitable purposes. Some organisations may have a range of activities, some of them charitable, some of them not. To become a charity that organisation would have to stop its non-charitable activities. Promoters will need to consider carefully if becoming a charity will severely restrict their planned activities. If so, charitable status may not be right for your organisation.

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The extent of political or campaigning activities that a charity can take on are limited and strict rules apply to trading by charities.

Trustees are not allowed to receive financial benefits from the charity they manage unless this is specifically authorised by the governing document of the charity or by the charity commission. Financial benefits include salaries, services or the awarding of business contracts to a trustee's own business from the charity.

Benefits that are incompatible with the establishment of an organisation for exclusively charitable purposes cannot be authorised at all but trustees are entitled to be reimbursed for their reasonable out-of-pocket expenses, for example, train fares to trustee meetings.

Trustees need to avoid any situation where charitable and personal interests conflict.

Charity law imposes certain financial reporting obligations; these vary with the size of the charity.