

SCIOs: A Guide

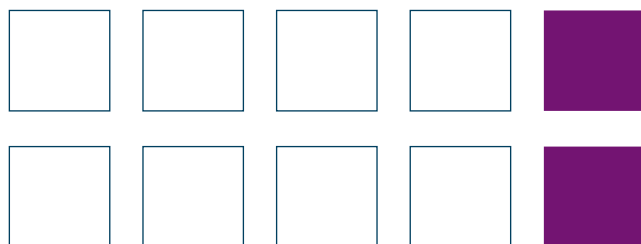
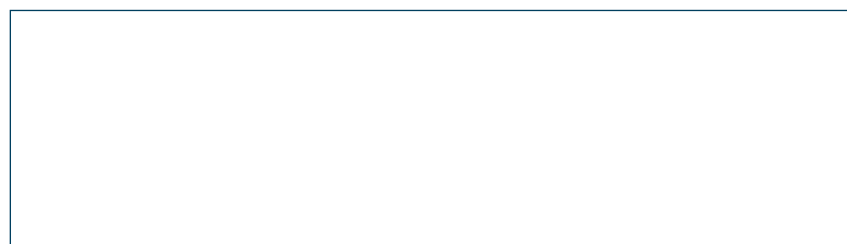
Guidance on the Scottish
Charitable Incorporated
Organisation for charities
and their advisers

OSCr

Office of the Scottish **Charity Regulator**

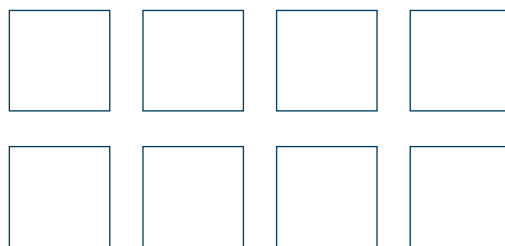
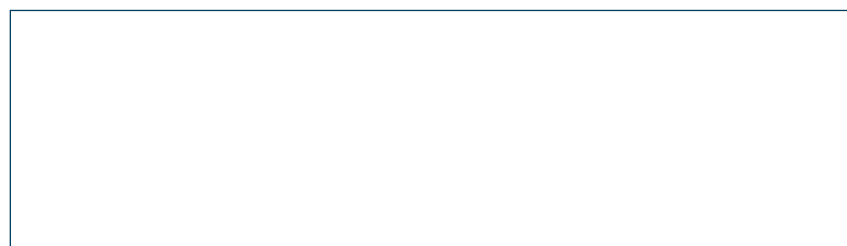






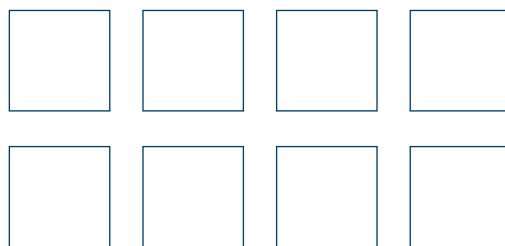
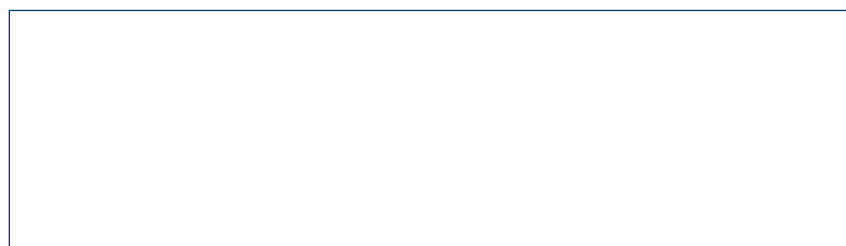
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1. What is a SCIO?

1.1 Background

The Scottish Charitable Incorporated Organisation (SCIO) is an optional new 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'). Charitable companies, which are also incorporated, report both to OSCR and to the Registrar of Companies ('Companies House').

Charity law in England and Wales and in Northern Ireland provides for a similar type of body to be established in those countries, in both cases to be known as the Charitable Incorporated Organisation (CIO).

This guidance is aimed at anyone who is considering setting up a charity, particularly those interested in becoming a SCIO, and those existing charities which are considering changing their legal form to a SCIO. It will also be useful to advisers to charities and anyone working with charities, such as funding organisations or local authorities.

We use italics throughout this guidance to highlight the first time we use a technical term which is defined in the Glossary at section 9. We also make reference to other OSCR guidance publications which will also be useful to those considering setting up a SCIO; these publications can all be accessed at www.oscr.org.uk.

1.2 Legal framework

The SCIO form is created by the following legislation:

- The Charities and Trustee Investment (Scotland) Act 2005 (as amended) ('the 2005 Act')

- The Scottish Charitable Incorporated Organisations Regulations 2011 ('the General Regulations')
- The Scottish Charitable Incorporated Organisations (Removal from the Register and Dissolution) Regulations 2011 ('the Dissolution Regulations').

In general terms, the principles of charity law apply equally to SCIOs as they do to any other charity entered in the Scottish Charity Register. There are, however, some important differences between the duties and responsibilities of a SCIO and those of other Scottish charities, and these are set out in detail in section 5 of this guidance.

1.3 SCIOs: 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 (see section 3.1 of this guidance). 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.

The SCIO also differs from other charities on the Register in that its existence is dependent upon its charitable status (that is, upon being entered in the Register). In the case of Scottish charities which are not SCIOs, charitable status is awarded to an existing organisation such as a company, trust or unincorporated association. This means that these organisations may continue to exist even if charitable status is withdrawn, although in the majority of cases they would no longer be entitled to refer to themselves as charities.

The SCIO, on the other hand, becomes a legal entity only when it is entered in the Register and ceases to exist if it is removed from the Register. The SCIO cannot choose to convert to another legal form, cannot amalgamate with a body which is not a SCIO and cannot seek removal from the Register other than by dissolving itself. This is an important point to consider before applying to OSCR to incorporate a SCIO. Other important matters for consideration are outlined in section 2.1 below.



2. Is becoming a SCIO the right choice?

The SCIO is a new legal form which provides another option for bodies wishing to register as charities in Scotland, and for those existing Scottish charities which wish to adopt a different legal form.

Before making an application to register a SCIO, it is important to consider whether the SCIO will be the most suitable legal form for the proposed charity. There are some significant differences between being a SCIO and being any other kind of body with charitable status in Scotland.

The table in section 2.1 below sets out some of the key characteristics of the SCIO as well as those of the most

common types of alternative legal form used by Scottish charities. This comparison may help you consider whether the SCIO 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 regulator, OSCR cannot offer advice on whether being a SCIO is the right choice for a particular charity. Any body considering the SCIO as a potential option should consider taking advice from intermediary bodies, support organisations and/or professional advisers before making an application to OSCR (see section 8 for a list of useful contacts).

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

	SCIO	Unincorporated Association	Company	Trust
Regulator	Single regulator OSCR	Single regulator OSCR	Dual regulators OSCR and Companies House	Single regulator OSCR
Key legislation	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

	SCIO	Unincorporated Association	Company	Trust
Legal status	<i>Legal personality</i> 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 <i>succession</i>) Liability of charity trustees is limited (in most cases) Members are not liable to contribute to the assets if it is wound up	No legal personality 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	Legal personality 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) Liability of members is usually limited in the Articles of Association to £1	No legal personality 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

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

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	SCIO	Unincorporated Association	Company	Trust
Membership	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) <i>Resolutions of members are required before certain actions can be taken</i> Members are subject to some of the duties of charity trustees (see section 5.2.1) Meeting of members must be held at least every 15 months Membership cannot be transferred (see section 5.2)	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	Must have at least one member 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 for certain decisions Members are not subject to any of the duties of charity trustees	Does not have a membership structure

	SCIO	Unincorporated Association	Company	Trust
Specific duties and requirements	Duty to keep registers of members and charity trustees, and to make these publicly available in certain circumstances (see section 5.3) Governing document must contain a number of basic elements in relation to the body's governance	No specific duties or requirements, other than those set out in the governing document or in policies and procedures adopted by the charity trustees	Wide-ranging duties and requirements set out by company law including duty to keep registers of members and directors	Duties as set out in the governing document Trustees are subject to the requirements of trust law

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	SCIO	Unincorporated Association	Company	Trust
Removal from the Register and dissolution	Removal from the Register results in dissolution Dissolution by <i>solvent</i> or <i>insolvent</i> route (see section 7.3) Requirement for public notice of dissolution Option for <i>creditors</i> to instigate <i>sequestration</i> and subsequent dissolution (see section 7.4) No option for the body to be <i>restored</i> following dissolution	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 (subject to any requirement set out in the governing document)	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 constitutional requirements (normally following a resolution of the members) or at the instigation of Companies House Companies House dissolves the body by removing it from the Companies Register after a public notice period Option for creditors to instigate <i>liquidation</i> and subsequent dissolution Option for the body to be restored (through a court procedure) following dissolution to allow outstanding transactions with the body to take place	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 when all trust property is <i>expended</i> or at the discretion of the charity trustees if their powers permit No requirement for public notice of dissolution

3. Setting up a new SCIO

3.1 Applying to become a SCIO

Once you have considered the available options for the proposed charity and determined that the SCIO is suitable for its needs, an Application for the Incorporation of a SCIO and a proposed SCIO constitution may be submitted to OSCR on or after 1 April 2011. This application form will be available on the [Scottish Charitable Incorporated Organisations](#) page of OSCR's website.

What must a SCIO's constitution contain?

The legislation does not set out a standard format for a SCIO's constitution but it does require each SCIO constitution to contain certain basic information and rules which set out the minimum requirements of how the SCIO will be governed. The members of a SCIO may add further requirements to its constitution if they consider they would be useful to the SCIO's circumstances.

