

The Scottish Out of School Care Network



20th January 2010
By email:

Consultation on Options for the Implementation of the Scottish Charitable Incorporated Organisation (SCIO)

Response – Scottish Out of School Care Network

The Scottish Out of School Care Network is the national charitable organisation representing the interest of the 1,000+ out of school care services in Scotland. Many of these services are located within the voluntary sector and most have, or are seeking, charitable status and would be included in the targeted market for a SCIO.

While agreeing for the need for robust regulation in terms of instilling and maintaining good faith in the charitable sector, SOSCN has consistently recommended that there must be measures to reduce the administrative and legal complexity of the organisational structures of small to medium charities. We need to reduce the burden of work on unpaid committees and boards and to create transparent, simpler processes which protect individuals from risk in contributing as volunteer management, without taking on the full complexity of company law.

SOSCN therefore welcomes the potential of the SCIO in addressing these issues and we hope that this new model will help existing and new out of school care charitable services in setting up a proportionate, organisational structure to meet their needs.

Irene Audain, Chief Executive

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1

Scottish Out of School Care Network: Company Limited by guarantee with Charitable status
Company Incorporation No: SC200662 Inland Revenue No: SC020520

The Scottish Out of School Care Network

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Consultation on Options for the Implementation of the Scottish Charitable

Incorporated Organisation (SCIO)

RESPONSE FORM

Q1: In designing the SCIO primarily for charities with incomes of between £25,000 and £1,000,000, do you think we have identified the right target market?

Yes ✓	No	Don't Know
Supporting Comment: This is a reasonable target market, given the majority of charities fall well below the upper end of this scale; it would certainly cover the majority of out of school care charities.		

Q2. Having considered the issues discussed in paragraphs 63-74, and the draft framework provided at Annex A, do you agree with the Working Group that option 1 presents the right SCIO model for implementation?

Yes ✓	No	Don't Know
Supporting Comment: This framework provides the right balance between reducing the administrative and legal deadlines which can be burdensome in terms of company law for smaller organisations (which may have different volunteer board members every year or so), whilst being not so “light touch” that it fails to instill confidence in potential funders, investors, employees or clients.		

The Scottish Out of School Care Network

Q3. Does option 1 deliver those original policy objectives in creating a straightforward yet robust incorporation vehicle for Scottish charities?

Yes ✓	No	Don't Know
Supporting Comment: Option 1 supports the creation of the legal entity of the organisation, thus removing the risks for individuals involved in an unincorporated association. As many out of school care services are unincorporated, this is a welcome development. While it requires particular safeguards in terms of the constitution, governance and insolvency /dissolution measures, these requirements are much less complex than full company law, which makes Option 1 a more streamlined and simple process than company incorporation, which currently deters many smaller organisations.		

Q4. Have we correctly identified the advantages and disadvantages? Do you think option 1 has missed any aspects?

Yes ✓	No	Don't Know
Supporting Comment: An advantage, probably of any option, that should be highlighted in publicity is in the name itself, as it reinforces the charitable aspect of the organisation.		

Q5. Do you agree that option 2, the company model, would not deliver the best SCIO form for Scottish charities? Have we correctly identified the advantages and disadvantages? If you disagree, please tell us why.

Yes ✓	No	Don't Know
Supporting Comment: See Q3 comments		

Q6. Do you agree that option 3, the minimalist model, would not provide the ideal structure for the SCIO? Have we correctly identified the advantages and disadvantages? If you disagree, please tell us why.

Yes ✓	No	Don't Know
Supporting Comment – see Q3 comments		

The Scottish Out of School Care Network

Q7. Of the three models outlined above, which would you prefer the SCIO to be based on? Please tell us why you have chosen a particular option over and above the others.

Option 1		
Supporting Comment: This option provides a half way route between the overly complex company law option and a too light approach which would not reassure agencies engaging with charitable organisations in terms of contracts etc. With a growing number of potential funding routes in the form of social enterprise type loans, this may open up potential funding which may not have been available to unincorporated associations.		

Q8: Do you agree that the additional details of the SCIO application process should be set out administratively by OSCR rather than in regulations?

