



Consultation on Options for the Implementation of the Scottish Charitable Incorporated Organisation (SCIO)

**A response from the
Scottish Council for Voluntary Organisations**

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About SCVO

The Scottish Council for Voluntary Organisations is the national body representing the interests of the voluntary sector in Scotland. It does so through its policy committee which is elected from its membership of around 1300 Scottish voluntary organisations. SCVO's mission is to advance the values and shared interests of the voluntary sector to provide them with information and assistance; to improve their effectiveness and efficiency and to represent their views to Government and other public bodies. Further details about SCVO can be found at www.scvo.org.uk.

SCVO has long been an advocate of the development of a bespoke law governing charities in Scotland. We also supported the inclusion of SCIOs in the Act, as a solution to the longstanding debate/discussion about the absence of a corporate entity especially designed for charities. SCVO, along with other sector representatives (EVOC, Citizens Advice Scotland and the Scottish Drugs Forum), has participated over the past year in a Scottish Government Working Group set up to advise Ministers on the development of regulation to implement the SCIO provisions in the Act. This response has been formulated by internal discussion within SCVO and its Policy Committee, as well as discussions and focus group work with CsVS and other interface groups, umbrella organisations and front line organisations considering becoming SCIOs.

Introduction

- Our recent work on this issue has confirmed our belief that the voluntary sector is keen to see this new legal form become available as soon as possible.
- SCVO believes the SCIO provides a practical solution to growing concerns within the sector about the disproportionate levels of liability committee members and other volunteers can be exposed to as a result of their involvement with unincorporated community groups.
- However, the SCIO framework needs to be simple and accessible; minimise the need for professional advice; and take full advantage of the opportunity to minimise administrative burdens, with the reduction from two to one regulator a major benefit to charities, small and large.
- It should also uphold the principles of transparency and accountability; and support good governance.
- This response expresses our views regarding the general principles raised in the Government's consultation document. The next stage will be to draft detailed regulations based on these general principles. Consultation will follow on the draft regulations hopefully before the summer recess. We recognise that there will be many challenges in translating these general principles in to practical regulation. We strongly encourage the Scottish Government to keep the overall policy aims and interests of the sector front and centre during that process. We are conscious that good ideas can get lost in the implementation phase and that the devil is often in the detail.

SCVO's Response to the Consultation Questions:

Q 1

In designing the SCIO primarily for charities with incomes of between £25,000 and £1,000,000, do you think we have identified the right target market?

- The consultation document contains statistics about the nature of the charitable sector in Scotland. It is important to remember that 80% have an annual income below £100,000 and nearly two thirds are below the £25,000 level.
- The working group focused on the small to mid-range of charities because of the difficulties of trying to design a one-size fits all model.
- We understand the numbers are to give a sense of range, rather than as specific thresholds. SCIOs should be available to any charity regardless of size.
- We have had lots of feedback from the sector strongly in favour of including the smaller end of the spectrum of organisations, below the £25,000 level.
- They highlight a number of specific examples of organisations with very little annual income but significant assets, for whom the benefit of the SCIO would be very valuable, e.g. village halls and other community-owned buildings.
- Therefore, the SCIO needs to be made accessible and suitable for the smallest groups who may stand to benefit most from this new form. Other examples include after school clubs and sports clubs, many of which are currently looking to become companies limited by guarantee but who have expressed a preference for the SCIO form.
- One of the reasons for this preference is the perception of company law as threatening; it brings an unnecessary level of complexity and burden of compliance; it involves financial implications of fees, including penalties for late filing that can be particularly onerous for small groups running on volunteer good will; and the requirement for audited accounts regardless of size of organisation implies disproportionate costs in professional fees and administration hours.
- Also, there is a strong feeling within the voluntary sector that the company model is not suited to the voluntary sector because of the fundamentally different motives (e.g. non profit-making). The language and structure of company law are at odds with the ethos of the sector.
- We also support the underlying policy aim of providing some protection for committee members, in response to growing awareness of potential liability, which is making it difficult to recruit committee members/trustees. This is a simple aim which should not require a complex and cumbersome regulatory framework. We refer to the Scottish Law Commission work on unincorporated associations, which provided a simple and neat solution to the liability problem.