A SCIO's constitution must contain:

- Its name and the charitable purposes for which the SCIO is established
- Membership rules
 - » Who is eligible to be a member?
 - » How does a person become a member?
- Charity trustee rules
 - » Who is eligible to be a charity trustee?
 - » How are charity trustees appointed? A SCIO must have at least 3 charity trustees.
- Details of the procedure that members and charity trustees must follow to withdraw from membership or their positions as charity trustees, and how they may be removed from the SCIO

- Any restrictions on the powers of the SCIO. A SCIO has powers under the 2005 Act to do anything to further its charitable purposes unless the constitution restricts those powers.
- The organisational structure of the SCIO
 - » For example, are the charity trustees and the members identical (a single-tier structure), or does it have a separate body of members (a two-tier structure)?
- Procedures for meetings
 - » How will meetings be convened and recorded? This should cover both members' meetings and charity trustees' meetings.
 - » What is the *quorum* for any meetings of the SCIO? Again, this covers both members' meetings and charity trustee meetings.
 - » What voting rights do members and charity trustees have?
 - » How will resolutions be passed?
- Any restrictions on the remuneration of charity trustees which are additional to the restrictions in section 67 of the 2005 Act, for example, a ban on remuneration being paid to charity trustees. Please see OSCR's guidance publication, '[Guidance for Charity Trustees](#)' for further details on the remuneration of charity trustees
- Procedures for dealing with any conflict of interest
- Details of how the SCIO will use any surplus assets it has at the time of its dissolution. These assets must be used for charitable purposes which are the same as or which resemble closely the SCIO's own purposes.

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The application to incorporate a SCIO must be made by two or more natural persons who will become the first members of the SCIO if the application is successful. The SCIO must always have at least two members, who may also be charity trustees but do not need to be (see section 5.2.1 for details of the duties of the SCIO's members).

Corporate bodies, such as companies or other SCIOs, cannot apply for the creation of a SCIO, although they may later be appointed as charity trustees or become members.

Once constituted, the SCIO is required to have at least three charity trustees who have the general control and management of the administration of the SCIO. OSCR expects the applicants to be able to name the three or more proposed charity trustees at the point of application; the charity trustees may be natural persons and/or corporate bodies.

As well as the additional duties set out in section 5.1, the charity trustees of a SCIO share the same general duties of any other charity trustee as set out at section 66 of the 2005 Act. Please see OSCR's guidance publication, '[Guidance for Charity Trustees](#)', for further details on the duties of charity trustees.

The application for the incorporation of the SCIO must contain:

- The name of the proposed SCIO as set out in its proposed constitution, and any other name by which it wishes to be known
- The principal office of the proposed SCIO, which must be in Scotland, and the name of its principal contact person
- The name of the two or more individuals who are making the application and who will therefore become the SCIO's first members
- A statement outlining the SCIO's proposed activities
- Details of any conditions the proposed SCIO will place on accessing the benefits it will provide.

If any of these elements are missing, OSCR will be unable to assess the application and will return it to the applicants for completion.

In addition to the application, each of the three or more proposed charity trustees must sign a 'Charity Trustee Declaration Form' to confirm they are aware of their duties and that they are not disqualified from acting as a charity trustee for any of the reasons set out in section 69 of the 2005 Act. The Declaration Forms can be found at the end of the Application for the Incorporation of a SCIO form.

Please see OSCR's guidance publication, '[Guidance for Charity Trustees](#)' for further details on disqualification from acting as a charity trustee.

3.2 How does OSCR make its decision?

Applications for the incorporation of new SCIOs will be assessed in a very similar way to applications from any other type of body wishing to register as a charity in Scotland. This means that the proposed SCIO must pass the charity test as set out in sections 7 to 8 of the 2005 Act. Please see our guidance publication, '[Meeting the Charity Test](#)', for a detailed explanation of the charity test.

Even when a proposed SCIO meets the charity test, OSCR must refuse the application if:

- The SCIO's proposed name is objectionable in a way set out in section 10 of the 2005 Act. Please see our guidance publication, '[Changing Your Charity's Name](#)', for further details of objectionable names.
- The proposed constitution does not contain the required elements as set out in section 3.1 above.

If the charity test and requirements set out above are met, OSCR must not refuse the application for any other reason.

3.3 What happens when a SCIO application is successful?

If OSCR decides the proposed SCIO will pass the charity test, that its constitution contains the required elements and that its name is not objectionable, OSCR will enter the SCIO in the Scottish Charity Register.

Upon entry in the Register, the SCIO becomes a corporate body. Its name and constitution will be those which were specified during the application process and its first members will be the two or more individuals who made the application to OSCR.

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The SCIO must at this point take steps in line with the process set out in its constitution to formally appoint to their positions those three or more persons who were named during the application process as the proposed charity trustees. The charity trustees may either be natural persons and/or other corporate bodies.

The SCIO's entry in the Register will state that its legal form is a SCIO and will note the date on which it was entered in the Register. OSCR is required by the 2005 Act to send a copy of the Register entry to the SCIO's principal office.

In some limited circumstances, the entry of the SCIO in the Register may also result in property transferring automatically to the SCIO from its first members.

Such a transfer may only occur when the members hold the property temporarily on trust with the specific intention that it is used for the charitable purposes of the prospective SCIO. For example, property bequeathed in a will for the purpose of establishing a charity to benefit stray animals is held temporarily on trust by the executor of the estate. If that executor then made an application to constitute a SCIO to fulfil this purpose, this property would automatically transfer from the executor to the SCIO at the point it is entered in the Register.

While the transfer of all property in these circumstances occurs automatically, SCIOs which receive *heritable property* in this way may wish to take steps to remove any doubt as to their ownership of the property. This may be achieved by registering a Notice of Title with Registers of Scotland which is the Scottish Government agency responsible for records relating to property and other legal documents.

The provisions to transfer property do not apply to property which is held by individuals on trust for the purposes of another charity or body, even if those purposes are identical to those of the prospective SCIO and even if the SCIO is intended to replace the existing charity or body.

Please see section 4 for further explanation of the process an existing charity must follow to change legal form to a SCIO.

3.4 Refusal of applications; the right to review

If an application for the incorporation of a SCIO is refused, the applicants have the right under section 74 of the 2005 Act to seek a review of OSCR's decision within 21 days of the decision being made.

The review will be undertaken by a member of staff who was not involved in the original decision and will result in one of four outcomes:

- The decision is confirmed; the decision remains the same
- The decision is varied; the decision is changed in some substantive way, such as a change to the grounds for the decision or the timescales attached
- The decision is reversed; the decision is changed to the opposite decision
- The decision is revoked; the decision is withdrawn. This means that the decision has been officially cancelled with the effect that it is deemed that OSCR has not made a decision.

If the applicants are dissatisfied with the outcome of the review, they can appeal to the Scottish Charity Appeals Panel and ultimately to the Court of Session.

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4. How does an existing charity become a SCIO?

4.1 Unincorporated associations and trusts

As well as new bodies applying to OSCR to be constituted as SCIOs, it is likely that a number of existing charities may wish to change their legal form from an unincorporated association, trust or other legal form to a SCIO. Before they do so, they should study the table at section 2.1 and seek advice as necessary to ensure that becoming a SCIO is the most appropriate step for their charity. Such applications will be accepted from 1 April 2011.

Please note that, throughout this section, we have referred to unincorporated associations or trusts which wish to change legal form to a SCIO as they are the two forms most likely to wish to make this change. However, this section applies equally to any other charity which is not a company or *industrial and provident society* and which wishes to change legal form to a SCIO.

The 2005 Act does not include a specific mechanism to allow an existing charitable unincorporated association or trust to change its legal form to a SCIO (that is, to create a new SCIO with the same name and charity number as the existing charitable unincorporated association or trust, transfer the latter's assets and undertaking to the new SCIO and wind up the existing charitable unincorporated association or trust).

Instead, the existing charitable unincorporated association or trust must use a combination of other mechanisms provided by the 2005 Act in order to change legal form to a SCIO. In outline, members or charity trustees of the existing charitable unincorporated association or trust will:

- Apply to OSCR for the incorporation of a SCIO
- Apply to OSCR for the existing charitable unincorporated association or trust to be removed

from the Scottish Charity Register at the same time as the new SCIO is incorporated

- Following the removal of the existing charitable unincorporated association or trust from the Register, transfer all of its assets, liabilities and undertaking to the SCIO and thereafter wind up the existing unincorporated association or trust.

The procedure for a change of legal form for an unincorporated association or trust to SCIO is set out in more detail in Appendix 1.

There are a number of issues which impact on the process which an existing charitable unincorporated association or trust must follow to change its legal form:

- Under section 10 of the 2005 Act, OSCR cannot enter a body (including a SCIO) in the Scottish Charity Register if its name is the same as, or too like that of a charity. This means that the existing charitable unincorporated association or trust and the new SCIO cannot be entered in the Register at the same time with the same name.
- It is also not possible for two charities with the same charity number to be entered in the Register at the same time
- For the existing charitable unincorporated association or trust to be able to transfer its assets and liabilities to the new SCIO, the latter needs to be incorporated (that is, entered in the Scottish Charity Register).
- If the existing charitable unincorporated association or trust has entered into particular legal contracts, such as leases or service level agreements, it may take some time to transfer these to the new SCIO
- Similarly, an existing charitable unincorporated association or trust which obtains benefits on the basis of its charitable status, such as grant funding or rates relief, must consider how these benefits may be affected during the process of changing its legal form.

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If the existing charity does not wish the new SCIO to retain the same name and charity number, the change to legal form process is simpler. In such circumstances, provided the name of the proposed SCIO is not too like that of the existing charity, both the existing unincorporated association or trust and the new SCIO may be entered in the Register at the same time. This would enable the unincorporated association or trust to transfer its assets and liabilities to the new SCIO, and to resolve any legal or contractual issues, before it applies to OSCR for consent to dissolve and be removed from the Register.