Yes ✓	No	Don't Know
Supporting Comment: Absolutely, it is always the case that there are unusual or exceptions to the norm therefore the legislative details would have to be fairly wide ranging in order to cover a wide range of eventualities. Leaving this for administrative flexibility via OSCR is a better route to take, however, OSCR should provide firm and transparent guidance and work with umbrella bodies for different sectors so more tailored guidance can be developed.		

Q9: Are there specific additional requirements you would expect to be required in SCIO applications?

Yes ✓	No	Don't Know
Supporting Comment: In terms of financial management would there be a requirement for Trustees for example, to not be able to serve if personally an undischarged bankrupt or using a IVA? I'm not sure this is covered in the regulations here or would already be covered in OSCR registration but it is currently a requirement of company law.		

Q10. Do you agree that the additional details of the conversion process

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The Scottish Out of School Care Network

should be set out administratively by OSCR rather than in regulations?

Yes ✓	No	Don't Know
Supporting Comment:		
As in Q8 above.		

Q11. Do you agree that the additional details of the SCIO amalgamation process should be set out administratively by OSCR rather than in regulations?

Yes ✓	No	Don't Know
Supporting Comment:		
As in Q8 and Q10.		
Additional comment/ question – <i>what would happen if a current company limited by guarantee and a SCIO wanted to merge? Would this not require to be covered in regulation in terms of company law? For an unincorporated associated would it just be the case that the SCIO “absorbs” them?</i>		

Q12. Do you agree that the regulations should cover the basic elements to be required of a SCIO constitution rather than setting out the exact form and content?

Yes ✓	No	Don't Know
Supporting Comment:		
Umbrella organisations like the Scottish Out of School Care Network are very often consulted by services on what form their constitution should take for registration with OSCR or as an unincorporated association, company or other form of organisation. Therefore, we would want to see that in this process OSCR would be able to comment on and approve models developed for specific sectors by national organisations for the use of their sector to adapt to their specific service.		

Q13: Do you agree that the elements listed under paragraph 113 are the aspects of SCIO governance that SCIO constitutions should be required to cover? If you think any aspects have been missed, please provide details of these.

The Scottish Out of School Care Network

Yes ✓	No	Don't Know
Supporting Comment:		

Q14. Do you agree that the documents and information sources, in which SCIOs should be required to include their name, should mirror those for other Scottish charities?

Yes ✓	No	Don't Know
Supporting Comment:		

Q15. Do you agree that the SCIO regulations should not make specific provision on the keeping and/or publication of records and minutes, and the submission of certain documentation to OSCR, (additional to that already in the 2005 Act)?

Yes ✓	No	Don't Know
Supporting Comment:		

Q16. Do you agree that SCIOs should be required to keep registers of their members and that such registers should not be accessible to the public? If you disagree, please tell us why.

Yes ✓	No	Don't Know
Supporting Comment:		
<p>Some membership organisation records (say that of childminders) may hold personal addresses therefore this should not be public information.</p>		

Q17. Do you agree that SCIOs should be required to keep registers of their charity trustees and that such registers should not be accessible to the public? If you disagree, please tell us why.

Yes ✓	No	Don't Know
Supporting Comment:		
<p>Charity Trustees are often registered with personal addresses/contact details – there should be a way for the public to contact a charity's trustee via the organisation's registered address but again there is no reason why the public should know their home addresses/contact numbers etc.</p>		

Q18: Do you agree that the preferred SCIO model outlined in paragraphs 63-74 will help to minimise any uncertainty about doing business with a new form of incorporated organisation?

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The Scottish Out of School Care Network

Yes ✓	No	Don't Know
Supporting Comment:		
<p>It should, although it is not our experience that established unincorporated associations delivering out of school care have had any problems in doing business. Where it may make a big difference is with the growing tendency for social investment type loans rather than grants to be on offer to small to medium start up organisations.</p>		

Q19: Do you anticipate there being any additional costs for third parties associated with the introduction of a new form?

Yes ✓	No	Don't Know
Supporting Comment:		
<p>For umbrella organisations which provide specific guidance on potential structural models and how to set up services there may well be costs involved in producing guidance or updating current guidance to the new model. Staff training therefore will also be an issue. It is hoped that OSCR or the Scottish Government will work in partnership with such organisations in order to ensure that they are able to meet this demand on their resources.</p>		

Q20: Do you consider it important for a SCIO to be able to raise finance?

