

## EXECUTIVE NOTE

### THE SCOTTISH CHARITABLE INCORPORATED ORGANISATIONS (REMOVAL FROM REGISTER AND DISSOLUTION) REGULATIONS 2011

S.S.I. 2011/XXXX

1. The above Regulations are to be made in exercise of the powers conferred by sections 64(d) and 103(2) of the Charities and Trustee Investment (Scotland) Act 2005 (“the 2005 Act”). The Regulations are subject to affirmative resolution procedure.

#### Policy Objectives

2. The changes in charity regulation that the 2005 Act put in place are designed to provide a modern, proportionate regulatory framework that will support charities rather than tying them in red tape. Integral to this are the provisions in Chapter 7 of the 2005 Act, which introduce a framework for the creation, operation and regulation of a new legal form of incorporation for Scottish charities, namely the Scottish charitable incorporated organisation (“SCIO”). The SCIO will allow Scottish charities to enjoy the benefits of incorporation, notably no liability on members and legal personality for the charity, without requiring them to become companies or industrial and provident societies. SCIOs will be registered with and regulated by the Office of the Scottish Charity Regulator (OSCR).

3. Section 64 of the 2005 Act provides for the Scottish Ministers to make Regulations on a range of matters related to the operation of SCIOs, and, specifically under section 64(d), the Scottish Ministers can make provision concerning the winding up, insolvency or dissolution of a SCIO. This is one of two sets of Regulations on SCIOs, the other being The Scottish Charitable Incorporated Organisations Regulations 2011 which is subject to negative resolution procedure.

4. Much of the regulatory framework for SCIOs is already set out in Chapter 7 of the 2005 Act, including provisions relating to applications for creation as, conversion to, or amalgamation with a SCIO. In addition, SCIOs, by their very nature, will be Scottish charities, and subject to most of the existing regulatory framework that covers charities in the 2005 Act and the subordinate legislation made under it. Chapter 7 does not, however, make detailed provision for the dissolution of solvent and insolvent SCIOs, other than in the specific limited circumstances set out in section 61. The purpose of these Regulations is to set out the detailed requirements for the winding up and dissolution of both solvent and insolvent SCIOs.

5. The Regulations make provision to disapply certain aspects of the 2005 Act to ensure continuity between the SCIOs regime and other elements of the charity law framework. Firstly, aspects of **section 16** of the 2005 Act will be disapplied to remove the need for SCIOs to apply for OSCR’s consent *under that section* to amalgamate with another body or wind itself up and dissolve. The reason for this is that SCIOs will be required to apply to OSCR to amalgamate (with other SCIOs) under section 59 and to apply to dissolve under these Regulations. Thus, in order to avoid duplication, SCIOs have been taken out of the section 16 requirements for these two specific actions, amalgamation and dissolution. SCIOs will still be required to seek OSCR’s agreement under section 16(2)(a) for any amendment to their constitution which seeks to amend their purposes (having first passed the resolutions required

under section 63). Similarly, a SCIO will still need to seek OSCR's consent under section 16(2)(d) before applying to the Court to undertake any of the actions referred to in section 16(2).

6. **Section 18** of the 2005 Act allows charities to apply to be taken off the Scottish Charity Register ("the Register"). This does not however prevent the organisation itself continuing to operate in its existing form following removal from the Register, albeit without charitable status. The policy is different with SCIOs. The affairs of SCIOs must be wound up if they are removed from the Register and dissolved. This means no organisation that is a SCIO can continue to operate once it ceases to be a SCIO. This is achieved in the following way. Firstly, the provisions of section 18 are disapplied in the case of SCIOs. Secondly, bespoke dissolution machinery is provided under the Regulations to ensure that the affairs of the SCIO are in effect wound up prior to its being formally removed from the Register and dissolved. No other exit route is allowed (paragraphs 7 to 17 below). Essentially a solvent or insolvent SCIO may apply to OSCR to be dissolved. If the application is granted, the estate of the SCIO must first be sequestrated by the Accountant in Bankruptcy in the case of an insolvent SCIO. The right of a creditor to apply to court to sequestrate the estate of a SCIO is preserved, but if this happens the SCIO must then be dissolved by OSCR (paragraph 18). Finally, if OSCR thinks the SCIO has ceased to meet the charity test and this cannot be remedied, it can order the SCIO to apply for its own dissolution; failing which OSCR can seek an order from the Court of Session (paragraphs 19 and 20). The various processes are explained in more detail below.

