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# Charities and Trustee Investment (Scotland) Act 2005

## 2005 asp 10

### PART 1

#### CHARITIES

#### CHAPTER 7

##### SCOTTISH CHARITABLE INCORPORATED ORGANISATIONS

###### *Nature and constitution*

#### **49 Scottish charitable incorporated organisations**

- (1) A charity may be constituted as a Scottish charitable incorporated organisation (a “SCIO”).
- (2) A SCIO is a body corporate having—
  - (a) a constitution,
  - (b) a principal office in Scotland,
  - (c) 2 or more members.
- (3) Its membership may, but need not, consist of or include some or all of its charity trustees.
- (4) The members are not liable to contribute to the assets of the SCIO if it is wound up.

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#### **Commencement Information**

**II** S. 49 in force at 1.4.2011 by S.S.I. 2011/20, art. 2(3)(a)

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## 50 Constitution and powers

- (1) A SCIO's constitution must state its name and its purposes.
- (2) A SCIO's constitution must make provision—
  - (a) about who is eligible for membership, and how a person becomes a member, and
  - (b) for the appointment of 3 or more persons (“charity trustees”) who are to be charged with the general control of the SCIO's administration, and about any conditions of eligibility for becoming a charity trustee.
- (3) A SCIO's constitution must also provide for such other matters, and comply with such requirements, as are specified in regulations made by the Scottish Ministers.
- (4) A SCIO must use and apply its property in furtherance of its purposes and in accordance with its constitution.
- (5) Subject to anything in its constitution, a SCIO has power to do anything which is calculated to further its purposes or is conducive or incidental to doing so.
- (6) For the purposes of managing the affairs of a SCIO, its charity trustees may exercise all the SCIO's powers.

### Commencement Information

**I2** S. 50 in force at 1.4.2011 in so far as not already in force by S.S.I. 2011/20, art. 2(2)(a)

## 51 General duty of members of SCIO

Subsections (1)(a), (3) and (4) of section 66 apply to the members of a SCIO who are not charity trustees as they apply to its charity trustees.

### Commencement Information

**I3** S. 51 in force at 1.4.2011 by S.S.I. 2011/20, art. 2(3)(b)

## 52 Name and status

- (1) The name of a SCIO must appear in legible characters on—
  - (a) such documents issued by or on behalf of the SCIO,
  - (b) such documents signed by or on behalf of the SCIO,
 as may be specified in regulations made by the Scottish Ministers.
- (2) Subsection (3) applies where the name of a SCIO does not include—
  - (a) “Scottish charitable incorporated organisation”, or
  - (b) “SCIO” (with or without a full stop after each letter),
 whether or not capital letters are used.
- (3) Where this subsection applies, the fact that a SCIO is a SCIO must be stated in legible characters in all the documents referred to in subsection (1).
- (4) Section 15 does not apply in relation to a SCIO.

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- [<sup>F1</sup>(5) For the purposes of this section, a reference to a document—
- (a) issued by or on behalf of the SCIO , or
  - (b) signed by or on behalf of the SCIO ,
- includes a reference to a web page on a website operated by or on behalf of the SCIO.]

#### Textual Amendments

- F1** S. 52(5) inserted (1.8.2010) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), **ss. 120(2)**, 134(7); [S.S.I. 2010/221](#), **art. 3(2)**, Sch.

#### Commencement Information

- I4** S. 52 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/20](#), **art. 2(2)(b)**

### 53 Offences etc.

- (1) A charity trustee of a SCIO or a person on the SCIO's behalf who—
- (a) issues, or authorises the issue of, any document referred to in subsection (1) (a) of section 52, or
  - (b) signs, or authorises the signature on behalf of the SCIO of, any document referred to in subsection (1)(b) of that section,
- which does not comply with subsections (1) and (3) of that section is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (2) OSCR may direct—
- (a) any body which is not a SCIO and which is representing itself as being a SCIO,
  - (b) any person who is representing that any such body is a SCIO,
- to stop doing so by such date as OSCR may direct.
- (3) The Court of Session may, on an application by OSCR, interdict—
- (a) any body which is not a SCIO from representing itself as a SCIO,
  - (b) a person who is representing that such a body is a SCIO from doing so.
- (4) OSCR may not apply for such an interdict against a body or person unless the body or person has failed to comply with a direction under subsection (2).

