

CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON PARTS

Part 1: Charities

Chapter 7 – Scottish charitable incorporated organisations

Scottish charitable incorporated organisation

64. **Chapter 7 (sections 49 to 64)** establish a new legal form that charities may wish to adopt. The Scottish Charitable Incorporated Organisation (SCIO) is a legal form designed specifically for charities to enable them to become a corporate body, without having to become a company or industrial and provident society. SCIOs will be regulated by OSCR.
65. **Section 49 and 50** set out the basic mandatory requirements for a charity to become a SCIO. A SCIO is a corporate body and shall have a constitution, a principal office in Scotland and more than one member. The constitution of a SCIO must state its name and purposes and contain provisions about the membership and the trustees. Unlike a company limited by guarantee, the members of a SCIO will have no liability to contribute to the assets if it is wound up. The Scottish Ministers may make regulations specifying further matters relating to a SCIO's constitution.

Name and status

66. **Section 52** provides that the Scottish Ministers may specify in regulations which documents a SCIO's name must be shown on if they are issued or signed on its behalf. If the body's name does not include either the words "Scottish charitable incorporated organisation" or "SCIO", then documents must include a statement that it is a SCIO. Because all SCIOs must also be charities, these provisions are instead of those in section 13 which require a charity to state on its documents that it is a charity. **Section 53** establishes as an offence the issuing of any document which should include reference to SCIO, which does not. OSCR also has powers to direct a body which is not a SCIO from representing itself as such and failure to comply may lead to interdict by the Court of Session.

Creation of SCIO and entry in Register

67. **Section 54** sets out the procedure for application for registration of a SCIO. These provisions are similar to those for an application to be on the Register, with specific requirements relating to a SCIO. The effect of registration (**section 55**) is that on entry to the register as a SCIO, the body becomes a body corporate as described in the application. If a SCIO ceases to be a charity, it also ceases to be a SCIO.

Conversion, amalgamation and transfer

68. **Sections 56, 57 and 58** make provisions to allow a charity that is a company or an industrial and provident (or friendly) society to be converted to a SCIO. Such bodies cannot transfer if they have any share capital that is not fully paid up or if they have only a single member. An application for conversion must be accompanied by copies of both the resolution of the body to be converted to a SCIO and that adopting the proposed constitution of the SCIO.
69. **Section 57** imposes a duty on OSCR to consult with the Registrar of Companies or the Financial Services Authority and such other persons it thinks fit before determining an application for conversion. OSCR must grant the conversion only where a charity if converted into a SCIO can continue to meet the charity test. It must refuse the application if the SCIO's proposed name is objectionable under **section 10**, if the proposed constitution and powers of the SCIO do not meet the requirements of section 50 and any regulations under that section or if the application would be refused by virtue of regulations made under **section 6(1)**. If the converted body meets the charity test OSCR may only refuse the application on these grounds or as a result of representations from those it has consulted under **section 57(1)**. These provisions allow the previous regulator to advise OSCR of any default by the body applying.
70. Under **section 58**, if OSCR grants an application for a charity's conversion to a SCIO, as well as entering the body on the Register, it must send a copy of the body's resolutions to convert and a copy of the entry in the Charity Register to the registrar of the original body (i.e. Companies House or the Financial Services Authority). It is intended that once OSCR has confirmed that it will grant the body's application to become a SCIO, the relevant original registrar will cancel the body's entry on the original register. To require this to occur is however reserved and as such it is intended to include this in a section 104 order made in Westminster as a consequence of this Act.
- “71 **Schedule 4** (in paragraph 6) disapplies section 380 of the Companies Act 1985 in relation to the resolutions for conversion to a SCIO by a Scottish charitable company. This stops the company having to send these resolutions to Companies House before OSCR has decided whether or not to accept the application to convert.
72. **Section 59 and 60** provide for a number of SCIOs to amalgamate by application to OSCR. A resolution to amalgamate must be passed by either a two-thirds majority of those voting at a general meeting or a unanimous vote by the members of each of the SCIOs involved. If OSCR grants the application for amalgamation, it must enter the new SCIO on the register and remove the original bodies' entries and all the property, rights and liabilities of all the old SCIOs belong to the new SCIO. Similarly, **section 61** provides for a SCIO to transfer all its property, rights and liabilities to another SCIO, if OSCR confirms the application.
73. **Section 62** provides that a third party dealing with a SCIO is entitled to assume that the SCIO has sufficient legal powers under its constitution to enable it to act in the way it is attempting or proposing to act. Third parties may also assume that charity trustees are authorised to act on behalf of the charity they represent in any matter. It is effectively for SCIOs themselves, and their trustees, to ensure that they have the relevant powers. This is intended to provide a level of protection to those dealing, in good faith, with SCIOs and their trustees, in a similar manner to that provided to those dealing with registered companies.
74. Under **section 64**, the Scottish Ministers may make regulations to set out further provisions on SCIOs such as the application process, the administration of SCIOs, amalgamations, transfers, the winding up, insolvency or dissolution of SCIOs, the maintenance of other registers of information on SCIOs or as they see fit.