7. The Regulations set out the detailed mechanisms for the **dissolution of solvent SCIOs**, which is initiated by application, by the SCIO, to OSCR for the SCIO to be struck off the Register; if removed, the SCIO would then be dissolved. In order to ensure that the interests of beneficiaries, (potential) creditors and other third parties are protected, the SCIO is required to satisfy certain conditions prior to entering the process and to publicise the intended dissolution, allowing objections to be lodged.

8. Before the solvent SCIO submits an application for dissolution it **must pass the resolution** required under Regulation 3(2) in accordance with Regulation 3(3), not more than **21 days before making the application**. The resolution required under Regulation 3(2) must make clear the following:

- that, subject to the **consent of OSCR**, it will wind up its affairs;
- that all **outstanding debts and liabilities must be satisfied**;
- that any **surplus assets will be transferred** to another body (or bodies) with charitable purposes the same as or closely resembling those set out in the SCIO's constitution; and
- that the SCIO will be removed from the Register and **dissolved**.

9. The application must be accompanied by a number of further documents, some of which are prescribed in schedules to the Regulations. These include:

- a copy of the SCIO's **constitution**, as amended;
- a copy of the **register of charity trustees**;
- a **declaration of solvency**, as set out in Schedule 1, in the form of a signed undertaking from the charity trustees to the effect that the SCIO is solvent and will be able to satisfy all its outstanding liabilities prior to dissolution;
- a **notice of the proposed dissolution**, which is set out in Schedule 2; and

- a statement providing details of the proposed dissolution, including how the affairs of the SCIO will be wound up, outstanding liabilities met and surplus assets transferred.

10. Provisions for publicising the proposed dissolution under the Regulations place a requirement on OSCR to publish notice of the dissolution on its website for 28 days and, in addition, require the SCIO to contact all known creditors to advise them of the application. The Regulations set out specific timeframes for the various stages of the application and determination process but make provision for additional time if OSCR requires further information. They also specify the decisions OSCR may take, subject to which the SCIO is dissolved and removed from the Register. OSCR's decision to refuse such an application under these Regulations is to be treated as if it were among the list of decisions in section 71 of the 2005 Act, under which charities can ask OSCR for a review and ultimately lodge an appeal to the Scottish Charity Appeals Panel (SCAP), if the original decision is confirmed.

11. The mechanism set out in the Regulations for the **dissolution of insolvent SCIOs** draws on the existing regime for the **sequestration** under section 6 of the **Bankruptcy (Scotland) Act 1985** of corporate bodies (other than companies which may be wound up under the Insolvency Act 1986). The modified sequestration process provided for in these Regulations allows the insolvent SCIO to apply for its own sequestration, which will be managed by the Accountant in Bankruptcy (AiB). Under these provisions, the charity trustees of a SCIO may make an application to OSCR for the SCIO to be removed from the Register and dissolved on the grounds that the SCIO is insolvent, having outstanding debts of at least £1500. This threshold is used by the AiB in relation to sequestration of other entities, such as partnerships and trusts, and has been included here to ensure consistency with these existing regimes.

12. Before the insolvent SCIO submits an application for sequestration it **must pass the resolution** required under Regulation 5(1) in accordance with Regulation 5(2), not more than **21 days before making the application**. The resolution required under Regulation 5(1) must make clear the following:

- that, providing OSCR is satisfied that the application meets the requirements of the Regulations, the SCIO's estate will be sequestrated;
- that after the settlement of all outstanding debts and liabilities, any **surplus assets will be transferred** to another body (or bodies) with charitable purposes the same as or closely resembling those set out in the SCIO's constitution; and
- that the SCIO will be removed from the Register and **dissolved**.

13. The application must be accompanied by a number of further documents, some of which are prescribed in Schedules to the Regulations. These include:

- a copy of the SCIO's **constitution**, as amended;
- a copy of the **register of charity trustees**;
- a **declaration of insolvency**, as set out in Schedule 3, in the form of a signed undertaking from the charity trustees to the effect that the SCIO is insolvent, having outstanding debts of at least £1500;
- an **application to the AiB for sequestration** of the estate of the SCIO, as set out in Schedule 4, signed by the charity trustees; and
- a **notice of the proposed dissolution**, which is set out in Schedule 5.