4.2 Companies and industrial and provident societies: the conversion process

The 2005 Act sets out a specific process for existing charitable companies and charitable industrial and provident societies ('IPSs') to be converted into SCIOs (see Appendix 2 for full details of this process). This part of the legislation does not take effect until 1 January 2012, and therefore applications cannot be submitted to OSCR until that date.

The conversion of a company or IPS to a SCIO may only take place if:

- In the case of either the company or the IPS having a share capital, that share capital is fully paid up (in the majority of cases, charitable companies will not have a share capital)
- In the case of companies, the company has more than one member.

As with charitable unincorporated associations or trusts wishing to change legal form to a SCIO, the company or IPS considering conversion to a SCIO should first study the table in section 2.1 and seek advice as necessary to ensure that becoming a SCIO is the most appropriate step for the charity.

The application to convert a company or IPS into a SCIO follows in the main the same process as the application for the incorporation of a new SCIO (see section 3). The company or IPS wishing to convert into a SCIO must complete an Application for Conversion form (this will be available at www.oscr.org.uk by 1 January 2012) and, in addition to the documents set out in section 3, must submit it to OSCR with the following documents:

- A copy of the resolution of the company or IPS agreeing to its conversion into a SCIO, and
- A copy of the resolution of the company or IPS adopting the proposed constitution of the SCIO

These resolutions must be either a *special resolution* of the company or IPS, or a unanimous written resolution signed by or on behalf of all the members of the company or IPS entitled to vote on a special resolution. The resolutions should state the name of the company or IPS which wishes to convert, and both its charity number and company number or Financial Services Authority ('FSA') reference number (as appropriate). The FSA may also require an IPS to complete a Statutory Declaration which confirms the resolutions have been passed in line with legal requirements.

Before making a decision on the application for conversion, OSCR is required by the 2005 Act to consult Companies House or the FSA, for applications from charitable companies and IPSs respectively, and any other person it thinks would be appropriate.

In addition to the reasons for refusal of an application for the creation of a SCIO set out at section 3.2, OSCR may also refuse the application for conversion on the basis of any information provided by those it has consulted.

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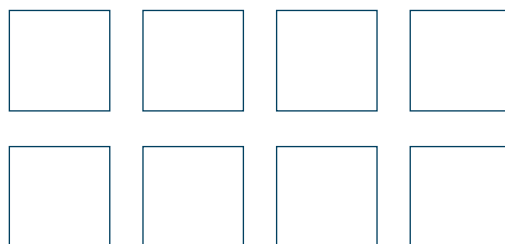
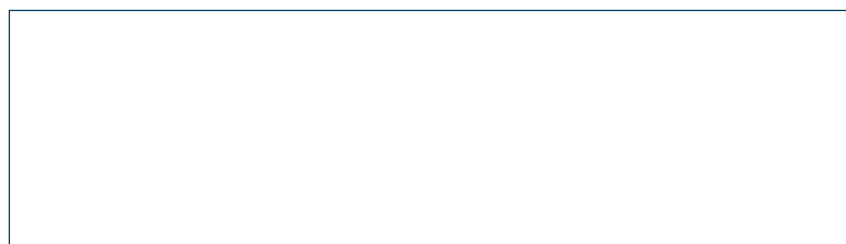
Why might other regulators object?

The following list, while not exhaustive, gives an indication of the types of situations in which information received by OSCR during consultation with Companies House or the FSA is likely to lead to a refusal of the application for conversion:

- where Companies House, the FSA or any other public body is already pursuing enforcement or prosecution action against the company or IPS which wishes to convert
- where it is in the public interest to refuse the conversion, for example, if the company or IPS which wishes to convert is attempting to avoid enforcement or prosecution action by making its application to OSCR
- where the company or IPS which wishes to convert is overdue in its submission of accounts or annual returns to Companies House or the FSA (as appropriate)
- where the company or IPS has already applied to Companies House or the FSA for voluntary dissolution and the process of dissolution is underway
- where Companies House or the FSA is aware that one of the proposed charity trustees of the new SCIO is disqualified under sections 69 and 70 of the 2005 Act from acting as a charity trustee
- where the company or IPS which wishes to convert is in liquidation or *administrative receivership*.

If OSCR is satisfied that the proposed SCIO meets the charity test (see section 3.2) and that (following consultation), there are no other grounds to refuse the application, OSCR will grant the application to convert the company or IPS into a SCIO.

If the application for conversion is refused, the charitable company or IPS has the right to seek a review of OSCR's decision following the same process set out in section 3.4 of this guidance.



5. Duties and requirements of a SCIO

5.1 Comparison of requirements for SCIOs and non-SCIO charities

As outlined previously, the SCIO will in general terms be regulated by OSCR in the same manner as any other charity entered in the Register. However, there are some key differences between the duties and responsibilities of a SCIO and those of other Scottish charities.

The table below summarises these key similarities and differences. Where the requirements are the same, we point to existing OSCR guidance publications which apply equally to SCIOs. Where there are differences, we highlight more detailed sections of this guidance which explore these differences in depth.

Please note that this table refers only to charity law; charities which are also subject to other areas of law, such as company law, may have additional duties.

Requirement	Applicable guidance and legislation	
	SCIO	Non-SCIO Charity
General duties of charity trustees	Guidance for Charity Trustees (s.66 of 2005 Act)	
Restrictions on the remuneration of charity trustees	Guidance for Charity Trustees (ss.67 and 68 of 2005 Act)	
Submission of Annual Return to OSCR	Annual Monitoring webpage (s.22 of 2005 Act)	
Charity accounting regulations	Scottish Charity Accounts Receipts & Payments Workpack Independent Examination Guidance (ss.44 and 45 of 2005 Act and the Charities Accounts (Scotland) Regulations 2006 (as amended))	
Providing accounts and/or constitution on request to any member of the public	Guidance for Charity Trustees (s.23 of 2005 Act)	

Requirement	SCIO	Non-SCIO Charity
Seeking consent to change name	Changing Your Charity's Name – Seeking OSCR's Consent (s.11 of 2005 Act)	
Seeking consent to change purposes	Changing Your Charity's Purposes – Seeking OSCR's Consent (s.16(2)(a) of 2005 Act)	
Notification to OSCR of changes made	Making Changes to Your Charity webpage (s.17 of 2005 Act)	
Benevolent fundraising	Benevolent Fundraising (ss.79 to 83 of 2005 Act and the Charities and Benevolent Fundraising (Scotland) Regulations 2009)	
Amalgamating with another body	Section 7.1 of this guidance (s.59-60 of 2005 Act)	Amalgamating Your Charity webpage (s.16(2)(b) of 2005 Act)
Seeking consent to dissolve or wind up	Section 7.3 of this guidance (Dissolution Regulations)	Dissolving Your Charity – Seeking OSCR's Consent (s.16(2)(c) of 2005 Act)
References to charitable status	Section 5.4 of this guidance (s.52 of 2005 Act)	References to Charitable Status (s.15 of 2005 Act and the Charities References in Documents (Scotland) Regulations 2007 (as amended))
Limited application of charity trustee duties to members	Section 5.2.1 of this guidance (s.51 of 2005 Act)	N/A

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Requirement	SCIO	Non-SCIO Charity
Member resolution required for amendment of constitution	Section 5.2.2 of this guidance (s.63 of 2005 Act)	N/A
Duty to keep and supply register of charity trustees	Section 5.3 of this guidance (General Regulations)	N/A
Duty to keep and supply register of members	Section 5.3 of this guidance (General Regulations)	N/A
Duty to hold meeting of members	Section 5.2.2 of this guidance (General Regulations)	N/A
Transfer of undertaking	Section 7.2 of this guidance (s.61 of 2005 Act)	N/A

5.2 Membership requirements

The members of a SCIO differ from those of any other Scottish charity in two main ways:

- Membership of a SCIO may not be transferred from one member to another
- Members of SCIOs are also subject to some of the general duties of charity trustees set out at section 66 of the 2005 Act.

Because members of a SCIO have statutory duties under the 2005 Act, both the SCIO and OSCR must be clear about who the members are at all times. The members themselves must also know that they are members in order to fulfil their duties under the 2005 Act; it is therefore not possible for a SCIO to define its membership, for example, as all those dwelling in a particular geographical area or belonging to a section of the community (although these conditions may be used as eligibility criteria).

Instead, a SCIO must maintain an up to date register of its members so that they are clearly identifiable and therefore their decision-making powers can be seen to have been properly exercised (see section 5.3 for more details on the register of members).

5.2.1 Duties of members

As stated above, SCIO members are subject to some of the general duties of charity trustees; specifically, they must:

- act in the interests of the SCIO, and
- seek, in good faith, to ensure the SCIO acts in a manner which is consistent with its charitable purposes.

If the members fail to comply with this duty, it may be treated as misconduct in the administration of the SCIO.

OSCR recognises that members may not be in the day to day management and control of the administration of the SCIO. In assessing whether SCIO members have met their legal duties, OSCR will look on a case by case basis at whether the members have properly exercised those particular powers given to them both by the SCIO’s constitution and the 2005 Act.

At a practical level, those powers are most likely to apply when members are considering changes to the constitution or taking part in elections of charity trustees. When exercising such powers, the members must act in the interests of the SCIO and seek to ensure that the SCIO continues to operate in line with its charitable purposes.

5.2.2 Meetings and resolutions

The 2005 Act requires the SCIO to hold a meeting of its members within 15 months of being entered in the Register and at least once every 15 months from then on. The SCIO must give both its members and its charity trustees at least 14 days’ notice of such meetings.

Meetings of SCIO members will provide them with an oversight of the charity's operations and, depending on the provisions of the constitution, are likely to be an opportunity for members to elect charity trustees, scrutinise accounts and vote on particular matters.

