

Forth Valley Third Sector Conference 2018

**Have you got the right legal
structure?**



Welcome and introductions

- Housekeeping
- Workshop overview:
- Paula Duncan, Engagement Manager, OSCR
- James Proctor, Programme Manager, Community Shares Scotland
- Jennifer Robertson, Social Enterprise Development Officer, Forth Valley TSIs

Legal Structures: SCIOs and Charitable Companies

Paula Duncan

Engagement Manager OSCR

Outline

- OSCAR
- What it means to be a charity
- Legal structures
- Spotlight on unincorporated bodies
- Spotlight on incorporated bodies
- Company vs SCIO
- How to incorporate

OSCR

- Determine whether bodies are charities
- Keep a public Register of charities (Scottish Charity Register)
- Encourage, facilitate and monitor compliance by charities with the provisions of the Act
- Identify and investigate apparent misconduct in the administration of charities and to take remedial or protective action in relation to such misconduct
- Give information or advice, or to make proposals, to Scottish Ministers on matters relating to OSCR's functions

What does it mean to be a charity



An organisation must not call itself a charity in Scotland if it does not appear on the **Scottish Charity Register**. In order to be entered into the Register the organisation must pass the **charity test**. That is, it must have wholly **charitable purposes** and **provide public benefit**.

Is charitable status right for you?

- Not run by one person, but a board of charity trustees who are collectively responsible
- Not to be set up to benefit one individual
- Charitable status does not equal funding
- Annual reporting requirements
- Your structure will determine how many regulators
- Not just charity law to consider
- Not necessarily the same as a social enterprise

Legal structures

- Your charity structure is defined by its 'governing document' (the legal document that creates the organisation and says how it should be run)
- The type of structure you choose affects how your charity will operate, such as:
 - who will run it and whether it will have a wider membership
 - whether it can enter into contracts or employ staff in its own name
 - whether the trustees will be personally liable for what the charity does

Spotlight on unincorporated

- Trusts or Unincorporated Associations
- Trust deed or constitution
- If your charity is unincorporated:
 - the trustees are personally liable for what it does
 - it won't be able to enter into contracts or control some investments in its own name
 - One or more trustees, or a corporate custodian trustee will have to 'hold' any land on your charity's behalf

Spotlight on incorporated bodies

- **Companies** (normally limited by guarantee) or **Scottish Charitable Incorporated Organisation** (SCIO)
- If you choose a structure that forms a corporate body, the law considers your charity to be a person in the same way as an individual (called legal personality)
- This gives your charity the legal capacity to do many things in its own name that a person can do, such as:
 - employing paid staff
 - delivering charitable services under contractual agreements
 - entering into commercial contracts in its own name
 - owning land or other property
 - If a charity structure is a corporate body, **generally** its trustees aren't personally liable for what it does.
 - Can take legal action. Sue or be sued.

Company vs SCIO

Company	SCIO
Articles of Association	SCIO constitution (specific elements req)
Regulated by OSCR and Companies House	Regulated by OSCR
Has legal personality	Has legal personality
Accrued accounts regardless of income	R+P or accrued depending on income level (under 250k for R+P)
Unlimited powers in furtherance of purposes (unless restricted in articles of association)	Unlimited powers in furtherance of purposes (unless restricted in constitution)
Must have at least one member	Must have at least two members (who can also be trustees if single tier)
Wide ranging duties set out by company law including duty to keep registers	Duty to keep register of members and trustees
Removal from Register does not result in dissolution	Removal from Register does result in dissolution

How to change legal structure

Different processes for different legal forms

- Companies can ***convert*** to SCIOs
- Unincorporated bodies have to ***incorporate***
- Some trust deeds do not give the power to wind up, they have an additional step (***reorganisation***)

Guidance available from:
www.oscr.org.uk

Co-operative and Community Benefit Societies

www.communitysharesscotland.org.uk

Who are Community Shares Scotland?



- **Raise awareness** through communications and events across Scotland.
- Provide direct **support and advice** to communities
- Deliver **training and advice** to support organisations
- Create and distribute **tools and resources** for Scottish audiences
- Funded by the Big Lottery Fund Scotland and Scottish Government until June 2020
- Delivered by Development Trust Association Scotland





3 Take Away Messages

1. A democratic and member-owned organisation run for the benefit of the members or the community.
2. Increasingly popular due to limited liability, asset lock, option of charitable status and ability to issue share capital.
3. Enshrine democracy and community governance.



Contents

- What is a Co-operative or Community Benefit Society?
- What is their legal position?
- What are the benefits?
- Why use it?
- How can they be financed?



