



Office of the Scottish **Charity Regulator**

# **Scottish Charitable Incorporated Organisations (SCIOs) – an overview**

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# What is a Scottish Charitable Incorporated Organisation?

A Scottish Charitable Incorporated Organisation (SCIO) is a new legal form which will allow Scottish charities to incorporate without having to become companies.

# Why the SCIO?

## Concerns about unincorporated charities:

- Charity trustees have personal liability
- Members liable to contribute if wound up
- No legal identity – charity trustees undertake transactions on its behalf
- Creditor confidence - no public notice of winding up

# Isn't there already a solution?

## **Company limited by guarantee:**

- Offers limited liability
- Offers separate legal identity
- Is credible to third parties (esp. creditors)

### BUT

- Regulated both by OSCR and Companies House
- Accrued accounts – regardless of income

# What will the SCIO do?

## A form that:

- Offers limited liability
- Offers separate legal identity
- Is credible to third parties (esp. creditors)
- Is transparent and accountable to public and members
- Is otherwise as simple as possible

# What's the timetable?

## 1 April 2011

- we started registering new SCIOs (South Seeds SCIO)
- changes to legal form (all charities except companies and I&Ps)

## 1 January 2012

- conversions (companies or I&Ps to SCIO)
- amalgamations (2 or more SCIOs forming a new SCIO)
- transfer of undertakings (to another SCIO)

# Key features

1. OSCR is the regulator of the legal form, not just its charitable status
2. Removal from the Register equals dissolution
3. Creditor protection
4. Importance of members as well as trustees

# Key features: the Register

The existence of a SCIO as corporate body depends on its entry in the Scottish Charity Register, so:

- No such thing as a SCIO without charitable status
- When a SCIO is removed from the Register, it ceases to be a SCIO

# Key features: creditor protection

Elements of protection for creditors:

- **Solvent dissolution:** application notice published, SCIO must write to known creditors
- **Insolvent dissolution:** notice of application published, sequestration procedure
- **Creditor-led sequestration** (through court): notice of sequestration published

# Key features: role of members

Role of members has particular prominence in SCIOs:

- Must be at least 2 members
- SCIO members are subject to some of the same duties as charity trustees
- Duty to keep and supply a register of members

# Compliance – what's the same?

Much is the same as for other charities:

- Charity trustee duties & remuneration
- Annual returns and accounts (accounting thresholds same as unincorporated)
- Consents for name and purpose changes
- Notifications
- Providing accounts and/or constitution to public
- Fundraising

# Compliance – what's different? (1)

- Some charity trustee duties apply to members
- Duty to keep and supply to public a register of charity trustees
- Duty to keep and supply to members a register of members
- References to SCIO status
- Consents for dissolution and amalgamation

# Compliance – what's different? (2)

## Governance differences:

- Meetings of members – minimum of one meeting every 15 months
- Governance framework in constitution
- Bar on transfer of membership
- Minimum of 2 members
- Minimum of 3 charity trustees

# Applications for new SCIOs

- Scottish principal office?
- application from 2 natural persons?
- does the constitution contain the elements the Act & Regulations say it must? (models available)
- does it pass the charity test?

**Very much like the existing status process**

# Unincorporated charity to SCIO

Process similar to current 'Change of Legal Form':

- Application to register new SCIO – in principle decision
- Application for removal of existing charity at same time new SCIO is incorporated
- Transfer of assets (s.19 monitoring)
- Wind-up of unincorporated body

# Triggers for change

## When might incorporation be appropriate?

- Increase in size/scale of operations
- Employing staff
- Owning property
- Entering into contracts
- Vulnerable beneficiaries
- Identified risk of liability
- And.....?

# Changing to SCIO – things to think about

- Crystallising liabilities e.g. pension deficit
- Future legacies or bequests?
- Restrictions relating to wind up of a SCIO
- Restrictions on some types of borrowing
- Accuracy of membership details?
- And...?

# Questions?

- What are the possible advantages of SCIO for your organisation/the people you advise?
- What are the possible disadvantages?
- What's the most important thing you'd still like to know?