Members also have a key role in agreeing any amendments to the SCIO's constitution. The SCIO may only make amendments if a resolution is passed by its members in the following manner:

- By a two-thirds majority of those members voting at a general meeting of the SCIO, or
- Unanimously by the SCIO's members, otherwise than at a general meeting.

This means that the SCIO's membership has overall control of the governance structure of the charity, including agreeing the constitutional requirements for the appointment or removal of charity trustees, arrangements for holding meetings and provisions for the wind up of the SCIO.

The purposes of the SCIO may also only be altered by a resolution of the SCIO's members and subject to OSCR's prior consent (see our guidance publication, '[Changing Your Charity's Purposes](#)' for further details).

Any change to the SCIO's constitution must also be notified to OSCR. [OSCR's Notification of Changes Made \(SCIOs\) form](#) should be used to notify OSCR of any change to the constitution and must be submitted, together with the documentation outlined on the form and in the letter of consent (if applicable), within three months of the change taking effect.

5.3 Duty to keep registers of charity trustees and of members

5.3.1 Register of charity trustees

All SCIOs have a duty to keep a register of their charity trustees which must be updated within 28 days of any change being notified to the SCIO. The register must contain specific information about current charity trustees; where a charity trustee is a corporate body rather than a natural person, some additional information is required.

Additionally, the SCIO's register must also retain some information about former charity trustees for at least six years from the date the person ceased to be a charity trustee.

There is no set format for the register of charity trustees but it must contain the information summarised in the table below:

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Information required	Type of charity trustee		
	Current charity trustee (natural person)	Current charity trustee (corporate body)	Former charity trustee
Name	✓	✓	✓
Address	✓	✓	
Date of appointment	✓	✓	
Details of any office held	✓	✓	✓
Whether appointed by OSCR under s.70A of 2005 Act	✓	✓	
Any other name by which body is known		✓	
Name of principal contact		✓	
Charity and/or company number (if applicable)		✓	
Date on which he/she ceased to be a charity trustee			✓

5.3.2 Duty to provide a copy of the register of charity trustees

Any person may request a copy of the SCIO's register of charity trustees and, if the request is reasonable, will be entitled to be given a copy by the SCIO within 28 days. This provision aims to encourage transparency and public accountability of SCIOs as bodies in which the public has a legitimate interest. OSCR's general expectation is therefore that SCIOs should release this document rather than seek to withhold it.

In considering a request for a copy of the register, a SCIO should reflect on whether the request itself is reasonable, rather than whether the motivation for the request is reasonable.

Whether or not a request can be said to be reasonable will depend on the specific circumstances of each individual case. In general terms, however, OSCR considers the following to be examples of unreasonable requests:

- A request for the document if it is already publicly available, for example, on the SCIO's website
- A request for documents that the requester already has, for example, documents which have previously been provided by the SCIO to the requester.

Neither the 2005 Act nor the General Regulations entitle SCIOs to charge a fee to cover the cost of supplying this register, nor do they stipulate whether the register must be submitted in electronic or hard copy form. As a matter of good practice, the SCIO should take into account any

particular preference the requester has expressed about how the register is to be supplied.

If the person making the request is not a charity trustee, the SCIO is permitted to omit the address of any of its charity trustees. The SCIO may also omit the name of any of its charity trustees only if it is satisfied that disclosing that information is likely to jeopardise the safety or security of any person or premises.

SCIOs should note, however, that they are required to publish in the trustees' annual report to their annual accounts the names of charity trustees who have served during the financial year (unless OSCR has granted an exemption), and that they have a duty under section 23 of the 2005 Act to provide a copy of those accounts to any person making a reasonable request for them.

5.3.3 Register of members

Where the members of a SCIO are not identical to its charity trustees (that is, where it has a two-tier structure), it also has a duty to keep a register of its members, which is to be updated within 28 days of any change being notified to the SCIO.

As with the register of charity trustees, the register of members must contain additional information for any member which is a corporate body. The register of members must also retain some information about former members for at least six years from the date the person ceased to be a member of the SCIO.

There is no set format for the register of members but it must contain the information summarised in the table below:

Information required	Type of member		
	Current member (natural person)	Current member (corporate body)	Former member
Name	✓	✓	✓
Address	✓	✓	
Date of registration as a member	✓	✓	
Any other name by which body is known		✓	
Name of principal contact		✓	
Charity and/or company number (if applicable)		✓	
Date on which he/she ceased to be a member			✓

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5.3.4 Duty to provide a copy of the register of members

Only a member or charity trustee of a SCIO may request a copy of that SCIO's register of members. If the request is reasonable (see section 5.3.2), the member or charity trustee will be entitled to be given a copy of the register by the SCIO within 28 days; again, the SCIO is not entitled to charge a fee for supplying the document.

If the person making the request is a member but not a charity trustee, the SCIO is permitted to omit the address of any of its members from the copy of the register it supplies.

Before supplying any information on its members, the SCIO may wish to consider any statutory requirements which apply regarding the handling of personal data, balanced with the good practice approach of operating an open, transparent organisation in which members can easily communicate with one another about key issues. Guidance in relation to data protection is available from the [Information Commissioner's Office](#).

5.4 References to SCIO Status

Section 52 of the 2005 Act sets out how SCIOs must refer to their name and their status as a SCIO on a number of specified documents which are issued or signed by the SCIO or on its behalf. This includes:

- Any of the specified documents which are hosted on a webpage of a website operated by or on behalf of the SCIO
- Any of the specified documents which are issued or signed by a third party on the SCIO's behalf, for example, by a solicitor who is acting on the SCIO's behalf or an accountant who is requesting payment from another body on behalf of the SCIO.

SCIOs and their agents are required by the 2005 Act and the General Regulations to state on the specified documents the SCIO's name and, if the name does not include the terms 'Scottish Charitable Incorporated Organisation' or 'SCIO' (with or without a full stop after each letter), the fact that it is a SCIO.

As SCIOs are a new legal form, it is likely that they will be relatively unknown amongst the general public in the short to medium term. OSCR therefore also recommends that all SCIOs state their legal form as 'Scottish Charitable Incorporated Organisation' rather than using the acronym, 'SCIO'.

You will note from the table in section 5.1 above that the requirements regarding references to charitable status set out at section 15 of the 2005 Act do not apply to SCIOs as they apply to any other charity on the Register.

However, as a matter of good practice, OSCR strongly recommends that the specified documents also state the SCIO's Scottish Charity Number. This will enable the SCIO to be easily recognised by members of the public, funders and contractors as a regulated Scottish charity in which they can have confidence.

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Which documents must comply?

The documents (including documents on webpages of a website operated on behalf of the SCIO) on which the SCIO and its agents must include its name and the fact that it is a SCIO (if applicable) are:

- Business letters and emails
- Advertisements, notices and official publications
- Any document which solicits money or other property for the benefit of the SCIO
- Promissory notes, endorsements and orders for money or goods
- Bills rendered
- Invoices, receipts and letters of credit
- Statements of account prepared in accordance with either regulation 8, 9 or 14 of the Charities Accounts (Scotland) Regulations 2006 (as amended)
- Educational or campaign documentation
- Conveyances which provide for the creation, transfer, variation or extinction of an interest in land
- Contractual documentation
- Bills of exchange, other than cheques
- The home web page on a website operated by or on behalf of the SCIO.

equally useful general guidance for SCIOs as for other charities in the Register.

SCIOs are required to comply with their duty to state their name and status (if applicable) on the specified documents from the date on which they are entered in the Register and so become constituted as a SCIO. Unlike the situation with other non-SCIO charities, there is no period of grace for SCIOs to comply with this requirement. The charity trustees of new SCIOs must therefore be mindful of this duty and take appropriate steps to ensure the SCIO is able to comply with its duties in relation to name and status as soon as possible after being entered in the Register.

It is a criminal offence for a SCIO's charity trustees or a person acting on the SCIO's behalf to issue or sign any of the specified documents which do not include the required information or to authorise such actions. Any person found guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale, currently £1,000.

In order to protect the SCIO brand, OSCR has power to direct any body (or any person representing it) which is not a SCIO to stop representing itself as a SCIO. If that body or person fails to comply with the direction, OSCR may apply to the Court of Session to interdict the body or person from representing the body as a SCIO.

These documents are very similar to those which non-SCIO charities must ensure comply with section 15 of the 2005 Act. OSCR's guidance publication, '[References to Charitable Status](#)' explains in further detail which types of documents may have to comply with requirements and highlights additional documents which should comply as a matter of good practice. Although the publication was not written with the regulation of SCIOs in mind, it provides

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6. SCIOs which no longer meet the charity test

Like any other charity, a SCIO's charitable status is dependent upon it continuing to meet the charity test.

However, section 30 of the 2005 Act, which relates to non-SCIO charities which no longer meet the charity test, does not apply to SCIOs. The Dissolution Regulations instead make provisions to allow OSCR to address a SCIO's failure to meet the charity test in a controlled and orderly way, as outlined below.

6.1 OSCR's powers of direction

If, following inquiries, it appears to OSCR that a SCIO does not meet the charity test, it must direct the SCIO:

- Within a specified period of time, to take such steps as OSCR considers necessary for the purposes of meeting the charity test, or
- Within a specified period of time, to make an application to OSCR for the solvent or insolvent dissolution of the SCIO (see section 7.3).

A SCIO which fails to take steps to meet the charity test as directed will then receive a further direction from OSCR to make an application for the solvent or insolvent dissolution of the SCIO.

OSCR can vary or revoke such directions. This allows OSCR to extend or shorten the timescales specified in the directions, to alter the steps it requires the SCIO to take in order to meet the charity test or to withdraw the direction if new information is received.

If a SCIO disagrees with any of these directions, it has the right to seek a review of OSCR's decision following the same process set out in section 3.4 of this guidance.