14. Provisions under the Regulations for publicising the proposed dissolution place a requirement on OSCR to publish notice of the dissolution on its website. The Regulations

provide that once OSCR is satisfied that the application is in order, OSCR refers the application to the AiB. The principal reason for involving both OSCR and the AiB in this process is that their respective functions are very different and their roles here are based on their existing duties. The AiB manages sequestrations in Scotland and will make the SCIO bankrupt through this process. However, sequestration does not provide for the dissolution and winding up of a body. Thus, OSCR must be involved as the registrar and regulator of SCIOs in order to remove the SCIO from the Register, after which it is dissolved.

15. On receipt of the documents and associated fee for determination of a debtor application (as in the Bankruptcy Fee (Scotland) Regulations 1993, currently set at £100), the AiB will need to be satisfied that the SCIO is insolvent having outstanding debts of at least £1500, before sending a copy of the award of sequestration to OSCR for publication on its website. The AiB must refuse to award sequestration if it has not received the fee within 21 days of receiving the application and accompanying documents from OSCR.

16. The Regulations provide that the sequestration of the estate of a SCIO shall be treated as if it were the sequestration of the estate of a body corporate by the AiB, under the Bankruptcy (Scotland) Act 1985, following a debtor application without the need for concurrence of a qualified creditor, or the nomination of a trustee. This draws on the existing legal and operational frameworks for sequestration of corporate entities but makes clear that the application does not require the agreement of a creditor and that the AiB will act as trustee in all debtor applications.

17. Following successful completion of the sequestration of the estate of a SCIO, the Regulations provide for the transfer of any surplus assets, in accordance with the resolution passed by the SCIO prior to application. Once transfer has been concluded, the AiB notifies OSCR of the completed sequestration and forwards copies of the final accounts of the AiB's intromissions or dealings with the SCIO's estate and a determination of fees and outlays. Receipt of this notification by OSCR triggers the removal of the SCIO from the Register and its dissolution.

18. The Regulations provide that the estate of a SCIO may not be sequestrated except in terms of these Regulations or in the route laid out for creditor petitions under Regulation 7. This latter route allows a qualified creditor or qualified creditors, a temporary administrator or a member State liquidator to petition the court for the sequestration of the estate of a SCIO as a body corporate under the Bankruptcy (Scotland) Act 1985. The Regulations place a duty on the petitioner to notify OSCR and the SCIO that a petition is to be lodged. Similarly, the trustee appointed to manage the process must notify OSCR of the award of sequestration, to enable OSCR to publish on its website a notice of the sequestration of the SCIO and, following completion of the sequestration, to allow OSCR to remove the SCIO from the Register and dissolve it. The trustee is also required under the Regulations to transfer any surplus assets to another body (or bodies with charitable purposes the same as or closely resembling those set out in the SCIO's constitution, and send copies of the final accounts of intromissions and a determination of fees and outlays to OSCR.

19. In order to ensure that a SCIO's affairs are properly dealt with prior to any removal from the Register by OSCR (where OSCR has determined that the SCIO no longer meets the charity test), the Regulations make specific provision regarding the application of this of OSCR's powers of direction in relation to SCIOs. On determining that a SCIO no longer meets the charity test, OSCR is required under Regulation 8(1) to direct the SCIO to either:

- take certain steps that OSCR considers necessary for the purposes of meeting the charity test; or
- make an application to OSCR under these Regulations to be removed from the Register and dissolved.

20. The Regulations provide that in the event of non-compliance with the former, OSCR will then direct the SCIO to do the latter and, in the event that the SCIO does not apply for dissolution as directed, OSCR must apply to the Court of Session to deal with the SCIO appropriately. The provisions also include powers for OSCR to revoke or vary said directions, which are to be subject to the review and appeal mechanisms set out in Chapter 10 of Part 1 of the 2005 Act.

21. Schedules 1 to 5 set out prescribed forms for various stages in the application processes. Schedule 4, in particular, is based on the existing forms from AiB's Entity Debtor Application pack, which have been tested and used by the AiB.

### **Consultation**

22. Policy options for the implementation of the SCIO were the subject of the **Consultation on Options for the Implementation of the Scottish Charitable Incorporated Organisation (SCIO)** that ran from 16 November 2009 until 26 February 2010. The consultation focussed on the policy principles, developed by the Scottish Charitable Incorporated Organisations (SCIOs) Working Group, which would determine the structure of the SCIO and the design of the regulatory framework within which it will operate. The public consultation included nine stakeholder engagement events in different locations across Scotland. Having fixed the policy for implementation in light of the responses received, draft Regulations were then published for public discussion, which ran from 14 October 2010 until 26 November 2010 and included three public discussion events.