Yes ✓	No	Don't Know
Supporting Comment:		
<p>This is becoming more important as funding bodies have more limited resources and in some cases a start up, expansion or merger may incur costs which can be recouped in the future. There is a current trend in funding investment towards loans rather than grants in the third sector. SCIOs must also be able to raise finance through not for profit trading type activities and through more traditional grant and trust funding.</p>		

Q21. Do you agree that the regulations should not provide for the maintenance and publication of registers of charges and debentures, as proposed in the preferred model (option 1, page 22)?

Yes ✓	No	Don't Know
Supporting Comment:		

The Scottish Out of School Care Network

This is much more applicable to larger companies and would be time consuming for organisations.

Q22. Do you agree that the regulations should require OSCR to publish SCIO accounts on its website to increase transparency?

Yes ✓	No	Don't Know
Supporting Comment:		
<p>This would be a useful additional safeguard for funders or investors and would mirror, it is presumed, the timeline and requirement to submit accounts to OSCR anyway so should not be an additional administrative action on the part of the SCIO.</p>		

Q23: Do you agree that the accounting framework for SCIOs should mirror the existing requirements for charities rather than companies (that for charities allows those with limited income to produce a simpler form of accounts, i.e. receipts and payments accounts)? If you disagree, please tell us why.

Yes ✓	No	Don't Know
Supporting Comment:		
<p>The cost of external auditing for small organisations may wipe out any small balances they hold which would be better used to fulfill their charitable purposes.</p>		

Q24. Which of the options for the dissolution of a *solvent* SCIO do you think strikes the right balance between protecting creditors and reducing the administrative burden on charities?

Option	Yes	No	Don't know	Comment
Option 1 – the basic option	✓			For small uncomplicated organisations who are covering any outstanding debts in full.
Option 2 – striking off				
Option 3 –	✓			There has to be a route which can

The Scottish Out of School Care Network

Members Voluntary Liquidation				be instigated by the organisation itself rather than external agencies.
Option 4 – only allow formal insolvency				
Further Comment				Currently some charitable organisations specify in their constitution where any surplus assets should go in the event of dissolution, will this clause still be in place?

Q25. Which of the options for the dissolution of an *insolvent* SCIO do you think strikes the right balance between protecting creditors and reducing the administrative burden on charities? If you have selected option 5, the interim option, please tell us which of options 1-3 you would prefer to be developed for the longer term.

Option	Yes	No	Don't know	Comment
Option 1 – Apply the current insolvency regime				
Option 2 – Apply the current insolvency regime, with modification			Maybe	See comment below.
Option 3 – Appointment of an independent third party to manage the most complex or contested insolvency cases				
Option 4 – The default regime				

The Scottish Out of School Care Network

Option 5 – Apply the default regime in the interim, whilst a dedicated insolvency regime for SCIOs is developed	✓			We do not have expertise in this area but believe that there must be a simpler route developed which prevents the administration costs of insolvency taking most of the assets that creditors could have accessed.

Any other comments

NOT on consultation but on consultation forms.

It would be useful to provide downloadable forms in either word format or with data entry fields for those respondents who respond electronically.

This also applies to the respondent information below.

Organisation	Scottish Out of School Care Network
Name	Ms Irene Audain
Role	Chief Executive
Address	Level 2, 100 Wellington Street, Glasgow G2 6DH
Phone	0141 564 1284
email	irene@soscn.org
Permissions	<p>I am responding as C) organisation and agree for the contents to be made available publicly.</p> <p>Agree to D) sharing information internally and being contacted by the Scottish Government.</p>

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RESPONDENT INFORMATION FOI

Please Note That This Form **Must** Be Returned With Your Response to Ensure That We Handle Your Response Appropriately

1. Name/Organisation

Organisation Name

Title Mr Ms Mrs Miss Dr *Please tick as appropriate*

Surname

Forename

2. Postal Address

<input type="text"/>		
<input type="text"/>		
<input type="text"/>		
<input type="text"/>		
Postcode	Phone	Email

3. Permissions

I am responding as...

Individual

Please tick as appropriate

Group/Organisation

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation *will be* made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your response to be made available?

Please tick as appropriate Yes

No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

 Yes No