6.2 Powers of the Court of Session

If a SCIO fails to comply with either direction to apply to dissolve itself, OSCR must apply to the Court of Session for an order. After considering the evidence and any defence submitted by the SCIO, the Court may deal with the SCIO and its charity trustees in any way it thinks fit.

The Court may also make any order it thinks appropriate in the circumstances, including ordering the SCIO to comply with the directions by OSCR to apply to dissolve itself, or exercising any of its powers set out in the 2005 Act. These powers include:

- Appointing a judicial factor to manage the affairs of the SCIO
- Suspending or removing any person who is in the management or control of the SCIO
- Restricting the financial transactions of the SCIO.

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7. The end of a SCIO

As noted previously, a SCIO becomes a legal entity only when it is entered in the Register and ceases to exist if it is removed from the Register. The SCIO cannot choose to convert to another legal form and cannot seek removal from the Register other than by dissolving itself (see section 7.3 below).

However, in addition to dissolving itself, a SCIO which wants its activities to carry on in another form may choose to cease its operations by either amalgamating with another SCIO or transferring its undertaking to a new SCIO (see sections 7.1 and 7.2 below).

7.1 Amalgamating with another SCIO

Section 59 of the 2005 Act makes provision for the amalgamation of a SCIO with one or more SCIOs. Please note that a SCIO may not amalgamate with any other type of body (even although that other body is a charity). This part of the legislation does not take effect until 1 January 2012, and therefore applications cannot be submitted to OSCR until that date.

The 2005 Act defines the amalgamation of SCIOs as two or more SCIOs ('the old SCIOs') ceasing to exist and a new SCIO being constituted and entered in the Register as their successor.

If one SCIO wishes to wind up and transfer its assets to an existing SCIO, OSCR will process the application as a dissolution or a transfer of undertaking (see 7.2 or 7.3 below) rather than an amalgamation. This is because the action does not result in a new SCIO being created.

Applying to amalgamate with another SCIO

If two or more old SCIOs wish to amalgamate, they must submit to OSCR an Application for Consent to Amalgamate (SCIOs) (this will be available at www.oscr.org.uk by 1 January 2012) which includes:

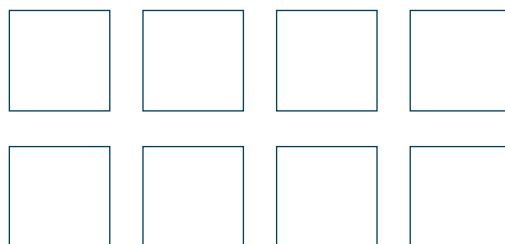
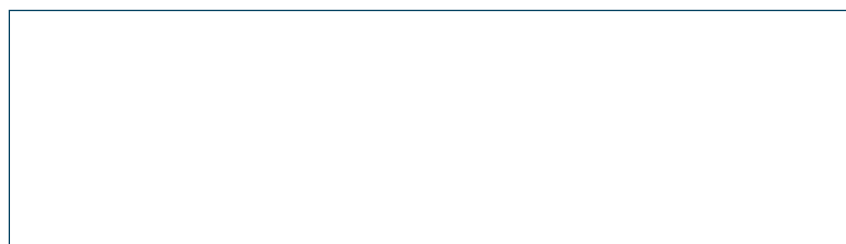
- The name and Scottish Charity Numbers of the old SCIOs which wish to amalgamate
- The name of the new SCIO
- The contact details of the person making the application
- The proposed principal office of the new SCIO
- The proposed effective date of the amalgamation. Please note that there is no statutory notice period for amalgamations of SCIOs, as there is for the amalgamation of non-SCIO charities.

The application must also be accompanied by:

- Copies of the constitutions of each of the old SCIOs
- A copy of the proposed constitution of the new SCIO
- A copy of a resolution from each of the old SCIOs approving the proposed amalgamation
- A copy of a resolution from each of the old SCIOs adopting the proposed constitution of the new SCIO.

Both of the resolutions must be passed by a two-thirds majority of those voting at a general meeting of the old SCIOs, or unanimously by the old SCIOs' members otherwise than at a general meeting.

OSCR will assess the proposed constitution and activities of the new SCIO in the same manner as an application for the creation of any other new SCIO (see section 3).



If OSCR decides the proposed new SCIO will pass the charity test, that its constitution contains the required elements and that its name is not objectionable, OSCR will enter the new SCIO in the Scottish Charity Register.

The new SCIO will then become a corporate body with a new charity number. The new SCIO's constitution and name are as specified during the application process and its first members are the members of the old SCIOs immediately before the new SCIO was entered in the Register.

The new SCIO must at this point take steps to formally appoint to their positions those three or more persons who were named during the application process as the proposed charity trustees. The process for appointing these charity trustees will be set out in the SCIO's constitution

The new SCIO's entry on the Register will state:

- the fact the body is a SCIO
- the date on which it was entered in the Register, and
- the fact that it was created following the amalgamation of the old SCIOs, which will each be named.

The old SCIOs will simultaneously be removed from the Register. At that point, all property, rights and liabilities of the old SCIOs transfer automatically to the new SCIO and the old SCIOs are dissolved. As outlined at section 3.3, the new SCIO may wish to take steps to ensure that there are no doubts as to their ownership of heritable property by registering a Notice of Title with the Registers of Scotland.

If the application for amalgamation is refused, the applicant SCIOs have the right to seek a review of OSCR's decision following the same process set out in section 3.4 of this guidance.

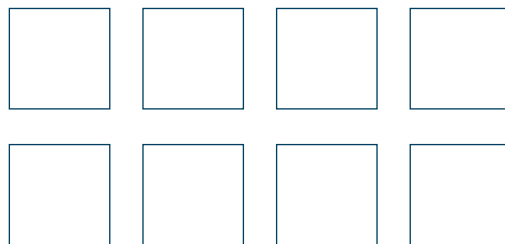
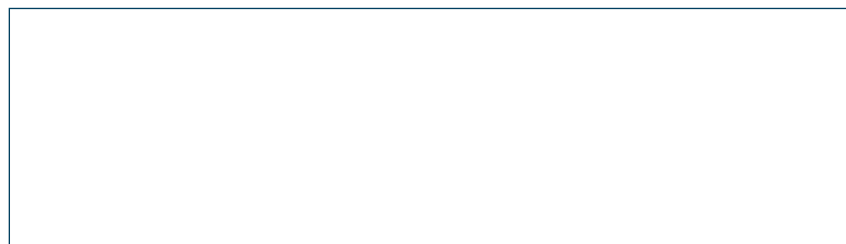
7.2 Transfer of a SCIO's undertaking to another SCIO

A SCIO ('the transferor SCIO') which no longer wishes to continue to exist, but which does not want its activities to cease, may choose under section 61 of the 2005 Act to transfer its undertaking to another SCIO. This part of the legislation does not take effect until 1 January 2012, and therefore applications cannot be submitted to OSCR until that date.

Transferring a SCIO's undertaking involves the transfer of all of the transferor SCIO's property, rights and liabilities to another SCIO ('the transferee SCIO'), followed by the wind up of the transferor SCIO. This action differs from the wind up of a SCIO (see section 7.3) which only involves the transfer of any surplus assets, but not any rights or liabilities, to another body which has similar purposes to the SCIO (whether or not that body is a SCIO).

If a SCIO wishes to transfer its undertaking to another SCIO, it must pass a resolution agreeing to the transfer of undertaking to a specified SCIO. A copy of that resolution must then be sent to OSCR together with an Application to Transfer Undertaking form (this will be available at www.oscr.org.uk by 1 January 2012) and a copy of a resolution of the transferee SCIO which confirms its acceptance of the transfer. The resolutions of both the transferor and transferee SCIO must be passed by a two-thirds majority of those voting at general meetings of each SCIO, or unanimously by the SCIOs' members otherwise than at a general meeting.

The resolution of the transferor SCIO does not take effect until OSCR confirms the resolution, therefore the transferor SCIO must not proceed with the transfer of undertaking until OSCR has provided it with written notice that the resolution is in order.



In determining whether the resolution should be confirmed, some of the issues OSCR will consider include:

- Whether the transferor SCIO has the power to transfer its undertaking
- Whether the transfer of the assets is in accordance with the terms of the transferor SCIO's constitution, in particular the dissolution clause
- Whether the resolutions of the transferee and transferor SCIOs were passed in accordance with the procedures set out in their constitutions and in the 2005 Act
- Whether there are any other matters which would affect the transfer of the assets, for example, a complaint about the transfer which OSCR is in the process of investigating.

If OSCR is satisfied with the proposals contained within the resolution of the transferor SCIO, it will confirm the resolution and give notice to the transferor SCIO of that decision. At that point:

- All property, rights and liabilities of the transferor SCIO transfer to the transferee SCIO in accordance with the resolution
- OSCR will remove the transferor SCIO from the Register and it is dissolved.

As outlined at section 3.3, the transferee SCIO may wish to take steps to ensure that there are no doubts as to their ownership of heritable property by registering a Notice of Title with the Registers of Scotland.

If OSCR does not confirm the resolution to transfer the undertaking, it will advise the transferor SCIO of the reasons for its decision and provide guidance if appropriate on the steps the SCIO may take to have a new resolution confirmed. If OSCR has any serious concerns in

relation to the proposed transfer, it may also be necessary for OSCR to use its powers under section 31 of the 2005 Act in order to protect the property of the transferor SCIO.

A decision by OSCR not to confirm a SCIO's resolution to transfer its undertaking is not reviewable.

7.3 Dissolving a SCIO

A SCIO may only apply to OSCR to be removed from the Register, and therefore dissolve itself, by making an application for a solvent or an insolvent dissolution (see section 7.3.1 and 7.3.2 below) under the Dissolution Regulations.