What is a Co-operative or Community Benefit Society?

A legal form for organisations that want to operate on a democratic, not for profit basis for purposes that benefit:

- their members (Co-operative)
- their community as a whole (Bencom).



What is their legal position?



- Co-operative and Community Benefit Societies Act 2014
- Registered with Financial Conduct Authority (FCA)
- Governed by Model Rules (not Mem & Arts)
- Known as Co-ops, Bencoms or CBSs



What are the benefits?



- Limited Liability
- Democratic - one person, one vote with elected directors
- Can be charitable
- Optional Asset Lock
- Can issue unique share capital – community shares



Why use it?



- Community governance and operation
- Enshrines democracy
- Boost community engagement
- Community Empowerment Act – named model
- Eligible for Community Asset Transfer and Community Right-to-buy



How can they be financed?



- Similar to most community organisations
- Grants, loans and donations
- Can also issue shares – known as Community Shares
- Used for community enterprise such as:
pubs and shops, harbours, community buildings, renewable energy initiatives, local sports and media initiatives and a host of other community based ventures



3 Take Away Messages

1. A democratic and member-owned organisation run for the benefit of the members or community.
2. Increasingly popular due to limited liability, asset lock, option of charitable status and ability to issue share capital.
3. Enshrine democracy and community governance.



More Info?



Community Shares Scotland

www.communitysharesscotland.org.uk

FCA - Mutual Societies

<https://www.fca.org.uk/firms/registered-societies-introduction>

Co-operatives UK

Simply Legal - <https://www.uk.coop/resources/simply-legal>



Community Shares Scotland

Get in touch!

www.communitysharesscotland.org.uk

@CommSharesScot

E: info@communitysharesscotland.org.uk

T: 0131 220 3777



Community Interest Companies (CICs)

Jennifer Robertson
Development Officer – Social Enterprise

Coming Up

- What is a Community Interest Company?
- Proving Community Interest
- Advantages and disadvantages
- Reporting requirements
- How to apply

- Questions?

What is a Community Interest Company?

- CICs are a type of limited company for people wishing to establish businesses which trade with a social purpose (social enterprises), or to carry on other activities for the benefit of the community.
- CICs may take one of three company forms:
 - Limited by Guarantee
 - Limited by Shares
 - Public Limited Company (PLC)

CIC's most suitable for.....

- **People who:-**
- want to trade for the benefit of a specific community.
- want it to be clear to members, financial backers, customers and others that they work for the benefit of the community.
- can prove that their activities and services will benefit the community
- do not want charitable status because it is not appropriate to their planned activities.
- want to be sure that, if the organisation ceases to exist, the remaining assets will be used for the community.

Proving Community Interest

- All companies applying to be registered as CICs must provide the Regulator with evidence that they will satisfy the **community interest test**.
- In order to determine whether your company satisfies (or will satisfy) the test, you need to consider:
 - the purposes for which it is set up;
 - the range of activities in which it will engage; and
 - who will be seen as benefiting from its activities
- Form - CIC 36

Advantages and disadvantages

- **Advantages of being a CIC:**

- as a corporate body, a CIC can hold property and borrow money in its own name
- flexible options for trading for community benefit without private gain
- personal liability of members is limited
- two tier structure for decision making allowing democratic input from members including the chance to vote on election/re-election of the board of directors
- asset lock ensures that profits/assets are retained by the community
- directors may receive limited payment (if the CIC's constitution or Articles permits)

- **Disadvantages of being a CIC:**

- may incur some setting up costs (such as legal fees and registration fees to Companies House)
- dual reporting to both Companies House and the CIC Regulator including statutory filing of Annual Accounts along with annual CIC Report
- cannot apply for charitable status in Scotland

Statutory Reporting Requirements

- A community interest company (CIC) is required to prepare and deliver annually, to the Registrar of Companies:
 - accounts;
 - a CIC Report (CIC37) with a £15 filing fee
 - Confirmation Statement with a £15 filing fee

How to apply.....

- The following registration documents and forms are required:
- **IN01** form to incorporate a limited company
- **Memorandum of Association**
- **Articles of Association** (effectively a company's constitution)
- **CIC 36** (declarations on formation of a community interest company)
- Cheque/postal order for £35

Useful websites.....

- Companies House
- <https://www.gov.uk/government/organisations/companies-house>
- CIC Regulator
- <https://www.gov.uk/government/organisations/office-of-the-regulator-of-community-interest-companies>
- CIC Association
- <http://www.cicassociation.org.uk/>
- Sencot Legal
- <http://se-legal.net/>

And Finally.....

Thank you
and
Any Questions?