23. OSCR and the AiB have also been consulted on both sets of SCIO Regulations, both during and after the official consultation and discussion periods. There have also been discussions with Companies House, the Financial Services Authority, the UK Government and the Scotland Funders' Forum.

### **Financial Effects**

24. While there may be some administrative costs involved in setting up or converting to become a SCIO, there are no direct fees payable to OSCR under these Regulations. As with other corporate bodies applying for sequestration, there will be a fee payable to the AiB, currently set at £100, for SCIOs that apply for sequestration. This fee is considerably lower than the costs associated with the corporate insolvency regime to which charitable companies are subject. Charities will have to meet their own costs associated with making an application, although we expect these costs to be minimal. There will also be costs to OSCR associated with processing applications and monitoring compliance but these were always included in assumptions and estimates of its running costs, as part of its day to day business, and so we would expect the administration costs to be met within existing budgets. As the AiB will be responsible for administering the estate of an insolvent SCIO in cases where they are trustee, there may be new additional costs to the AiB.

25. While it is not possible to precisely predict new costs to the AiB, we do not expect these to be considerable. We anticipate that SCIO insolvencies will be fairly rare; while there are no precise figures for charity insolvencies, anecdotal evidence suggests that numbers are not significant. The AiB will collect a fee of £100 with every application for sequestration of a SCIO and if the insolvent SCIO has any assets, any costs incurred by the AiB in the way of fees and outlays for administering the estate of an insolvent SCIO will be recouped from them wherever possible. We have adopted streamlined legal machinery for managing SCIO insolvencies with the deliberate intention of keeping costs to a minimum, using existing AiB processes, so there will be no need for staff to develop or learn new systems or procedures. A Business and Regulatory Impact Assessment has been prepared and is available at: <http://www.scotland.gov.uk/Topics/People/15300/charities/SCIOs>

Scottish Government Justice Directorate  
26 January 2011

## **Final Business and Regulatory Impact Assessment**

### **1. Title**

The Scottish Charitable Incorporated Organisation Regulations 2011 and The Scottish Charitable Incorporated Organisations (Removal from Register and Dissolution) Regulations 2011.

### **2. Purpose and Intended Effect**

#### Objective

These Regulations set out the detail around the creation, operation and dissolution of Scottish Charitable Incorporated Organisations (SCIOs), a new form of corporate body designed specifically for Scottish charities. The SCIO provides an additional option for new and existing charities which want to incorporate. These Regulations set out requirements which are in addition to those placed on registered charities which are not SCIOs. However, these additional duties only apply to bodies which voluntarily choose to become a SCIO. They do not impose new requirements on other bodies or charities, although new responsibilities will be placed on the Office of the Scottish Charity Regulator (OSCR) and the Accountant in Bankruptcy (AiB).

#### Background

This BRIA applies to Scotland only. Chapter 7 of The Charities and Trustee Investment (Scotland) Act 2005 (the '2005 Act') sets out the basic legislative structure of the Scottish Charitable Incorporated Organisation (SCIO) and provides that Scottish Ministers may make regulations in respect of the SCIO. The purpose of these Regulations is to set out specific requirements for SCIOs where these are not already covered in detail by the 2005 Act. The UK Government is taking forward an equivalent project for charities in England and Wales. The Northern Ireland Assembly have provision to take forward a similar project for charities in Northern Ireland.

#### Rationale for Government intervention

There have been calls for a number of years for the creation of a separate vehicle for incorporating charities. The report of the Kemp Commission in 1997, on the future of the voluntary sector in Scotland, recommended that there should be a separate, bespoke vehicle for incorporating charities. This mirrored the recommendation in the report of the Deakin Commission on the future of the voluntary sector in England & Wales (1996).

The Company Law Review Steering Group (in 2001) also concluded that there should be a new vehicle exclusively for incorporating charities. The Scottish Charity Law Review Commission endorsed the proposals of the Company Law Review and recommended that a new incorporation vehicle should be made available to charities.