Section 16(2)(c) of the 2005 Act, which sets out the requirement for non-SCIO charities to seek OSCR's consent to wind up or dissolve, does not apply to SCIOs. Unlike the situation for non-SCIO charities, there is no requirement for SCIOs to make the application for solvent or insolvent dissolution within a specified timescale of the proposed dissolution date. This is because OSCR, rather than the SCIO itself, carries out the dissolution of the SCIO by removing it from the Register.

Additionally, SCIOs may not apply to OSCR for removal from the Register under section 18 of the 2005 Act, which is the section which gives non-SCIO charities the right to seek removal from the Register so that they continue to operate without charitable status. This is because a SCIO exists only while it is entered in the Register; it cannot continue to operate without charitable status.

Whether a SCIO applies to be dissolved using the solvent or insolvent procedure, its members are not liable to contribute to the assets of the SCIO when it is wound up.

7.3.1 Dissolving a solvent SCIO

A SCIO which is solvent may apply to OSCR to be removed from the Register, and therefore dissolved, by submitting the documents listed at Appendix 3.

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When OSCR receives the completed application and required documents, it will publish the Notice of Application for Dissolution submitted with the application on its website within 14 days. If any elements of the application are incomplete, OSCR will advise the SCIO which documents are still required and delay publication until after they have been received.

The Notice of Application for Dissolution will be published on OSCR's website for 28 days, during which time any person may contact OSCR to object to or offer further information regarding the dissolution. This period of time offers some protection to third parties who have been contracting with or otherwise have a relationship with the SCIO by offering them the opportunity to object to the dissolution, for example, if the SCIO owes them outstanding debts.

Once the 28 day publication period has expired, OSCR must make its decision on the SCIO's application to dissolve within 21 days. There are three decisions open to OSCR:

- To consent to the application
- To consent to the application subject to any condition (the SCIO must provide its written acceptance of any condition before the dissolution can proceed), or
- To refuse the application.

If OSCR consents to the application to dissolve, the SCIO will be free to wind up its affairs within a period of time agreed with OSCR. Once it has done so, it must notify OSCR by providing the following information:

- Evidence that any surplus assets have been passed to the body (or bodies) named in the resolution of the SCIO's members
- Evidence that any other condition of consent has been fulfilled

- Confirmation from the SCIO's charity trustees that the SCIO has settled all outstanding liabilities and that it has no remaining assets.

If OSCR is satisfied that the SCIO has wound up its affairs in line with the requirements of the 2005 Act and any conditions of consent, it will remove the SCIO from the Register and the SCIO will therefore be dissolved.

If the application for the solvent dissolution of a SCIO is refused, the SCIO has the right to seek a review of OSCR's decision following the same process set out in section 3.4 of this guidance.

7.3.2 Dissolving an insolvent SCIO

A SCIO which is insolvent may, if it has outstanding debts of at least £1,500, apply to OSCR to be removed from the Register and therefore dissolved. A resolution that the SCIO's estate be sequestrated must accompany this application.

While OSCR deals with the initial application to dissolve and then the removal of the SCIO from the Register at the end of the process, the decision on whether the SCIO shall be sequestrated and the processing of the sequestration are dealt with by the Accountant in Bankruptcy (AiB).

AiB is an Agency of the Scottish Government which supervises the process of insolvency in Scotland and which, in some instances, acts as Trustee in Bankruptcy. In the case of an insolvent SCIO which applies to OSCR to be dissolved, AiB will always act as the Trustee in Bankruptcy; the SCIO is not permitted to nominate its own choice of trustee.

The estate of a SCIO may only be sequestrated as outlined in this section or in section 7.4.

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Please note that there is currently no provision to dissolve an apparently insolvent SCIO which has outstanding debts of less than £1,500. Insolvent SCIOs which are in that position are urged to seek independent advice and, if possible, to come to an agreement with their creditors to settle their outstanding debts. This may allow the SCIO to apply for a solvent dissolution (see section 7.3.1).

An insolvent SCIO with debts of at least £1,500 may apply to OSCR to be dissolved, by submitting the documents listed at Appendix 4.

When OSCR receives the completed application and required documents, it will publish the Notice of Application for Dissolution submitted with the application on its website within 14 days. If any elements of the application are incomplete, OSCR will advise the SCIO which documents are still required and delay publication until after they have been received.

The Notice of Application for Dissolution will remain on OSCR's website until the sequestration of the SCIO is awarded or refused; the decision on the sequestration is likely to be made within approximately four to six weeks of the Notice being published.

If within 14 days of having published the Notice of Application for Dissolution on its website, OSCR is satisfied that the SCIO has supplied all the required documents, it will pass the application to AiB to make a decision on whether the SCIO shall be sequestered.

At the same time, OSCR will notify the SCIO it has made the referral and advise the SCIO to pay the debtor application fee direct to AiB. The fee is currently £200 (this is set by the Bankruptcy Fees (Scotland) Regulations 1993) (as amended)) and must be paid to AiB by post, telephone, bank transfer or in person within 21 days of AiB receiving the application from OSCR (see Appendix 5

for details of how to pay this fee). AiB cannot process the application until the fee is received, therefore the applicant SCIO should endeavour to pay this sum to AiB as soon as possible.

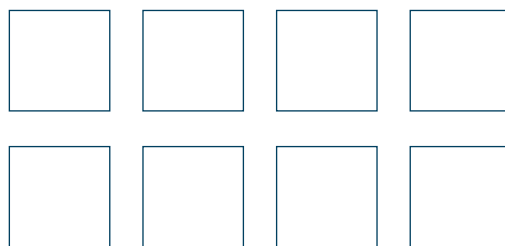
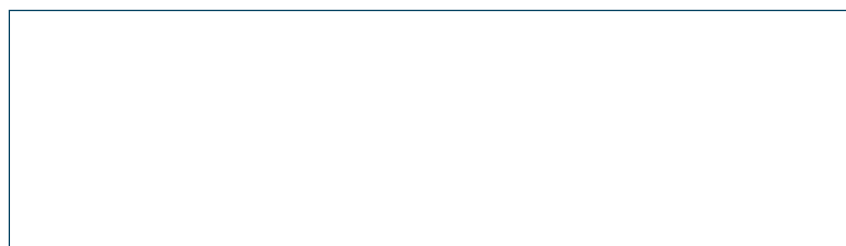
If the fee has not been paid within this timescale, AiB must refuse the application to award sequestration. The fee is non-refundable, even if the application is refused by AiB, as it meets some of the administrative costs of assessing and processing the application.

AiB, on receipt of the fee, will then assess the application to determine if the SCIO is insolvent with outstanding debts of at least £1,500. If it is satisfied this is the case, the AiB will award sequestration of the SCIO's estate and notify OSCR and the SCIO of its decision. OSCR will in turn publish the award of sequestration on its website and remove the Notice of Application for Dissolution. Details of the sequestration will also be entered into AiB's Register of Insolvencies which can be accessed at www.aib.gov.uk.

The sequestration process will take a minimum of 15 months to complete, although it may take considerably longer depending on the number or type of assets the SCIO holds, and depending on how easily the Trustee in Bankruptcy can access the information he or she requires.

In summary, the process of sequestration will involve the Trustee in Bankruptcy taking the following steps:

- establishing the SCIO's assets and liabilities
- publishing a notice of the sequestration in the Register of Insolvencies (this can be accessed at www.aib.gov.uk)
- holding a meeting of the creditors (if AiB thinks this appropriate)
- realising the estate and making payments to creditors if there are sufficient funds to do so



Once the sequestration of the estate is complete, AiB will transfer any surplus assets to the body named in the resolution of the SCIO's members (see Appendix 4). AiB will then notify OSCR that the sequestration is complete and provide copies of the final accounts of the estate. The Trustee in Bankruptcy will remain in office until this point.

OSCR will then remove the SCIO from the Register and the SCIO will therefore be dissolved.

7.4 Creditor-led sequestration

As well as an insolvent SCIO itself taking steps to wind up its estate, the Dissolution Regulations make provision for a SCIO's creditors and other third parties (a temporary administrator or a member State liquidator appointed in main proceedings) to petition the sheriff court for the sequestration of the SCIO if they are owed at least £3,000 by the SCIO. This offers third parties (most commonly creditors) which contract with the SCIO a route by which they can recover debts owed to them in a fair manner or otherwise instigate the orderly wind up of the SCIO's estate.

If a creditor or other third party wishes to lodge a petition in court for the sequestration of a SCIO's estate, he or she must first notify both OSCR and the SCIO of this intention. The notification must be delivered between 7 and 14 days before the petition is due to be lodged, and the sheriff cannot award sequestration without proof that OSCR and the SCIO have been notified of the petition. The SCIO against whom the petition has been lodged will be given an opportunity to challenge the petition as part of the court procedure.

If the petition is successful and sequestration of the estate is awarded by the court, the Trustee in Bankruptcy who has been appointed must notify OSCR of the award. OSCR will at that point publish a notice of the award of sequestration on its website and state that the SCIO will be dissolved once the sequestration is complete. The process and

timeframe of creditor-led sequestrations are on the whole the same as when a SCIO applies for its own sequestration (see section 7.3.2).

In the case of a sequestration of a SCIO's estate which is the result of a third party's petition, the Trustee in Bankruptcy need not be AiB. The third party lodging the petition instead has the option of nominating a Trustee in Bankruptcy who may be an insolvency practitioner or AiB. If the third party does not nominate a Trustee in Bankruptcy, the court will appoint AiB to this role.

Once the sequestration of the estate is complete, the Trustee in Bankruptcy will transfer any surplus assets to another body (or bodies) which has similar purposes to those of the SCIO as set out in its constitution. If AiB is acting as the Trustee in Bankruptcy, it will ask the SCIO to identify this recipient body and then seek confirmation from OSCR that the purposes of the recipient body are sufficiently similar to those of the SCIO. In the event that AiB has not been nominated as the Trustee in Bankruptcy, the insolvency practitioner who is appointed to that role is under a duty to ensure the assets are transferred to an appropriate recipient body; again, he or she may wish to do so in consultation with OSCR.

