

Friendly Societies

Very few groups opt for this type of structure, but it may be suitable if your group wishes to remain unincorporated, have some external rules and detailed provisions to solve disputes, have the facility to transfer property between trustees without the need for documentation and are not concerned about having limited liability.

To become a Friendly Society a group must have a benevolent purpose and a minimum of 7 members. A Friendly society can become a charity and hold property through trustees. It is simple to transfer property between trustees. If disputes arise there is access to arbitration through the Assistant Registrar for Scotland (see below).

Members, and trustees in particular, are personally liable for any debts of the organisation. The organisation must comply with The Friendly Societies Act and is liable to investigation by the Registrar, or the trustees may incur fines. This type of structure is likely to be unfamiliar to banks and lawyers with whom the organisation has dealings.

Groups wishing to adopt this legal structure will need to register with the Assistant Registrar of Scotland under the Friendly Societies Act 1974. Contact **Registrar of Friendly Societies**, 58 Frederick Street, Edinburgh, Phone 0131 226 3224.



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constitution.

To determine the best legal structure and constitution for your group, you should consider:

- **what is your purpose and what you want to achieve;**
- **who can become a member and how will you recruit;**
- **who will be responsible for managing and controlling the project, how will they be appointed and what will these managers and controllers be authorised to do once appointed;**
- **will the organisation be borrowing money and / or giving grants or loans to other projects;how will members meet and make decisions;**
- **does your group own property or is it likely to own property in the future;what is the size of your budget;**

- will you be employing staff.

company limited by guarantee or IPS. This may be the best option if your group is small, has a limited or specific purpose, operates on a small budget, does not own property or employ staff, or enter into lease agreements for any equipment etc.

There are no statutory rules on how an unincorporated association should be run. As legal advice is not therefore necessary, no set up costs are incurred unless you involve a solicitor. There is no need for a formal annual audit of accounts, unless this is required under grant conditions, or you are a charity. There is no need to notify changes in office bearers to any public register.

However, as a collection of individuals an association has no legal identity of its own, which may mean that the individuals acting for an unincorporated group, i.e. the executive or management committee, bear unlimited personal liability. In other words they may be held personally responsible for the organisation.

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If your group is looking at owning/running community assets – for example

- running the local shop and post office;
- developing play park and recreational facilities;
- managing a housing development;
- developing renewable energy projects such as wind

farms;

- **setting up training programmes.**

And if your aim as a group is to be

- **engaged in the economic, environmental and social regeneration of a defined area or community;**
- **independent but seek to work in partnership with other private, voluntary and public sector organisations;**
- **self-sufficient or aiming for self sufficiency, and not for private profit.**

then you should consider having a legal structure which is Company Ltd by Guarantee or Community Interest Company (or less commonly as an Industrial & Provident Society). Your group might also then be called a Development Trust. For more information on Development Trusts, contact the Development Trust Association Scotland. Development Trust Association (DTA) Scotland is a community led regeneration network. It is the national body for development trusts in Scotland and works closely with the DTA in England and Wales.

Company Limited by Guarantee

An incorporated company limited by guarantee is a useful structure for voluntary and community organisations which are actively involved in running projects which need to lease premises, enter into long-term commitments, employ people etc. and especially if substantial sums of money are involved.

A company limited by guarantee is a democratic structure comprised of members and a board of directors elected by them.

Control of the organisation ultimately lies with the members. The board, in effect the management committee, will have to retire from time to time and the decision about re-electing them or electing new directors belongs to the members. Important matters affecting the structure of the company have to be referred to the members for a decision.

Members usually pay an annual subscription and cannot benefit from any profits made by the company. If the organisation runs into debt the members' liability is limited to an amount they guarantee to pay in terms of a clause in the constitution, usually a nominal sum of £1 each.

However limited company status does not protect directors found to be wilfully negligent or who do not have due regard for the interests of creditors. They can also be found guilty of a criminal offence. Their responsibilities include detailed statutory obligations in relation to filing returns and keeping proper records, and most importantly in monitoring the company's financial position and taking immediate steps to prevent insolvency.

Generally it is up to the members to appoint the people they believe will run the company well on their behalf. The only restrictions that prevent anyone becoming a director are:

- the person must not have been disqualified by a court from acting as a company director (unless he or she has been given permission to act by a court for a particular company);
- the person must not be an undischarged bankrupt (except with leave of the court);
- in Scotland, anybody under the age of 16 and
- for a PLC or their subsidiaries, anybody over the age of 70, unless specifically approved by a general meeting of the company.

A limited company can apply for charitable status as long as the aims of the organisation and its memorandum and articles of association are accepted by the Office of the Scottish Charity Regulator (OSCR). For assistance visit www.oscr.org.uk

Statutory forms and guidance to the provisions under the Companies Act are available from **Companies House**. For Guidance Booklets on company formation, registration, administration and management visit **Companies House Website** or phone 0870 3333636.

New Format Memorandum and Articles

In October 2009 the Companies Act 2006 introduced changes to the format of companies governing documents (the Memorandum and Articles of Association). The Articles now include the company's objects and liabilities, which were previously found in the Memorandum

Scottish Charitable Incorporated Organisation (SCIO)

A SCIO is a new legal form for charities registered in Scotland.

What are the benefits of SCIOs?

The main benefit is that a SCIO offers protection to charity trustees from personal liability, while removing the reporting and regulatory requirements of a company. A SCIO only reports to OSCR, who is the regulator of the legal form, not just its charitable status. OSCR is also responsible for incorporating and/or dissolving SCIOs.

The existence of a SCIO as a corporate body depends on its entry in the Scottish Charity Register, this means a SCIO does not exist without charitable status and when a SCIO is removed from the Register, it ceases to be a SCIO.

Members

A SCIO must:

- have its principal office in Scotland
- have two or more members; these may include some or all of the charity trustees subject to the terms of the constitution;
- have three or more charity trustees;
- keep and supply a register of members and charity trustees.

SCIO constitution

A SCIO constitution should contain basic information about how the SCIO will be governed. Elements that must be included are:

- 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 procedures 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 structures 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' meeting and charity trustees' meetings.

what is the quorum for any meetings of the SCIO? Again, this covers both members' meetings and charity trustees 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.

Key Features

As a corporate body a SCIO can enter into contracts, employ staff, incur debts, own property, sue and be sued, however charity trustees are protected from incurring personal liability except in instances where they are reckless; negligent; have acted illegally or have acted outwith their powers in the management and control of the SCIO.

How to apply

Applications need to pass the charity test and contain the elements as set out in the regulations. The principal office must be based in Scotland, and applications must be made from two natural persons. Please note: existing charitable companies and

charitable industrial and provident societies will not be able to apply to convert to a SCIO until 1 January 2012. Scottish charities which are any other type of legal form will be able to apply to change legal form to a SCIO from 1 April 2011. The process for changing an unincorporated charity into a SCIO is similar to the change of legal form process, however there will be a new process for changing a corporate charity into a SCIO, which will be available in 2012.

For more information on SCIO's or to apply visit OSCRs website or download their guidance booklet **SCIO's: A Guide**.