Q2

Having considered the issues discussed in paragraphs 63-74, and the draft framework provided at Annex A, do you agree with the Working Group that option 1 presents the right SCIO model for implementation?

A brief description of Option 1:

- The starting point for Option 1 is existing charity law and regulation.
 - What do we need to add to this to ensure third party confidence in SCIOs and good governance within them?
 - This option assumes that we are satisfied with existing requirements in the Charities and Trustee Investment (Scotland) Act 2005 (the 'Act') imposing general duties on charity trustees and members and that no additional duties are needed for SCIOs.
 - What do we need to say in regulation about SCIO constitutions? This option favours putting some specific requirements in regulation on the areas which a SCIO constitution must cover (some of which are already in the Act), without providing specific wording for such clauses. Model constitutions would continue to be developed by the sector.
 - Maintenance of registers of members and trustees is required. They would need to be submitted to OSCR but not made public.
 - How does this option address the issue of credibility vis a vis third parties (e.g. creditors/funders)? There would be no requirement for a register of charges; but there would be specific provision for both solvent and insolvent dissolution. Ideas about these provisions are detailed below.
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- We think the solution lies somewhere in between Options 1 and 3. See below for more detailed discussion.

Q3

Does option 1 deliver those original policy objectives in creating a straightforward yet robust incorporation vehicle for Scottish charities?

- The original policy objectives were: 1) to create an incorporation vehicle that is tailored to the needs of charities; 2) straightforward; 3) accessible; 4) affordable; and 5) credible.
- As note above, we think the best solution for the sector is to create a framework that lies somewhere in between Options 1 and 3. We believe the additional regulation over and above what already applies to a charity should be kept to an absolute minimum, and that this is possible without jeopardising the credibility of the new SCIO vehicle. The credibility of the new format is going to come mainly from its relation to existing charity law.
- In terms of the policy objectives, there are other issues that will have a very big practical impact on the popularity of the SCIO and its ability to benefit the sector. For example, the issue of what accounting regulations will apply to SCIOs is going to be key. This is discussed below.
- We must ensure that the process applicable for unincorporated associations wishing to become SCIOs is made as accessible and straightforward as possible, because this is the group of organisations that have the greatest incentive to take up the SCIO and the most to benefit from it.

Q4

Have we correctly identified the advantages and disadvantages? Do you think option 1 has missed any aspects?

Please see above.

Q5

Do you agree that option 2, the company model, would not deliver the best SCIO form for Scottish charities? Have we correctly identified the advantages and disadvantages? If you disagree, please tell us why.

YES

Q6

Do you agree that option 3, the minimalist model, would not provide the ideal structure for the SCIO? Have we correctly identified the advantages and disadvantages? If you disagree, please tell us why.

- We think the SCIO should be as close to this end of the spectrum as possible.
- A strong message coming from the sector is that groups at the smaller end of the spectrum continue to struggle with existing levels of OSCR regulation. So care must be taken to create a system that is as light touch as possible and does not unnecessarily add to existing OSCR regulation requirements. Otherwise, the vehicle will not be attractive and we will have lost a golden opportunity to settle a debate that has been ongoing now for over 30 years.
- As noted above, the Scottish Law Commission proposals for creating limited liability for unincorporated associations produced a solution to the liability problem with an absolute minimum of fuss. This does pose the question of why we need more regulation in the case of registered charities that are subject to OSCR's compliance regime.
- Concerns about credibility in the eyes of third parties must not be exaggerated. The Working Group's contact with funders/lenders has confirmed SCVO's belief that this group has confidence in the charity brand, underpinned by OSCR regulation. The SCIO will benefit from this and should require a very minimum of additional regulation to address practicalities (like the dissolution process for example).

