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| The Ayrshire Community Trust |
| Introduction to setting up a SCIO |
| A Basic Overview |



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**An Introduction to setting up a SCIO**

**What is a SCIO?**

In basic terms, SCIO stands for Scottish Charitable Incorporated Organisation and is a legal model which has been created specifically for the Scottish charity sector.

It allows Scottish charities to form themselves into corporate bodies - with the benefit of limited liability - without becoming companies (or industrial & provident societies).

That means that even the smallest charity can access the benefits of incorporation - including limited liability and legal capacity – and can hold property, employ people, incur debts, enter into contracts in its own name without being subject to the more complex apparatus of company law.

For new charities, the application for charitable status and incorporation process works as a single (one-stop shop) process through the Office of the Scottish Charity Regulator (OSCR).

**Why choose to become a SCIO rather than a Company Limited by Guarantee?**

The SCIO has been designed to provide the key benefits of becoming a company, such as a defined legal identity and limited liability (usually the key motivating factors for becoming a company limited by guarantee), whilst removing some of the associated burdens. For example, administration tends to be significantly reduced, as there is no requirement to notify any regulator about appointments or resignations of board members.

Also the law relating to SCIOs is self-contained and very manageable - unlike company law, where the sheer volume of legislation and case law can represent a significant concern for charitable companies.

**Two tier or single tier Structure?**

There are two structures available for the SCIO, two tier and single tier.

* The two tier structure is similar to that of a voluntary association and a company limited by guarantee where it is the membership of the organisation that appoint trustees and have decision making powers.
* The single tier structure is similar to a trust in that the trustees appoint new trustees and don’t have to answer to a wider body.

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

Ask The Ayrshire Community Trust for more details to which model best suits your needs.

**Advantages:**

* Provides the key benefits of becoming a company, such as a defined legal entity and limited liability whilst removing some of the associated burdens.
* Can hold property, enter into leases and other contracts, employ people, etc, in its own name.
* Less administration – no requirement to notify any regulator about appointments or resignations of board members.
* Unlike company law, where the volume of legislation and case law can be overwhelming, the law relating to SCIOs is self-contained and very manageable.
* It provides creditor protection and reassurance for those entering into contracts.
* Only needs to be registered with OSCR, unlike a charitable company, which also needs to register with Companies House.
* Is subject to the same accounting thresholds as unincorporated charities, so may not have to produce fully accrued accounts.
* Generally regarded by funding bodies and public agencies as a more ‘stable’ structure than a voluntary association.

**Disadvantages:**

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| * Existence is dependent upon charitable status. Loss of charitable status would mean that the SCIO would cease to exist
* Some changes must be notified to OSCR, and some require prior consent, eg change of name or charitable purposes.
* Members are subject to some of the same duties as charity trustees, specifically, they must act in the interests of the SCIO, and seek, in good faith, to ensure the SCIO acts in a manner which is consistent with its charitable purposes.
* There is a duty to keep and supply a register of charity trustees and members (if an organisation has a lot of fluidity in its membership eg a Student Union, a SCIO may not be the most appropriate legal form).
* Cannot convert or amalgamate with non-SCIO, though assets can be transferred to a non-SCIO charitable organisation

**How is it governed?**There is no standard format for a SCIO Constitution. TACT recommends adopting a ‘Model’ Constitution included in the guide. Please also read TACT’s basic guide to Writing Constitutions. All SCIO Constitutions should have the same basic element:* a SCIO should have two or more members and three trustees (in the case of a single tier SCIO the members can also be the trustees)
* it should have the name, purposes, a registered office in Scotland, and include any restrictions on powers
* it should list meeting procedures (convening, recording, quorum, voting, resolution)
* it should list membership rules (eligibility, appointment, withdrawal) and trustee rules (appointment, withdrawal, remuneration restrictions, conflict of interest)
* it should list the purposes for which surplus assets may be used on dissolution

**Getting Started:** 1. You must have 3 unrelated potential Trustees
2. You must read the Charitable Test (Appendix 5)
3. You must have clear objectives. What does your organistions exist to do?
4. You must be able to describe your activities and explain how they meet your objectives and the Charitable Test.
5. Decide whether a single tier or two tier SCIO structure best suits your needs and requirements.
6. Decide if any of the Trustees will be remunerated. Not recommended but permissible under the ‘less than one third’ rule.

Once you have answered the above questions, you will need to complete:* OSCR SCIO Application Form (Appendix 1)
* SCIO Constitution
	+ Single Tier (Appendix 2)
	+ Two Tier (Appendix 3)
* Trustee Declaration Form (Appendix 4)
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**Important Notes**

* There are comprehensive guidance notes that run alongside the OSCR SCIO Application Form but please do not hesitate to ask TACT for any help or clarification
* Also, it is vital that you understand every clause in your Constitution.
* The ‘Objects’ that you write into your Constitution MUST cross reference with what you have written in your SCIO Application Form.
* Please make an appointment with TACT if you require any assistance.

**Applying for charitable status**

To help OSCR make a decision on whether your organisation should be granted charitable status in Scotland, you must them the following information.

* A fully completed SCIO application form.
* A fully completed Charity Trustee Declaration form. Please print as many of these as you need. (Note that a SCIO must have a minimum of three charity trustees.) These forms allow the people running the charity - the charity trustees - to assure us that they are aware of their responsibilities and are not disqualified.
* A copy of your organisation's constitution or governing document. This sets out the purposes for which your organisation was set up, the form it will take, and what it can do. If possible, please give us a draft version so that any changes can be made easily.
* A description of your organisation's existing or proposed activities. For example, a business plan or a funding application. (Please make sure that any information that you send cross referencing with the SCIO Application Form and your Constitution). This helps OSCR to decide if your organisation will provide public benefit.
* A recent statement of accounts, if you have one or letter from your bank.

All completed applications should be sent to OSCR at:

**The Scottish Charity Regulator (OSCR)**

**2nd Floor**

**Quadrant House**

**9 Riverside Drive**

**Dundee**

**DD1 4NY**

OSCR will acknowledge your application within 10 days of receipt. They aim to assess applications within 90 days. Some applications take longer if they are complex, or if they need to come back to you for more information. In fact, OSCR will come back to you for more information or clarification in the majority of applications.

**How does OSCR decide?**

OSCR will use your completed forms and supporting documents to assess your application against the charity test (Appendix 5) which forms part of the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act).

In summary, to pass the charity test your organisation must meet the following requirements.

* It must have only charitable purposes. The purposes are found in your constitution or governing document and state what your organisation has been set up to achieve. When assessing your application, we will look to see that your purposes can be linked to those set out in the 2005 Act.
* Its activities must provide, or be intended to provide, public benefit in Scotland or elsewhere. We will look at what your organisation does or plans to do to achieve your purposes. You must be able to show that in carrying out your activities you will make a positive difference to the public in the ways suggested by your purposes. Charities can provide public benefit in many different ways and in differing amounts. It is important that your application clearly tells us what you intend to do to achieve your purposes. Without this we can't assess whether your organisation will provide public benefit.
* Your constitution or governing document must meet the requirements of the 2005 Act. We will check to make sure that:
* Your organisation's property cannot be used for non-charitable purposes.
* Ministers are not in control of, or are able to direct, your activities.
* Your organisation is not a political party or that its purpose is not the advancement of a political party.