The draft Charities and Trustee Investment (Scotland) Bill included provisions to create a new legal entity, the Scottish Charitable Incorporated Organisation (SCIO). In the consultation on the draft Bill, there was strong support for a tailor-made incorporation vehicle for charities in Scotland that was as clear and straightforward as possible and, consequently, Chapter 7 of the 2005 Act provides for the creation of a regime for SCIOs.

At present, most charities can only obtain corporate status by becoming a company (either limited by guarantee or by shares), although certain charities can be incorporated as Industrial & Provident Societies (I&Ps), statutory corporations or under Royal Charter.

While company status offers some of the same benefits as the SCIO – corporate personality and limited liability – it also has certain disadvantages for charities. As a company a charity is registered with both OSCR and Companies House, meaning that it must comply with the requirements of both Regulators. At a practical level this means that a charity must produce fully accrued accounts, which are filed with both Regulators, notify certain changes to both and must comply with two sets of requirements. In addition, Companies House imposes certain charges to companies, for example for filing accounts.

The SCIO Regulations will further increase transparency and reduce red tape for charities who wish to incorporate. The SCIO form, along with the other requirements of the 2005 Act, are designed to help support a flourishing charity sector in Scotland, which is well regulated and in which the public have confidence. A flourishing Scottish charity sector will be in a strong position to provide public services which are high quality and responsive to the needs of local people, and help support strong, resilient communities. Well regulated and flourishing charities can also help increase social economy turnover, helping to boost sustainable economic growth in Scotland.

### **3. Consultation**

#### Within Government

Consultation and discussions have taken place with a range of areas across the Scottish Government with an interest in the Third Sector, the Office of the Scottish Charity Regulator (OSCR), the Accountant in Bankruptcy (AiB), Companies House and the Financial Standards Authority (FSA). Discussions were also held with the UK Government's Office of the Third Sector (now the Office for Civil Society).

#### Public Consultation

The Scottish Government set up a SCIO Working Group in 2008 *'to advise Ministers how best to implement a regime for SCIOs, that is cost effective, as straightforward as possible and tailored to the needs of Scottish charities'*. The membership of the Working Group was drawn from professional advisors, the charity sector and OSCR. Full details of the remit and membership of the Working Group can be found at Annex A.



In winter 2008-2009 3 focus groups were held with representative of small charities, umbrella organisations and professional advisors. These focus groups, which were commissioned by the SCIO Working Group, were used to discuss key themes which the Working Group wanted to explore further. These findings were then used as the basis of the Working Group's future deliberations and discussions.

The Working Group developed a range of policy options, including a preferred option, which was the basis of a written consultation carried out in winter 2009/10. The consultation paper, which was available on the [SG website](#), was sent to individuals who had previously responded to charity law consultations, and those who had expressed an interest in the SCIO, as well as our wider charity law consultation distribution list. In total, around 450 hard copies of the consultation document were issued during the consultation exercise and a further 140 were distributed at consultation events. To support the written consultation, 6 stakeholder engagement events were held in various locations throughout Scotland. The focus groups were advertised on the Scottish Government webpages, as well as by the Scottish Council for Voluntary Organisations (SCVO). A further 4 focus groups were arranged in conjunction with third sector partners, principally SCVO. In total 63 written responses were received, and approximately 150 individuals attended meetings and events.

The general principle behind the SCIO – a streamlined, cost-effective method of incorporation – was widely supported. The policy proposals set out in the consultation paper were also broadly supported. Over 80% (47/57) of those who expressed a preference for one of the models supported the introduction of the Working Group's SCIO model, rather than other models which could have been introduced.

In addition to this, a short discussion period was held on the substance of the draft Regulations. During this time, a written discussion paper was issued to those who had responded to the policy consultation, and 3 further focus groups were held, which were attended by approximately 70 people in total. The focus groups were advertised on the Scottish Government webpages, as well as by the SCVO.

#### Business (including charities)

A number of businesses have been consulted throughout the process. 9 businesses (5 of which are charities) were included in the SCIO Working Group, on whose proposals the Regulations are based. Throughout the public consultation and discussion periods a number of businesses have responded to the written papers and participated in the focus group events. Focus group discussions varied depending on the interests of those present, but attendees were given the opportunity to discuss costs related to various elements of the proposals. The Scottish Government also addressed a meeting of the Scotland Funders' Forum and wrote to a range of external funders and commercial lenders prior to and during the wider public consultation.