#### Commencement Information

- I5** S. 53 in force at 1.4.2011 by [S.S.I. 2011/20](#), **art. 2(3)(c)**

### *Creation of SCIO and entry in Register*

### 54 Application for creation of SCIO

- (1) Any 2 or more individuals may apply to OSCR for a SCIO to be constituted and for its entry in the Register.
- (2) The application must—
- (a) state the name of the SCIO,

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- (b) state the proposed principal office of the SCIO,
  - (c) be accompanied by a copy of the SCIO's proposed constitution,
  - (d) contain such other information, and be accompanied by such other documents, as may be—
    - (i) required by regulations under section 6(1), or
    - (ii) otherwise required by OSCR.
- (3) OSCR may grant the application only if it considers that the SCIO, if constituted, would meet the charity test.
- (4) OSCR must refuse the application if—
- (a) it considers that the SCIO's proposed name falls within section 10,
  - (b) the SCIO's proposed constitution does not comply with one or more of the requirements of section 50 and any regulations made under that section, or
  - (c) the application must, by virtue of regulations under section 6(1), be refused, but must not otherwise refuse an application if it considers that the SCIO, if constituted, would meet the charity test.
- (5) Sections 4 and 5 do not apply in relation to an application under subsection (1).

#### Commencement Information

**16** S. 54 in force at 1.4.2011 by S.S.I. 2011/20, art. 2(3)(d)

## 55 Entry in Register

- (1) If OSCR grants an application under section 54(1) it must enter the SCIO to which the application relates in the Register.
- (2) On the entry in the Register being made in accordance with subsection (5), subsections (3) and (4) apply.
- (3) The SCIO becomes by virtue of this subsection a body corporate—
  - (a) whose constitution is that proposed in the application,
  - (b) whose name is that specified in the constitution, and
  - (c) whose first members are the individuals who made the application.
- (4) All property for the time being vested in those individuals (or any of them) on trust for the charitable purposes of the SCIO (when constituted) vests by virtue of this subsection in the SCIO.
- (5) The entry for the SCIO in the Register must (in addition to the matters required by section 3(3)) include—
  - (a) the date when the entry was made, and
  - (b) a note stating that the charity is constituted as a SCIO.
- (6) OSCR must send a copy of the entry in the Register to the SCIO at its principal office.
- (7) If a SCIO ceases to be a charity, it ceases to be a SCIO.

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### Commencement Information

**I7** S. 55 in force at 1.4.2011 by S.S.I. 2011/20, art. 2(3)(e)

VALID FROM 01/01/2012

### *Conversion, amalgamation and transfer*

#### **56 Conversion of charity which is a company or registered friendly society: applications**

- (1) The following may apply to OSCR to be converted into a SCIO, and for the SCIO's entry in the Register—
  - (a) a charity which is a company,
  - (b) a charity which is a registered society within the meaning of the Industrial and Provident Societies Act 1965 (c. 12).
- (2) But such an application may not be made—
  - (a) by a company or registered society having a share capital if any of the shares are not fully paid up,
  - (b) by a company having only a single member.
- (3) Such an application is referred to in this section and sections 57 and 58 as an “application for conversion”.
- (4) Section 54(2) applies in relation to an application for conversion as it applies to an application for a SCIO to be constituted (but sections 4 and 5 do not apply in relation to an application for conversion).
- (5) In addition to the documents referred to in section 54(2), the application for conversion must be accompanied by—
  - (a) a copy of the resolution of the company or registered society that it be converted into a SCIO, and
  - (b) a copy of the resolution of the company or registered society adopting the proposed constitution of the SCIO.
- (6) The resolution referred to in subsection (5)(a) must be—
  - (a) a special resolution of the company or registered society, or
  - (b) a unanimous written resolution signed by or on behalf of all the members of the company or registered society who would be entitled to vote on a special resolution.

[<sup>F2</sup>(6A) In the case of a company which is [<sup>F3</sup> registered under the Companies Act 2006 in Scotland ], Chapter 3 of Part 3 [<sup>F4</sup> of that Act ] (resolutions and agreements affecting a company's constitution) does not apply to the resolutions mentioned in subsection (5) (a) and (b).]

- (7) In the case of a registered society, “special resolution” has the meaning given in section 52(3) of the Industrial and Provident Societies Act 1965 (c. 12).