Q7

Of the three models outlined above, which would you prefer the SCIO to be based on? Please tell us why you have chosen a particular option over and above the others.

See our response to Q3 and Q6

Q8

Do you agree that the additional details of the SCIO application process should be set out administratively by OSCR rather than in regulations?

The Act contains some basic provisions on the SCIO application process:

- S. 54 says any 2 or more individuals may apply to OSCR to create a SCIO and to enter it into the charity register. The application must include the name, proposed principal office, include a copy of the constitution, and any other information required by regulation or OSCR.
- These are similar to the requirements for registration of a charity under s.4 of the Act.
- OSCR asks for additional information in relation to charities registering under s.4, including information re accounting period, beneficiary group, conditions of benefit, and a charity trustee declaration from three trustees – see para 91 of the consultation.

YES. We agree that additional details of the SCIO application process should be set out by OSCR rather than in regulations; that they should be kept to a minimum, required specifically by the policy aims of the new form; and developed in consultation with stakeholders, including the voluntary sector.

Q9

Are there specific additional requirements you would expect to be required in SCIO applications?

In principle, no. They should be the same as for charities, unless there are compelling reasons for different information to be provided (e.g. if a register of members is required).

Q10

Do you agree that the additional details of the conversion process should be set out administratively by OSCR rather than in regulations?

Yes.

- We believe that a significant percentage of demand for the SCIO will come from organisations that have not already incorporated under company law or adopted any other form of legal personality.
- The conversion process will not apply to unincorporated associations because they do not have independent legal status and are therefore not 'converting' from one legal status to another.
- Therefore the process of moving from an unincorporated association to a SCIO is of paramount importance to the sector. It needs to be simple, accessible and cost-effective.
- For all three processes, i.e. 1) adopting SCIO form from unincorporated status, 2) converting from company limited by guarantee (or other form), or 3) amalgamation of two existing SCIOs, we agree that the detail does not need to be set out in regulation. Processes should mirror those applicable for charities wherever possible. OSCR should be required to engage in formal public consultation before adopting these new procedures.

Q11

Do you agree that the additional details of the SCIO amalgamation process should be set out administratively by OSCR rather than in regulations?

See above

Q12

Do you agree that the regulations should cover the basic elements to be required of a SCIO constitution rather than setting out the exact form and content?

YES.

- There is not unanimous agreement within the sector on this point.
- However, a significant majority agree that the diversity of the sector means that it is impossible to produce detailed model constitutions that will be suitable for all organisations
- There is broad support for the proposal to regulate on the specific issues that a constitution must address, while leaving the 'how' up to each individual organisation; this should include clear requirements for membership, definition of member, etc. in light of the duties on members contained in s. 51 of the Act.
- Having said this, there is also very strong support for model constitutions to be made available to groups, which are flexible so they can be adapted to suit particular needs and aims.
- We think these should continue to be developed by the sector, including SCVO and other umbrella and sector specific bodies, rather than being set out in regulation.
- For example, there is considerable interest in developing specific forms of constitutions for certain areas of the sector, e.g. village halls, which will have a particular interest in becoming SCIOs but will have very particular needs and circumstances that must be catered for within their constituting documents. This is best done by the sector with the support of OSCR, where appropriate.

Q13

Do you agree that the elements listed under paragraph 113 are the aspects of SCIO governance that SCIO constitutions should be required to cover? If you think any aspects have been missed, please provide details of these.

Paragraph 113 of the consultation document includes:

- clauses on membership and trusteeship
- powers and general structure
- procedural rules, including calling and holding of meetings, quorums, decision-making processes, voting rights, resolutions, minutes and records
- board composition and role of office-bearers, as well as rules dealing with conflict of interest
- administration, including delegation, accounting, record-keeping, etc; and
- arrangements for winding up and dissolution

YES these elements should be in SCIO constitutions.