## **4. Options**

### **Option 1 - Do nothing**

This option would see the SCIO not being introduced. Charities could continue to be formed using existing constitutional forms.

### **Option 2 - Introduce the SCIO**

This would see charities being able to adopt the SCIO form, giving more choice to new and existing charities.

#### **Sectors and Groups affected**

The main changes will be for charities and potential charities. There are approximately 23,000 charities currently registered in Scotland. They are constituted in a variety of ways, with around 50% currently formed as unincorporated organisations. The breakdown of charity by income and constitutional form (as at 31 March 2010 – data provided by OSCR) is given at Annex B. However, the changes will only apply if a body chooses to adopt the SCIO form.

In addition, there will be an impact on professional advisors – solicitors, accountants etc – who play a role in advising charities, and potential charities, on a range of matters. Further, those bodies that play a role in advising the charity sector – such as SCVO and local voluntary sector interface organisations - will also be affected, as they will need to be aware of, and understand, the SCIO form and associated legal requirements.

#### **Costs and Benefits**

##### **Option 1 – Do nothing**

###### **Benefits**

There are no additional benefits by not introducing the SCIO.

###### **Costs**

Likewise, there will be no additional costs if the SCIO is not introduced.

##### **Option 2 – Introduce the SCIO**

###### **New & Existing Charities**

###### **Benefits**

The introduction of the SCIO will allow Scottish charities to enjoy the benefits of incorporation, notably limited liability for members and legal personality for the charity, without requiring them to become companies or industrial and provident societies.

Costs should be lower than those associated with company status, and by adopting the SCIO form, a currently incorporated charity (ie a company) may find that its costs are reduced.

A SCIO will not be required to pay for filing its Annual Return with OSCR as a company currently has to with Companies House (£30). Further, there will be no charge for registering as a SCIO with OSCR. Companies House currently charge a fee of £20 (£50 for same day) for incorporating as a company.

At present, a charitable company must produce fully accrued accounts, regardless of income. In contrast, the SCIO will follow existing charity law accounting requirements rather than company law requirements. This means that a SCIO with an income under £250,000 will be able to opt to produce a simpler form of accounts, than if the same body opted to become a company. It is not possible to put an exact value on the benefit of this, due to the varying nature of charities and their accounts, as well as variation in the supply of qualified accountants. However, figures of up to £4000 have been quoted for producing and auditing fully accrued accounts – as required by company law – compared to around £200 for production of simple receipts and payments accounts – as will be required by charity law for a SCIO with an income of under £250,000.

Where a SCIO is insolvent and seeks to wind-up its affairs, it can apply for sequestration, which under these Regulations will be mainly managed by the Accountant in Bankruptcy (AIB). There will be a fee of £100 payable to begin the process, after which AIB will take over the affairs of the SCIO to manage the process and distribute any remaining assets. Currently, an insolvent charitable company is required to go through the complex, costly and time-consuming corporate insolvency process. Again, it is not possible to put an exact figure on the cost of this, but figures ranging from £5000 upwards have been quoted.

### Costs

The introduction of the SCIO will not see any new costs imposed on charities, due to the voluntary nature of adopting the SCIO form. However, if a charity/body that is currently unincorporated chooses to become a SCIO there may be additional costs flowing from that decision. This is due to the higher governance standard required from a SCIO than from current forms of unincorporated charity. For example, a SCIO will be required to maintain a register of members, which an unincorporated charity does not have to do at present. It is not possible to quantify the cost of such a duty, as it will vary from SCIO to SCIO depending on the size of its membership and how frequently it changes, with the initial cost being associated with compiling the original register. These Regulations implement the Working Group's preferred SCIO model, and the vast majority of those consulted felt it struck the right balance between administrative ease and minimal cost for charities, on the one hand, with a robust and credible framework, on the other.

The alternatives presented in the policy consultation included the SCIO 'heavy' model, based on Company Law which would have seen higher costs than the other two models, particularly in areas such as financial reporting and disclosure of certain

information. Conversely, the SCIO 'lite' model would have seen lower costs, as the requirements would have more closely followed existing charity law. For example, there would have been no requirement to maintain registers of members and charity trustees. However, this option would not have in place certain governance requirements which funders/lenders may expect from a body with limited liability, which could result in lack of confidence in the SCIO form.

## Government Departments

### Benefits

OSCR are prepared for the SCIO regime: processing applications and monitoring compliance were always included in planning (during preparation for implementation of the 2005 Act), as part of its day to day business.