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### Textual Amendments

- F2** S. 56(6A) inserted (1.10.2007) by [Companies Act 2006 \(Commencement No.3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\)](#), art. 1(3)(a), [Sch. 4 para. 110](#) (with art. 12)
- F3** Words in s. 56(6A) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 250\(2\)\(a\)](#) (with art. 10)
- F4** Words in s. 56(6A) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 250\(2\)\(b\)](#) (with art. 10)

## 57 Determination of application for conversion

- (1) Before determining an application for conversion, OSCR must consult—
  - (a) the appropriate registrar, and
  - (b) such other persons as it thinks fit,
 about whether the application should be granted.
- (2) OSCR may grant an application for conversion only if it considers that the charity, if converted into a SCIO as proposed, would continue to meet the charity test.
- (3) OSCR must refuse an application for conversion if—
  - (a) it considers that the SCIO's proposed name falls within section 10,
  - (b) the SCIO's proposed constitution does not comply with one or more of the requirements of section 50 and any regulations made under that section, or
  - (c) the application must, by virtue of regulations under section 6(1), be refused.
- (4) If OSCR considers that a charity, if converted into a SCIO as proposed in an application for conversion, would continue to meet the charity test, OSCR may refuse the application on grounds other than those set out in subsection (3) only if it is satisfied by any representations received from those whom it consulted under subsection (1) that such a refusal would be appropriate.

## 58 Conversion: supplementary

- (1) If OSCR grants an application for conversion, it must—
  - (a) enter the SCIO in the Register,
  - (b) send to the appropriate registrar a copy of each of the resolutions of the converting company or registered society referred to in section 56(5) and a copy of the entry in the Register relating to the SCIO, and
  - (c) once the SCIO's constitution as a SCIO has taken effect, remove from the Register the entry for the converting company or registered society.
- (2) The entry for the SCIO in the Register must, for so long as its constitution as a SCIO has not yet taken effect, include a note stating that fact.
- (3) If the appropriate registrar—
  - (a) registers the documents sent under subsection (1)(b), and
  - (b) cancels the registration of the company under [<sup>F5</sup>the Companies Act 2006], or of the society under the Industrial and Provident Societies Act 1965 (c. 12),

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subsections (4) and (5) apply.

- (4) The company or registered society is by virtue of this subsection converted into a SCIO, being a body corporate—
- (a) whose constitution is that proposed in the application for conversion,
  - (b) whose name is that specified in the constitution, and
  - (c) whose first members are the members of the converting company or society immediately before the moment of conversion.
- (5) All property, rights and liabilities of the converting company or registered society become by virtue of this subsection the property, rights and liabilities of the SCIO.
- (6) The entry for the SCIO in the Register must include—
- (a) a note stating that the charity is constituted as a SCIO,
  - (b) the date on which it became so constituted, and
  - (c) a note of the name of the company or society which was converted into the SCIO.
- (7) In section 57 and in this section, the “appropriate registrar” means—
- (a) in the case of an application for conversion by a company, the registrar of companies<sup>F6</sup> ...,
  - (b) in the case of an application for conversion by a registered society, the Financial Services Authority.

#### Textual Amendments

- F5** Words in s. 58(3)(b) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 250\(3\)\(a\)](#) (with art. 10)
- F6** Words in s. 58(7)(a) omitted (1.10.2009) by virtue of [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 250\(3\)\(b\)](#) (with art. 10)

#### Commencement Information

- I8** [S. 58](#) in force at 1.1.2012 by [S.S.I. 2011/20](#), [art. 2\(4\)\(c\)](#)

## 59 Amalgamation of SCIOs

- (1) Any 2 or more SCIOs (“the old SCIOs”) may, in accordance with this section, apply to OSCR to be amalgamated, and for a new SCIO (“the new SCIO”) to be constituted and entered in the Register as their successor.
- (2) Such an application is referred to in this section and section 60 as an “application for amalgamation”.
- (3) Subsections (2) to (4) of section 54 apply in relation to an application for amalgamation as they apply to an application for a SCIO to be constituted, but with references to the SCIO being read as references to the new SCIO (but sections 4 and 5 do not apply in relation to an application for amalgamation).
- (4) In addition to the documents and information referred to in section 54(2), the application for amalgamation must be accompanied by—

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- (a) a copy of a resolution of each of the old SCIOs approving the proposed amalgamation, and
  - (b) a copy of a resolution of each of the old SCIOs adopting the proposed constitution of the new SCIO.
- (5) The resolutions must be passed—
- (a) by a two-thirds majority of those voting at a general meeting of the SCIO (including those voting by proxy or by post, if voting that way is permitted), or
  - (b) unanimously by the SCIO's members, otherwise than at a general meeting.

