



Supported by



MEMO+⁺

Minority Ethnic Matters Overview

MEMO+ is an occasional series of briefing papers on topics of interest to minority ethnic communities in Scotland. It is produced by the [Scottish Council of Jewish Communities](#) in partnership with [BEMIS - empowering Scotland's ethnic and cultural minority communities](#), and is supported by the [Scottish Government](#).

Briefing: Scottish Charitable Incorporated Organisations (SCIOs)

Scottish Charities

Charities in Scotland can have any of a wide range of purposes, such as welfare organisations, educational institutions, community groups, social clubs, advocacy organisations, and so on. They operate under the [Charities and Trustee Investment \(Scotland\) Act 2005](#), and are regulated by the [Office of the Scottish Charity Regulator](#) (OSCR, usually called “Oscar”).

OSCR believe that only around half the voluntary organisations in Scotland are registered as Charities ([“Becoming a Charity”, OSCR, 2011](#)). As well as giving the organisation a seal of public approval, being a charity has benefits such as being able to reclaim income tax on donations ([“Gift Aid”](#)), and possibly not having to pay rates on premises.

In order to call itself a Charity in Scotland, an organisation must demonstrate that it operates for at least one of the [“charitable purposes”](#) set out in the Act, and that it benefits the public. OSCR keeps a register of Scottish Charities, and also regulates charities based in other countries (including other parts of the UK) that have premises or carry out activities in Scotland. Charities are required to submit an annual return to OSCR, listing basic information such as the names of the Trustees, and also to lodge a copy of their annual accounts.

What is incorporation?

Unless it has a particular legal status, a club or other organisation is only a group of individuals. Without a separate legal identity, the organisation cannot enter into contracts on its own behalf, so it cannot employ staff, rent or buy premises, take out a loan or insurance, or sue or be sued in court. As a result all of these legal functions are carried out by the officers of the organisation as individuals, so they may, for example, find themselves personally liable for the debts of the organisation. Many people are naturally unwilling to take this risk, so it is often difficult to find people to help run organisations that play a valuable role in society.

One way of avoiding this difficulty is for the organisation to become a Limited Company, but Companies are governed by the very detailed and complex provisions of the Companies Acts. These are more concerned with regulating businesses, so small charities may find the regulations, such as the requirement to keep fully accrued accounts, very onerous. In addition, Charitable Companies have to meet the different requirements of two different regulators, which adds further complexity to their administration.

That is why the Scottish Government created the new form of **Scottish Charitable Incorporated Organisations (SCIOs)**, so that organisations that meet the [Charity Test](#) can have the protection of a separate legal identity, and so enter into legal relationships on its own behalf, without more complex regulation than necessary. A similar legal form, the [Charitable Incorporated Organisation](#), will be introduced shortly in England and Wales.

SCIO or Charity?

A SCIO is a Scottish charity, and has to meet the same tests of having charitable purposes and providing public benefit as any other charity. There are very few additional requirements, and these are mainly formal: having at least three “Charity Trustees” who are responsible for running the charity and keeping a register of members, for example. The level of financial scrutiny is the same, and there are no extra reporting requirements.

The main difference is therefore the legal status of the charity, and the benefit of having a distinct legal “personality” from its members and trustees, so that they would not normally be personally liable for the actions of the charity. Note, however, that this protection is not total: if charity trustees act illegally or outwith their powers under the SCIO’s constitution, or are reckless or negligent, they may still be liable in law for the actions of the SCIO. This, however, is very rare.

Becoming a SCIO may be particularly advantageous for charities that own property. At present the property will have been bought by trustees on behalf of the charity, and ownership needs to be transferred when the trustees change, or else it may remain in the names of people who no longer have any connection with the charity, or who have died. A SCIO, on the other hand, may hold property in its own name, and so ownership will not depend on who runs it at any given time.

Note that whereas normally charitable status is granted to an entity that already exists, a SCIO’s legal existence depends on its being registered as a charity so if it loses its charitable status (for example by ceasing to serve the public interest) it will cease to exist; a SCIO cannot change to a different legal status or cease to be a SCIO except by deciding to dissolve itself in accordance with the legal requirements.