### Costs

There are unlikely to be any substantial new, ongoing costs on OSCR as a result of the introduction of the SCIO. Costs to OSCR associated with the SCIO regime, processing applications and monitoring compliance, were included in assumptions and estimates of its running costs during preparation for implementation of the 2005 Act and so we would expect the administration costs to be met within existing budgets. Given that the SCIO model to be implemented under these Regulations does not place resource intensive additional responsibilities on OSCR, we do not anticipate new significant costs for the Regulator.

As AiB will be responsible for administering the estate of an insolvent SCIO in cases where they are trustee, there may be new additional costs to AiB. While it is not possible to precisely predict new costs, we do not expect these to be considerable. We anticipate that SCIO insolvencies will be fairly rare; while there are no precise figures for charity insolvencies, anecdotal evidence suggests that numbers are not significant.

The AiB will collect a fee of £100 with every application for sequestration of a SCIO and if the insolvent SCIO has any assets, any costs incurred by the AiB in the way of fees and outlays for administering the estate of an insolvent SCIO will be recouped from them wherever possible.

We have adopted streamlined legal machinery for managing SCIO insolvencies with the deliberate intention of keeping costs to a minimum, using existing AiB processes, so there will be no need for staff to develop or learn new systems or procedures.

## Professional Advisers and Umbrella/Advisory Bodies

### Benefits

The SCIO regime will provide a streamlined, cost-effective method of incorporation, one which is widely supported by professional advisers and umbrella/advisory bodies such as the Scottish Council for Voluntary Organisations.

### Costs

There are unlikely to be any direct costs associated with the SCIO for these bodies. However, there may be indirect costs from it, which are likely to flow from individuals and organisations making themselves aware of the SCIO and its requirements.

## **5 Scottish Firms (including charities) Impact Test**

As set out in section 4 above, it is likely that small charities and potential charities which choose to adopt the SCIO form will experience benefits not available had they opted either to remain unincorporated, or incorporated as a company.

While there may be higher governance standards, and therefore some additional costs than remaining unincorporated, the acquisition of legal personality is likely to solve some of the problems that unincorporated charities currently suffer. Likewise, the opportunity of lower costs than those associated with company form is likely to present benefits to those bodies which opt for incorporation using the SCIO form instead of the company form.

As a result of the ongoing and direct nature of our consultation process, which included charities, it was not proportionate to have further face to face discussions. 9 businesses assisted in the development of proposals through representation on the SCIOs working group, in addition to all those represented at the focus groups.

### Competition Assessment

The proposals place no formal restrictions on entry to markets. We applied the competition filter and the answers were as follows:

- i) the proposals do not directly limit the number or range of suppliers;
- ii) the proposals do not indirectly limit the number or range of suppliers;
- iii) the proposals do not limit the ability of suppliers to compete; and
- iv) the proposals do not reduce suppliers' incentives to compete vigorously.

Therefore, no full competition assessment was necessary.

### Test Run of Business Forms

These Regulations do not introduce any new business forms. The nearest thing to business forms introduced are the various forms connected with the dissolution of the SCIOs. The substantive forms are well tested forms currently used in sequestration, subject to minor adaptation.

## **6. Legal Aid Impact Test**

There are no new criminal penalties introduced by the Regulations. Section 53 of the 2005 Act contains a criminal penalty which will come into force alongside the Regulations. However, given that no prosecutions under the 2005 Act have yet been taken forward, we would expect the effect on legal aid to be negligible. The Scottish Government Access to Justice Team has confirmed they are of the opinion that these Regulations will have little, if any, impact on legal aid.

## **7. Enforcement, Sanctions and Monitoring**

OSCR will be responsible for ensuring that SCIOs comply with the requirements placed on them by the Regulations. OSCR has a range of powers under chapter 4 of the 2005 Act to investigate charities, including powers to obtain information, issue directions, suspend charity trustees and apply to the Court of Session for further actions. How OSCR opts to make use of those powers is an operational matter for the Regulator.

OSCR will be responsible for reviewing the effectiveness of the SCIO regime. OSCR may make recommendations to Scottish Ministers in respect of its functions in its Annual Report, which is laid before Parliament each autumn.

