

Becoming a Scottish Charitable Incorporated Organisation (SCIO) Briefing Paper

Background

The Scottish Charitable Incorporated Organisation (SCIO) is an optional legal form for registered Scottish charities. The Scottish Ministers introduced the new SCIO legal form in April 2011 to allow charities to be incorporated but to be administered and regulated by a single body, the Office of the Scottish Charity Regulator ('OSCR').

The Key Facts

The SCIO is a corporate body which is a legal entity having, on the whole, the same status as a natural person. This means it has many of the same rights, protections, privileges, responsibilities and liabilities that an individual would have under the law. As a legal entity, the SCIO may enter into the same type of transactions as a natural person, such as entering into contracts, employing staff, incurring debts, owning property, suing and being sued.

As the transactions of the SCIO are undertaken by it directly, rather than by its charity trustees on its behalf, the charity trustees are in general protected from incurring personal liability. However, as with any other type of corporate body, this protection is not absolute; in some circumstances, charity trustees individually may be held responsible for the actions of the SCIO. Such circumstances are rare but may occur when the charity trustees have been reckless, negligent, have acted illegally or have acted outwith their powers in their management and control of the SCIO.

The governing document of a SCIO is a constitution which must contain a number of basic elements in relation to its governance and other key matters. The SCIO must also:

- have its principal office in Scotland
- have at least two members; these may include some or all of the charity trustees subject to the terms of the constitution
- use and apply its property in furtherance of its charitable purposes and in accordance with its constitution.

Is Becoming a SCIO the right choice?

COCIS is currently an Unincorporated Association with charitable status. This means that our Executive Committee Members, also known as Trustees, have greater personal liability in relation to the actions of the organisation. Becoming a SCIO would provide them, many of whom are carers, with greater protection. In addition, as an Unincorporated Association, COCIS, is not able to pay people directly and are not eligible for UK tax incentives. This function is currently handled for us by VOCAL.

The table below sets out the key characteristics of a SCIO compared to an Unincorporated Association

	SCIO	Unincorporated Association
Legal Status	<p>Legal personality</p> <ul style="list-style-type: none"> ○ 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) ○ Members are not liable to contribute to the assets if it is wound up 	<p>No legal personality</p> <ul style="list-style-type: none"> ○ 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
Accounting requirements	Same	Same
Extent of Powers	Same	Same
Membership	<ul style="list-style-type: none"> ○ Must have at least two members (who may also be charity trustees) ○ 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) ○ Resolutions of members are required before certain actions can be taken. For example, changing the constitution ○ Members are subject to some of the duties of charity trustees. These are to act in the interests of the SCIO and to ensure the SCIO acts in a manner consistent with its charitable purposes ○ Meeting of members must be held at least every 15 months 	<ul style="list-style-type: none"> ○ Must have at least two members (who may also be charity trustees) ○ 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) ○ Governing document sets out the powers that members have and how decisions may be taken ○ Members are not subject to any of the duties of charity trustees

	<ul style="list-style-type: none"> ○ Membership cannot be transferred 	
Specific Duties	<ul style="list-style-type: none"> ○ Duty to keep a register of charity trustees, and to make this publicly available in certain circumstances (personal contact details would be removed) ○ Duty to keep a register of members and to make this available, if a reasonable request is made, by a member or Charity Trustee (personal contact details would be removed) ○ Governing document must contain a number of basic elements in relation to the body's governance 	<ul style="list-style-type: none"> ○ No specific duties or requirements, other than those set out in the governing document or in policies and procedures adopted by the charity trustees
Removal from the Register & dissolution	<ul style="list-style-type: none"> ○ Removal from the Register results in dissolution ○ Requirement for public notice of dissolution ○ Option for creditors to instigate sequestration and subsequent dissolution ○ No option for the body to be restored following dissolution 	<ul style="list-style-type: none"> ○ 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 ○ Dissolution takes place in line with requirements set out in the governing document ○ No requirement for public notice of dissolution

This information has been taken from OSCR's publication 'SCIOs: A Guide.' [To read the full document, follow this link](#)

Decision Making

The Executive Committee of the Coalition of Carers in Scotland believes that becoming a SCIO is the right choice for the organisation. We are asking our members to approve this via a vote at our Annual General Meeting on the 9th October 2024