## **60 Amalgamation: supplementary**

- (1) If OSCR grants an application for amalgamation, it must—
- (a) enter the new SCIO in the Register, and
  - (b) remove from the Register the entries for the old SCIOs.
- (2) On the new SCIO being entered in the Register it becomes by virtue of this section a body corporate—
- (a) whose constitution is that proposed in the application for amalgamation,
  - (b) whose name is that specified in the constitution, and
  - (c) whose first members are the members of the old SCIOs immediately before the new SCIO was entered in the Register.
- (3) On the removal of the old SCIOs from the Register—
- (a) all the property, rights and liabilities of each of the old SCIOs become by virtue of this subsection the property, rights and liabilities of the new SCIO, and
  - (b) each of the old SCIOs is dissolved.
- (4) The entry for the new SCIO in the Register must include—
- (a) a note stating that it is constituted as a SCIO,
  - (b) the date on which it became so constituted, and
  - (c) a note that it was constituted following amalgamation, and of the name of each of the old SCIOs.
- (5) OSCR must send a copy of the entry in the Register to the new SCIO at its principal office.

## **61 Transfer of SCIO's undertaking**

- (1) A SCIO may resolve that all its property, rights and liabilities should be transferred to another SCIO specified in the resolution.
- (2) Where a SCIO has passed such a resolution, it must send to OSCR—
- (a) a copy of the resolution, and
  - (b) a copy of a resolution of the transferee SCIO agreeing to the transfer to it.
- (3) A resolution referred to in subsections (1) and (2)(b) must be passed—
- (a) by a two-thirds majority of those voting at a general meeting of the SCIO (including those voting by proxy or by post, if voting that way is permitted), or



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- (b) unanimously by the SCIO's members, otherwise than at a general meeting.
- (4) The resolution referred to in subsection (1) does not take effect until confirmed by OSCR.
- (5) If OSCR confirms the resolution—
  - (a) all the property, rights and liabilities of the transferor SCIO become by virtue of this subsection the property, rights and liabilities of the transferee SCIO in accordance with the resolution,
  - (b) the transferor SCIO is dissolved, and
  - (c) OSCR must remove from the Register the entry for the transferor SCIO.

### General

## 62 Third parties

- (1) A person dealing with a SCIO in good faith and for value is not concerned to inquire whether—
  - (a) anything in the SCIO's constitution prevents it acting in the way that it is, or
  - (b) any constitutional limitations on the powers of the SCIO's charity trustees prevent them from binding the SCIO or authorising others to do so.
- (2) Nothing in subsection (1) prevents a person from bringing proceedings for interdict in respect of the doing of an act which—
  - (a) the SCIO, because of anything in its constitution, does not have power to do, or
  - (b) the SCIO's charity trustees, because of any constitutional limitations on their powers, do not have power to do.
- (3) But no such proceedings may be brought in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the SCIO.
- (4) Subsection (3) does not prevent OSCR from exercising any of its powers.
- (5) Nothing in subsection (1)(b) affects any liability incurred by the SCIO's charity trustees (or any of them) for doing anything which, because of any constitutional limitations on their powers, the trustees (or that trustee) do not have power to do.
- (6) Nothing in subsection (1) absolves the SCIO's charity trustees from their duty to act within the SCIO's constitution and in accordance with any constitutional limitations on their powers.
- (7) In this section “constitutional limitations” on the powers of a SCIO's charity trustees are limitations on their powers under its constitution, including limitations deriving from a resolution of the SCIO in general meeting, or from an agreement between the SCIO's members.

### Commencement Information

**19** S. 62 in force at 1.4.2011 by S.S.I. 2011/20, art. 2(3)(f)

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### 63 Amendment of constitution

- (1) A SCIO may by resolution of its members amend its constitution (and a single resolution may provide for more than one amendment).
- (2) Such a resolution must be passed—
  - (a) by a two-thirds majority of those voting at a general meeting of the SCIO (including those voting by proxy or by post, if voting that way is permitted), or
  - (b) unanimously by the SCIO's members, otherwise than at a general meeting.
- (3) The date of passing of such a resolution is—
  - (a) the date of the general meeting at which it was passed, or
  - (b) if it was passed otherwise than at a general meeting, the date on which the last member agreed to it.

#### Commencement Information

**I10** S. 63 in force at 1.4.2011 by S.S.I. 2011/20, art. 2(3)(g)

### 64 Regulations relating to SCIOs

The Scottish Ministers may by regulations make further provision in relation to SCIOs including, in particular, provision about—

- (a) applications for constitution as, or conversion into, a SCIO, the determination of applications, entry in the Register and the effect of such entry,
- (b) the administration of a SCIO,
- (c) amalgamation of SCIOs and transfer of a SCIO's property, rights and liabilities to another SCIO,
- (d) the winding up, insolvency or dissolution of a SCIO,
- (e) the maintenance of registers of information about SCIOs (for example, registers of members, of charity trustees or of charges over the SCIO's assets),
- (f) such other matters in connection with the provision made by this Chapter as they think fit.

#### Commencement Information

**I11** S. 64 in force at 21.1.2011 by S.S.I. 2011/20, art. 2(1)

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