Once any surplus assets have been transferred in this manner, the Trustee in Bankruptcy will notify OSCR that the sequestration is complete and provide copies of the final accounts of the estate. OSCR will then remove the SCIO from the Register and the SCIO will therefore be dissolved.

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8. Useful contacts

We provide a lot of information and guidance on our website www.oscr.org.uk. As the regulator, we cannot advise you if becoming a SCIO is right for you. However, you can get further support and information from:

- Your local Third Sector Interface, which are organisations which offer support to voluntary organisations - www.voluntaryactionsotland.org.uk
- Scottish Council for Voluntary Organisations (SCVO) has lots of useful information about constitutions, charitable status and organisational structures. Contact its Information Service on 0800 169 0022 or go to the Governance section of its website – www.scvo.org.uk
- The Scottish Government's website has an Enterprising Third Sector Organisations Zone which gives details of help and practical support available – www.scotland.gov.uk
- If you want professional legal advice on becoming a SCIO, you can find a solicitor or law firm by using the 'Find a Solicitor' section of the Law Society of Scotland website – www.lawsocietyofscotland.org.uk – you can search by name, area of work or accredited specialism.
- If you have any questions about tax, contact the HMRC Charities Helpline on 0845 302 0203 or go to www.hmrc.gov.uk/charities
- If you have any questions about sequestration, contact the Accountant in Bankruptcy on 0845 762 6171 or go to www.aib.gov.uk
- If you have any queries about company law or regulation, contact Companies House on 0303 1234 500 or go to www.companieshouse.gov.uk
- If you have any queries about IPSs, contact the Financial Services Authority on 0845 606 9966 or go to www.fsa.gov.uk

9. Glossary

Accrued accounts

Accounts prepared using the accruals basis allocate the costs or income of a particular activity according to when the liability is incurred or when there is entitlement or certainty about income. This is not necessarily the date on which money is received or paid out. Accounts prepared using the accruals basis must be prepared in accordance with the methods and principles of the Accounting and Reporting by Charities: Statement of Recommended Practice (the 2005 Charities SORP). See the ‘Scottish Charity Accounting’ page on www.oscr.org.uk for further details.

Administrative receivership

The situation in which a receiver is appointed to a body to take over responsibility for that body’s property. The receiver secures the body’s assets and may realise those assets and/or manage the affairs of the body in order to settle the body’s outstanding debts.

Charity trustee

A person who has the general control and management of the administration of a charity. A charity may refer to its charity trustees in a number of ways including management committee members, directors and board members.

Corporate body

A legal entity which results from one or more persons acting together as a group and on whom corporate status has been confirmed by law. The entity has a separate legal identity from the individual members’ identities. Corporate bodies have, on the whole, the same status as a natural person. For example, the corporate body has many of

the same rights, protections, privileges, responsibilities and liabilities as a natural person would under the law. It can enter into contracts, employ staff, incur debts, own property, sue and be sued.

Creditor

A person to whom money is owed.

Debtor

A person who owes money.

To expend (property)

To spend or use up.

Governing document

The document which establishes a body and states its charitable purposes. Depending on the legal form of the body, the governing document may be referred to as a constitution, Articles of Association, trust deed or rules.

Heritable property

Land and buildings.

Industrial and provident society

A registered society within the meaning of the Industrial and Provident Societies Act 1965 (c.12). Industrial and provident societies are registered with the Financial Services Authority (FSA).

Insolvent

The state of being unable to pay debts owed as and when they fall due.

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Legal entity

An entity which is recognised by the law; this may be a natural person or a corporate body.

Legal personality

A legal status enabling a body other than a natural person to enter into certain legal transactions such as contracts.

Liquidation

The process by which a company (or part of a company) is brought to an end, and the assets and property of the company are redistributed.

Natural person

A human being as distinguished from a corporate body.

Quorum

The minimum number or proportion of persons with voting rights (members, charity trustees or their proxies if applicable) that must be present or represented at a meeting to make the proceedings of that meeting valid.

Receipts and payments accounts

A simple form of accounting that consist of a summary of all monies received and paid via the bank and in cash by the charity during its financial year, along with a statement of balances. See the 'Scottish Charity Accounting' page on [OSCR's website](#) for further details.

Resolution

A formal decision made at a meeting, typically after taking a vote.

To restore (a body to a register)

To legally recreate a dissolved body with the effect that it is deemed to have continued in existence as if it had not been dissolved.

Sequestration

Sequestration is the Scottish legal term for bankruptcy and is the process for the recovery of unpaid or overdue debts. During sequestration, the whole of the estate (including funds and other assets) of a person who is insolvent is removed from their control. The estate legally transfers to the Trustee in Bankruptcy whose duty it is to realise the estate for the benefit of the creditors. Following sequestration, the debtor no longer has any duty to pay any of the debts accumulated up to the date of the sequestration.

Solvent

The state of being able to pay debts owed as and when they fall due.

Special resolution

A special resolution is a resolution which must be passed in a particular manner in line with the requirements of the applicable legislation. References to special resolutions in this guidance mean:

- In the case of companies, a special resolution as defined in section 283 of the Companies Act 2006
- In the case of industrial and provident societies, a special resolution as defined in section 52(3) of the Industrial and Provident Societies Act 1965 (c.12).

Succession

The action or process of inheriting property etc.

Appendix 1

Changing legal form: unincorporated associations and trusts

The following procedure may only be used where the unincorporated association or trust has the power to wind up and transfer its assets to the new SCIO. If this is not the case, the unincorporated association or trust may instead have to apply to OSCR for a Charity Reorganisation Scheme; please contact OSCR to discuss this process in more detail or read our [Charity Reorganisation Guidance](#).

The process of changing legal form from an unincorporated association or trust to a SCIO consists of two main stages; an application for the incorporation of a new SCIO, and an application under section 18 of the 2005 Act to remove the existing unincorporated association or trust from the Scottish Charity Register.

1. In summary, the stages of the change to legal form process are as follows:

Two or more individuals will submit to OSCR a Change to SCIO Application (Stage 1) form (available on the [Scottish Charitable Incorporated Organisations](#) page of OSCR's website) together with:

- a copy of the proposed SCIO constitution (including the required elements described in Section 3.1)
- a copy of the existing charity's constitution
- Trustee Declaration forms for the proposed charity trustees of the new SCIO (there must be at least 3 charity trustees)
- minutes of the meeting of the existing unincorporated association or trust agreeing to change its legal form
- any outstanding compliant accounts of the existing charity due to be filed with OSCR at the point of making the application

It is likely that the individuals who make this application will be the charity trustees of the existing unincorporated association or trust. If the application is successful, they will become the first members of the new SCIO.

2. The Change to SCIO Application (Stage 1) form includes:

- All information required for an application to incorporate a new SCIO, as set out in section 3.1.
- A statement of the assets and liabilities of the existing charity at the point of making the application. This information is required because any body which is removed from the Register remains under a duty to apply its property at the time of removal for its charitable purposes, and OSCR is required to monitor whether this duty has been fulfilled (in this case, until all the assets are transferred to the new SCIO). Please see [OSCR's publication, Guidance on OSCR Monitoring](#) under Section 19, for more detail.
- A statement outlining how the existing charity proposes to transfer these assets and liabilities to the new SCIO once it is incorporated (should the application be successful), and whether there are any known impediments to the transfer.

3. The application to create a new SCIO will be assessed in the same way as described in section 3. If OSCR is satisfied that the proposed SCIO will meet the charity test and that its constitution contains the required elements outlined in section 3.1, it will write to the applicant giving its approval in principle to the granting of charitable status to the SCIO, pending the removal of the existing unincorporated association or trust from the Register. If OSCR refuses the application, the applicants have the right to seek a review as set out in section 3.4 above.

4. The existing charitable unincorporated association or trust will then submit to OSCR the Change to SCIO

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Application – Removal from Register (Stage 2) form (available on the [Scottish Charitable Incorporated Organisations](#) page of OSCR's website). This is the existing charity's formal request to be removed from the Register under section 18 of the 2005 Act.

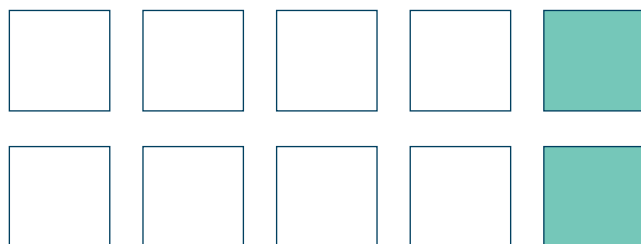
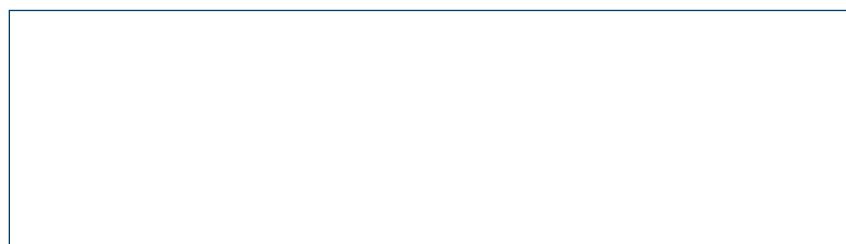
5. Within 28 days of receipt of the Change to SCIO Application – Removal from Register (Stage 2) form, OSCR will remove the existing unincorporated association or trust from the Register. At the same time, it will enter the new SCIO in the Register and so the SCIO will become a corporate body. This will enable the new SCIO to retain the same name and charity number as the existing unincorporated association or trust.
6. The existing unincorporated association or trust may then transfer its assets to the new SCIO. Please note that transferring certain assets, such as stocks, shares and heritable property, and certain liabilities, such as pension liabilities, can be a complex and lengthy process, and these issues are for the existing unincorporated association or trust to resolve in line with independent advice if appropriate.