- These issues are already covered in the SCVO model charity constitution and are standard elements of constitutional good governance which we promote across the sector. We assume the constitutions will also need to specify charitable purposes and what happens to assets on dissolution, as required for charities.
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- We want to limit the regulation of these constitutional elements to what is necessary for good governance in relation to SCIOs.
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- We also need to be very clear about what non-statutory guidance role OSCR will have in relation to SCIO constitutions. We believe this role must be limited to the requirements set out in regulation. Organisations must be free to craft their constitutions to suit their aims (within the scope of regulation and legislation).
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- SCVO, along with other sector umbrella bodies and the newly evolving CsVS/VC interfaces, will work together to produce models that can be adapted to the needs of different groups, as well as ongoing support in development of constitutions

Q14

Do you agree that the documents and information sources, in which SCIOs should be required to include their name, should mirror those for other Scottish charities?

YES.

- The disclosure of charitable status rules for charities do not apply to SCIOs (see s.52(4) of the Act). We think the rules should be the same for both charities and SCIOs, and we support the inclusion of websites.
- Another difference between the two in the Act is that criminal penalties apply in the case of SCIOs but not for charities. Although this is not part of the current consultation because it is already contained in the Act, we do not support the criminal penalties attached to failure to comply with the disclosure rules as applicable to SCIOs. We assume this is a measure that has been imported from company law and think it represents a disproportionate approach to the regulation of charities. As noted above, we believe the SCIO is going to be of particular benefit to the smaller end of the spectrum of Scottish charities. To think that a group of volunteers who have organised an after-school play group might find themselves liable to criminal penalties for omitting to include the full name in a document is extraordinarily draconian. We strongly urge the Scottish Government to consider a review of this provision in any forthcoming wider review of charity law.

Q15

Do you agree that the SCIO regulations should not make specific provision on the keeping and/or publication of records and minutes, and the submission of certain documentation to OSCR, (additional to that already in the 2005 Act)?

YES.

- We do not believe that it is appropriate to include these requirements in SCIO regulation where they do not already apply to charities in general.
- However, we do believe that it is good practice and a key aspect of good governance to have proper record keeping practices and a culture that fosters transparency. This can include publication of records and minutes in a variety of ways. Freedom of information

legislation may also apply to charities who are involved in the provision of public services. For the others, we strongly support a proactive approach to transparency and accountability. However, we do not support the inclusion of specific requirements along these lines in SCIO regulation.

Q16

Do you agree that SCIOs should be required to keep registers of their members and that such registers should not be accessible to the public? If you disagree, please tell us why.

YES.

- There is strong support within the sector for the keeping of a register of members.
- Many voluntary sector organisations already keep registers of members for the purposes of participating in annual meetings, managing voting rights, etc. This is good practice. However, there is also some confusion about the definition of a ‘member’ within some groups that can cause administrative and governance problems. Thus we support the practice of clearly outlining the terms of membership within an organisation’s constitution.
- But equally, it is recognised that such information is highly sensitive and should not be made public. We do not support a requirement to make registers of members public.
- For comparison purposes, the position with companies is that they must keep a register of members but are not obliged to submit it to Companies House.

Q17

Do you agree that SCIOs should be required to keep registers of their charity trustees and that such registers should not be accessible to the public? If you disagree, please tell us why.

YES.

- Charities are required to provide a list of trustees in their annual trustee report.
- There is no reason why a similar requirement should not apply to SCIOs.
- However, there is a sensitivity around publishing personal information. The current solution for charity trustees is that only names are provided. Addresses are withheld, though a contact address for the organisation is provided to OSCR, and that may sometimes be the address of an individual.
- We support a similar arrangement for SCIOs, again on the basis that unless there is a compelling reason for it, the rules for charities and SCIOs should be the same.

