



**THE LAW SOCIETY  
of SCOTLAND**  
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**Scottish Government  
Consultation on the options for the implementation of the Scottish  
Charitable Incorporated Organisation (SCIO)**

**The Law Society of Scotland's Response**

**February 2010**

## **INTRODUCTION**

The Charity Law sub-committee of the Law Society of Scotland (the sub-committee) welcomes the opportunity to comment on the Scottish Government's consultation on the options for implementing the Scottish Charitable Incorporated Organisation and has the following observations to make.

## **GENERAL COMMENTS**

Given the wide range of organisations which are eligible and which may be interested in forming a SCIO, the relevant legislation and administrative processes relating to the function of SCIOs must be as user-friendly as possible. For new charities, the sub-committee considers that it is likely to be popular for the medium sized charity but, provided that it is properly understood and has appropriate powers, even prospective charities which are comfortable with the guarantee company idea may be attracted to the SCIO.

## **SPECIFIC COMMENTS**

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

Yes.

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

Yes.

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

Yes

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

No.

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

Yes.

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

Yes.

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

Option 1. In the sub-committee's view, this is the most accessible.

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

It is appropriate for the application process to be dealt with administratively by OSCR.

**9. Are there specific additional requirements you would expect to be required in SCIO applications?**

The name and address of trustees. If limited liability is being granted, it would seem reasonable to require this information.

**10. Do you agree that the additional details of the conversion process should be set out administratively by OSCR rather than in regulations?**

Yes, as it would allow for adjustment.

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

Yes.

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

Yes, however the sub-committee is also of the view that there should be a **non**-mandatory model annexed to the regulations, but with a provision within the regulations stating that any other constitution would be acceptable providing it dealt with the list of required matters. In the sub-committee's view, that approach would be helpful in setting a benchmark, and would be likely in practice to produce more consistency among SCIO constitutions.

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

Yes.

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

Yes.

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

The sub-committee can see an argument for a specific provision regarding the keeping of records and minutes, and the submission of certain documents to OSCR. If a resolution of the members is needed to alter an SCIO constitution (as it is under the 2005 Act), then arguably a register of members is needed to ensure fair play in convening the meeting and ensuring that only votes of members are counted.

The sub-committee does not see the need for SCIO regulations to make specific provision on the publication of records, minutes or other documents.

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

Yes. It may be important for members, as distinct from the public, to have access to the register of members to cover situations such as where the members want to requisition a general meeting.

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

Yes. In the sub-committee's view, the Register of Charity Trustees should also be available to those dealing with SCIOs. They need to know who can bind the limited liability entity.

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

Yes but there needs to be sufficient resources made available to publicise the advantages of incorporating as a SCIO.

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

Yes. These would be related to both understanding the model and the nature of the advice that will be given by SCIOs compared with other forms of organisation.

**20. Do you consider it important for a SCIO to be able to raise finance?**

Yes.

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

Yes, however there is a commerciality test. If consultation hasn't already taken place, the sub-committee would recommend consulting with the lenders on this issue.

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

Yes. The sub-committee is of the view that, for this particular type of charity, readily available public accounts are important to show the financial strength of the organisation that the third parties are dealing with. It would help to build confidence in those dealing with SCIOs.

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

Yes.

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

**Option 1 – the basic option** (consistent with winding-up)

**Option 2 – striking off**

**Option 3 – Members Voluntary Liquidation**

**Option 4 – only allow formal insolvency**

The sub-committee is of the view that option 3 would be the better option from the point of view of general confidence in the model.

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

**Option 1 – Apply the current insolvency regime**

**Option 2 – Apply the current insolvency regime, with modification**

**Option 3 – Appointment of an independent third party to manage the most complex or contested insolvency cases**

**Option 4 – The default regime**

**Option 5 – Apply the default regime in the interim, whilst a dedicated insolvency regime for SCIOs is developed.**

Option 1.

**Any other comments?**

The sub-committee is of the view that if it OSCR is to become a regulator of SCIOs, it should be given sufficient resources to carry out the role properly. It is therefore imperative that a full impact assessment is undertaken by OSCR on how taking on SCIOs will affect them.



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