7. Once the transfer of assets and liabilities is complete, the existing unincorporated association or trust must provide evidence of this transfer to OSCR. The evidence required will be dependent on the particular circumstances, but in general will include information from the unincorporated association or trust such as:

- closing bank statements
- final accounts
- the date on which the transfer was complete and the date on which the unincorporated association or trust was wound up.

The existing unincorporated association or trust remains under a duty to apply any assets it held at the point of its removal from the Register for charitable purposes and to report to OSCR on those assets until they are transferred to the new SCIO.

8. If OSCR is satisfied that the transfer of assets and liabilities has been completed as agreed during the application process, the change of legal form will be complete.



Appendix 2

Conversions to SCIO form: companies and industrial and provident societies

As the conversion of the company or IPS into a SCIO involves the cessation of one corporate body and the creation of another, there are a number of steps to be taken before the conversion can fully take effect:

1. The company or IPS will submit to OSCR an Application for Conversion form (this will be available at www.oscr.org.uk by 1 January 2012), together with:
 - the documents set out at section 3.1 of this guidance, and
 - a copy of both of the resolutions of the company or IPS agreeing to the conversion and adopting the proposed SCIO constitution (as outlined at section 4.2).
2. OSCR will check to ensure that the application is complete, that all required documents have been submitted, and that the correct procedures have been followed by the company or IPS in making the resolutions (as outlined at section 4.2).
3. In assessing the Application for Conversion, OSCR must consider:
 - whether the proposed new SCIO will pass the charity test (see section 3)
 - whether the proposed constitution contains the required elements (see section 3.1)
 - whether the proposed name is objectionable (see section 3), and
 - whether there are any grounds to refuse the application following consultation with Companies House, FSA or any other appropriate person (see section 4.2).
4. If OSCR grants the Application for Conversion, it will add a note to the entry on the Scottish Charity Register for the existing company or IPS stating that it is to be converted into a SCIO (see section 4.2 for details of the applicant's rights if an application is refused).
5. OSCR will then send the following documents to Companies House or the FSA (as appropriate):
 - a copy of the Register entry of the company or IPS showing that it is to be converted into a SCIO, and
 - a copy of both of the resolutions of the company or IPS agreeing to the conversion and adopting the proposed SCIO constitution (as outlined at section 4.2).
6. Companies House or the FSA (as appropriate) will register the resolutions and cancel the registration of the company or IPS which wishes to convert. Once this has been done, the company or IPS is automatically converted into a SCIO. Its name and constitution will be those which were specified during the application process and its first members will be the members of the company or IPS immediately before the conversion took place. At this point, all property, rights and liabilities of the converting company or IPS become the property, rights and liabilities of the new SCIO.
7. Companies House or the FSA (as appropriate) will then notify OSCR that the conversion has taken effect. OSCR will in turn update the entry on the Register of the company or IPS to show that it has been converted into a SCIO. The new SCIO's entry in the Register will state that its legal form is a SCIO, note the date on which it was entered in the Register and include the name of the company or IPS which was converted into the SCIO. The new SCIO will retain the Scottish Charity Number of the company or IPS which converted into the SCIO.

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Appendix 3

Documents required with an application to dissolve a solvent SCIO

When applying to dissolve a solvent SCIO, the following documents must be submitted to OSCR:

1. An Application for Consent to Dissolve a Solvent SCIO (this will be available on the [Scottish Charitable Incorporated Organisations](#) page of OSCR's website). This application will include the following details of the proposed dissolution of the SCIO:
 - The SCIO's assets and liabilities at the time of the application
 - Details of any funds to be returned to a funding body or any other body under a contract or other terms
 - Proposals for how the outstanding liabilities will be met
 - The name of the body or bodies which will receive any surplus assets of the SCIO.
2. A signed statement from the SCIO that it will notify all its known creditors to advise them that it has applied to OSCR to be dissolved.
3. A copy of a resolution of the SCIO's members that, subject to OSCR's consent, the SCIO will:
 - wind up its affairs
 - transfer any surplus assets to another named body (or bodies) whose purposes are the same as or resemble closely those set out in the SCIO's constitution, and
 - be removed from the Register and therefore dissolved.

The resolution must be passed by a two-thirds majority of those members voting at a general meeting, or otherwise than at a general meeting, and certified by either at least two-thirds of the charity trustees, or by one of them on behalf of them all if so authorised. Additionally, it must have been passed no more than 21 days before making the application to OSCR.

4. A copy of the SCIO's constitution, including any amendment.
5. A copy of the register of the SCIO's charity trustees.
6. A Declaration of Solvency of the SCIO signed by at least two-thirds of its charity trustees, or by one charity trustee on behalf of them all if so authorised (this Declaration will be available on the [Scottish Charitable Incorporated Organisations](#) page of OSCR's website).
7. A Notice of Application for Dissolution of the SCIO (this Notice will be available on the [Scottish Charitable Incorporated Organisations](#) page of OSCR's website).

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Appendix 4

Documents required with an application to dissolve an insolvent SCIO

When applying to dissolve an insolvent SCIO, the following documents must be submitted to OSCR:

1. An Application to Dissolve an Insolvent SCIO (this will be available on the [Scottish Charitable Incorporated Organisations](#) page of OSCR's website). This application will include the name of the body (or bodies) which will receive any surplus assets of the SCIO.
2. A copy of a resolution of the SCIO's members that, subject to OSCR being satisfied that the application meets the requirements of the Dissolution Regulations:
 - the SCIO's estate will be sequestrated
 - any surplus assets will be transferred to another named body (or bodies) whose purposes are the same as or closely resemble those set out in the SCIO's constitution, and
 - the SCIO will be removed from the Register and therefore dissolved.
3. A copy of the SCIO's constitution, including any amendment.
4. A copy of the register of the SCIO's charity trustees.
5. A Declaration of Insolvency of the SCIO signed by at least two-thirds of its charity trustees, or by one charity trustee on behalf of them all if so authorised (this Declaration will be available on the [Scottish Charitable Incorporated Organisations](#) page of OSCR's website).
6. An application by the SCIO to AiB for the sequestration of the SCIO's estate signed by at least two-thirds of the charity trustees of the SCIO or by one of them on behalf of them all if so authorised (this application will be available on the [Scottish Charitable Incorporated Organisations](#) page of OSCR's website).

The application for the sequestration of the SCIO will be forwarded by OSCR to AiB if OSCR is satisfied that the SCIO has met the requirements of the Dissolution Regulations.
7. A Notice of Application for Dissolution of the SCIO (this Notice will be available on the [Scottish Charitable Incorporated Organisations](#) page of OSCR's website).

The resolution must be passed by a two-thirds majority of those members voting at a general meeting, or otherwise than at a general meeting, and certified by either at least two-thirds of the charity trustees, or by one of them on behalf of them all if so authorised. Additionally, it must have been passed no more than 21 days before making the application to OSCR.

Appendix 5

Debtor application fee - methods of payment

As outlined in section 7.3.2, all applications for sequestration submitted to AiB must be accompanied by a debtor application fee, which is currently set at £200.

This fee must be paid by the SCIO (or by someone else on its behalf) to AiB within 21 days of AiB receiving the application from OSCR; if the fee has not been paid within this timescale, AiB must refuse the application to award sequestration. The fee cannot be waived and is not refundable.

There are a number of ways to pay this fee to AiB as set out below:

Payment by post:

1. You should enclose postal orders or a cheque payable to the 'Accountant in Bankruptcy' for the full amount (currently £200). You must not post-date cheques. Ensure that you write the SCIO's name and address on the back of the postal orders or cheque.
2. Do not send cash through the post.
3. If someone else is paying for the application fee, AiB will accept a cheque in that person's name. The SCIO's name and address must be written on the back of the cheque.

Payment in person or over the phone (0300 200 2600):

1. You can pay by cash, cheque, debit card, or postal order at AiB's office (1 Pennyburn Road, Kilwinning, KA13 6SA). Cheques must be made payable to 'Accountant in Bankruptcy' and you must have a valid cheque guarantee card with you.
2. If someone else is paying for the application fee by cheque, AiB must also see that person's cheque guarantee card at the time of payment.

3. AiB accepts payment by debit card, either in the office or over the phone by calling 0300 200 2600. AiB cannot accept payment by credit card. Once your payment has been processed, you will be given a receipt number.
4. You must then write to AiB quoting this receipt number and the SCIO's name and address. This will allow AiB to match your payment with the application form it has already received from OSCR. You should keep a copy of the receipt number for your own records.

Payment at a bank (sort code 830608, account number 11444655):

1. You can pay by cash, postal order, cheque or debit card from your own bank account at your local Royal Bank of Scotland (RBS). Payment must be made into RBS account number: 11444655, sort code: 830608.
2. You cannot pay by credit card.
3. Cheques must be made payable to 'Accountant in Bankruptcy' with the SCIO's name and address on the back.
4. You must get a receipt from the bank which shows that payment has been made. To allow AiB to match your payment with your application, your receipt(s) should show:
 - the date
 - the amount you have paid, and
 - the account number the money was paid into.
5. You must write your name and address on the back of the receipt and send it to AiB as soon as possible. You should keep a copy of the receipt for your own records.

Without a receipt AiB is unable to process your application. Do not use the Quick Deposit envelopes at your bank as you will not have a receipt to send to AiB.

P. 01382 220446
E. info@oscr.org.uk
W. www.oscr.org.uk

APS Group Scotland 232306 (06/12)



HAPPY TO TRANSLATE

INVESTOR IN PEOPLE

[illegible]