## **8. Implementation & Delivery Plan**

To ensure that potential and existing charities are aware of the option of becoming a SCIO, and the duties which will flow as a result, OSCR will develop an implementation plan. While the exact detail will be for OSCR, we expect that it will include awareness raising and other more detailed training, which is likely to form part of OSCR's *Outreach Programme*, which seeks to train those who advise charities. OSCR will also produce appropriate guidance, which AiB will feed into with regards to the insolvent SCIO process.

### Post-implementation Review

OSCR will be responsible for reviewing the effectiveness of the SCIO regime, as with the rest of the 2005 Act. OSCR may make recommendations to Scottish Ministers in respect of its functions in its Annual Report, which is laid before Parliament each autumn.

## 9. Summary & Recommendation

	<b>Costs</b>	<b>Benefits</b>
<b>Option 1 – Do nothing</b>	<ul style="list-style-type: none"> <li>No costs associated</li> </ul>	<ul style="list-style-type: none"> <li>No new legal form for charities and other interested parties to understand.</li> </ul>
<b>Option 2 – Introduce the SCIO</b>	<ul style="list-style-type: none"> <li>Initial costs for charities, OSCR, advisors to learn the requirements of the new legal form.</li> <li>Some, possible, minor costs associated with ongoing requirements such as maintaining registers.</li> <li>Minor costs for applying for insolvent dissolution, where necessary but significantly less than those associated with corporate insolvency mechanisms.</li> <li>Possible costs for production and examination of accounts (this cost may apply regardless of constitutional form).</li> <li>Awareness-raising by OSCR.</li> </ul>	<ul style="list-style-type: none"> <li>A form of incorporation designed solely for Scottish Charities, which will provide legal personality and limited liability for charity trustees.</li> <li>Simpler form of accounting than current forms of incorporation.</li> <li>Less complex structure than companies.</li> <li>No incorporation or filing fees, as apply to companies.</li> <li>No dual regulation (companies are regulated by both OSCR and Companies House).</li> </ul>

### Key Features and Consultation Responses

<b>Feature</b>	<b>Respondents in Favour</b>
Development of preferred SCIO Model	82.5% (47/57)
Regulations set out basic requirements of a SCIO's constitution	88.5% (54/61)
Apply charity accounting requirements to SCIOs	94.6% (53/56)
SCIOs to keep a Register of members	88.3% (53/60)

**Option 2 is recommended.** It will provide the maximum benefit to existing and potential charities.

## 10. Declaration and Publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed:**.....

**Date:**.....

**Minister's Name and Title:**

Fergus Ewing, Minister for Community Safety, Scottish Government



**SCIO Working Group – Remit and Membership**

Remit: To advise Scottish Ministers on how best to implement a regime for Scottish Charitable Incorporated Organisations (SCIOs), that is cost-effective, as straightforward as possible and tailored to the needs of Scottish charities.

Chair: Richard Dennis (Deputy Director, Civil Law Division, Scottish Government)  
Secretariat: Anita Popplestone (Charity Law Team, Scottish Government)

**Members:**

- Adrienne Airlie (Institute of Chartered Accountants of Scotland; Martin Aitken & Co)
- David Brownlee (Citizens Advice Scotland)
- Ken Butler (Scottish Drugs Forum)
- Stuart Cross (Charity Law Research Unit, University of Dundee)
- Susan Deighan (Culture & Sport Glasgow)
- Nancy Fancott (Scottish Council for Voluntary Organisations (SCVO))
- Quentin Fisher (Office of the Scottish Charity Regulator (OSCR) - to be joined by Jane Ryder and/or Marieke Dwarshuis as appropriate)
- Dr Patrick Ford (Charity Law Research Unit, University of Dundee)
- Steve Kent (Edinburgh Voluntary Organisations Council)
- Professor Alex McDougall (Institute of Chartered Accountants of Scotland; HW Chartered Accountants)
- Gavin McEwan (Law Society of Scotland; Turcan Connell)
- Stephen Philips (Law Society of Scotland; Burness)

## Annex B

### Breakdown of Scottish Charity Sector by Size and Constitutional Form (as at 31 March 2010)

Income	Company	Trust	Unincorporated Association	Other constitutional forms	Total
£0	520	351	1045	113	2029
£1 to £24,999	977	2661	8091	739	12468
£25,000 to £99,999	857	824	2620	224	4525
£100,000 to £499,999	1277	338	885	104	2604
£500,000+	1004	198	156	280	1638
Total	4635	4372	12797	1460	23264

Data supplied by OSCR