Requirements of a SCIO

OSCR is responsible for registering all Scottish charities, including SCIOs, and will require to be satisfied that the SCIO meets the legal requirements. These include:

- showing its name and charity registration number legibly on all documents,
- keeping a public register of members and Charity Trustees,
- keeping [proper accounts](#) and lodging an [annual return](#) with OSCR,
- holding at least one General Meeting of members each year, and
- obtaining the approval of OSCR to wind up the charity when it no longer serves its purpose.

The legislation does not lay down a particular form for a SCIO's constitution, although a number of models have been approved by OSCR. However, there are a number of things that the SCIO's constitution must include:

- **the organisation's name and its purposes.**
- **what the organisation has the legal powers to do** (which might just say it can do anything that advances its purposes, or else list specific powers, such as the power to borrow money, purchase or rent premises, or employ staff).
- **any relationship with other organisations** such as a parent body or subsidiary.
- **how someone can become a member** or cease to be a member.
- **the composition of its board**, including any requirements that particular organisations or groups are represented.
- **the processes for appointing the charity trustees and office-bearers**, and how they can be removed from office.
- **rules about procedure**, such as how meetings are called, what business is done, how to propose motions, voting, minutes, etc.
- **rules about finance and accounting.**
- **how any conflict of interest is dealt with.**
- **how the constitution can be amended** (requiring a two-thirds majority).
- **how the charity can be wound up**, including the charitable purposes for which any remaining assets may be used.

How to become a SCIO

An application to incorporate a SCIO must be made to OSCR by at least two people who want to be the first members of the SCIO. The application must state:

- the name of the proposed SCIO
- the principal address of the proposed SCIO, which must be in Scotland
- the names of the people who are making the application
- the name of its main contact person
- the SCIO's proposed activities
- any conditions the proposed SCIO will place on accessing its benefits.

In addition the proposed Charity Trustees have to sign a form to confirm that they are not barred from holding that office and are aware of their [duties as Trustees](#).

If OSCR approves the application, the SCIO will then be entered in the Scottish Charity Register; if it is refused the applicants may request a review, and if they are still dissatisfied they can appeal to the Scottish Charities Appeal Panel and then to the courts.

SCIO status has been available since April 2011, and OSCR has announced that a simplified process for Charitable Companies that want to become SCIOs will be available from 1st Jan 2012.

Useful weblinks and contact details

- **Office of the Scottish Charity Regulator (OSCR)**
2nd Floor Quadrant House 9 Riverside Drive Dundee DD1 4NY
01382 220446
info@oscr.org.uk
www.oscr.org.uk
<http://www.oscr.org.uk/ScottishCharitableIncorporatedOrganisations.stm>
- **Scottish Council for Voluntary Organisations (SCVO)**
<http://www.scvo.org.uk/information/organisational-structures/scottish-charitable-incorporated-organisation-scio/>
(includes guides and model constitutions)
- **Your local Council for Voluntary Service (CVS) or Volunteer Centre**
<http://www.cvsscotland.org.uk/Home/Home.aspx>
- **The Scottish Government**
<http://www.scotland.gov.uk/Topics/People/15300/charities>
- **HM Revenue and Customs –**
Charities Helpline: 0845 302 0203
<http://www.hmrc.gov.uk/charities>



The **Scottish Council of Jewish Communities (SCoJeC)** is the representative body of all the Jewish communities in Scotland. It advances public understanding about the Jewish religion, culture and community, and also works in partnership with other organisations to promote good relations and understanding among community groups and to promote equality. (Scottish Charity SC029438) <http://www.scojec.org/>



BEMIS is the Scottish national Ethnic Minorities led umbrella body, supporting, empowering, and building the capacity of minority third sector community organisations. As a strategic partner with Government, it is proactive in influencing the development of race equality policy in Scotland, and helps develop and progress multicultural Scotland, active citizenship, democracy, and Human Rights Education at the Scottish, UK, and European levels. <http://www.bemis.org.uk/index.html>



The **Scottish Government** is committed to promoting equality of opportunity and social justice for all those who live in Scotland. **One Scotland** is the Scottish Government campaign designed to tackle racism. It aims to raise awareness of racist attitudes, highlight its negative impact and recognise the valuable contributions that other cultures have made to our society – and make Scotland no place for racism. <http://www.scotlandagainstracism.com/>