Q18

Do you agree that the preferred SCIO model outlined in paragraphs 63-74 will help to minimise any uncertainty about doing business with a new form of incorporated organisation?

Please see our responses to Q2, 3 and 6.

Q19

Do you anticipate there being any additional costs for third parties associated with the introduction of a new form?

YES.

- There will inevitably be an initial period of awareness raising after the new SCIO form is introduced. This will be equally true for third parties (i.e. lenders, funders, local authorities) as for those within the voluntary sector who are considering taking up the form.
- The costs of any adaptation of practice/procedure to the new form will be influenced by how big a change it represents from existing practice and awareness, as well as how effectively the Scottish Government and OSCR plan and resource their information, training and support programmes.
- If the SCIO takes a form somewhere between the preferred option and a minimalist approach, the additional costs for third parties should be kept to a minimum, as they will be closely based on existing charity regulation.

Q20

Do you consider it important for a SCIO to be able to raise finance?

- It depends on what you mean by 'raise finance'!
- There are thousands of charities in Scotland who have been active in a wide range of activities for years and years, without the benefit of corporate status.
- We believe the SCIO is going to provide tremendous benefit to the smaller and mid-size range of charities in Scotland (which is two thirds of all charities). These organisations already operate at various levels of sophistication in terms of their financial affairs, without the benefit of being a SCIO.
- The vast majority of this target group are unlikely to be involved in complex financial arrangements.
- Should they get to a stage where they are considering raising finance, they may find other ways of satisfying lenders, failing which they have the option to adopt company status under the Companies Act, while remaining a charity.

Q21

Do you agree that the regulations should not provide for the maintenance and publication of registers of charges and debentures, as proposed in the preferred model (option 1, page 22)?

YES

- We believe that this is unnecessary given the target market of the SCIO. It will add a further layer of complexity and delay in the availability of the SCIO for a very small group of potential beneficiaries that we do not believe should be the focus of our limited resources at this time.
- Further, it would add a significant burden on OSCR which is not justified by the policy aims of the SCIO.

Q22

Do you agree that the regulations should require OSCAR to publish SCIO accounts on its website to increase transparency?

- Our position is that the same rules that apply to charities should apply to SCIOs in relation to publication of accounting information. We are not convinced of any policy reason for making different rules for SCIOs. Because they are registered charities, they have the same duty to provide accounts on request to a member of the public. With respect to funders and lenders, the incentive is with the organisation to provide financial information in the format requested by the funder in order to secure that financial support.

Q23

Do you agree that the accounting framework for SCIOs should mirror the existing requirements for charities rather than companies (that for charities allows those with limited income to produce a simpler form of accounts, i.e. receipts and payments accounts)? If you disagree, please tell us why.

YES.

- This question highlights one of the key potential benefits of the SCIO for smaller charities.
- The sector strongly supports the view that the accounting requirements for SCIOs should mirror those for charities. In other words, that the thresholds that apply to charities for production of accrued accounts, should also apply to SCIOs.
- The fact that small charities that incorporate under company law are required to produce accrued accounts is a huge source of grief and cost for the sector. Bringing the SCIO in line with current charity accounting thresholds is seen as one of the principle benefits that groups will acquire as a result of choosing the SCIO over incorporation under company law.
- It would also be very confusing to have different rules for charities and SCIOs. Further, we do not see what policy aim would be achieved by making such a distinction.

Q24

Which of the options for the dissolution of a solvent SCIO do you think strikes the right balance between protecting creditors and reducing the administrative burden on charities?

Option 1 - the basic option - similar to process that unincorporated charities would use via OSCAR under s.16, which requires OSCAR consent before any winding up or dissolution.

Option 2 - striking off - similar to the process that companies would use via Companies House; this process could involve certain requirements to satisfy creditors, like the SCIO trustees must sign a 'declaration of solvency' (though the potential liability of trustees in relation to this declaration must be made clear) plus some publication requirements, e.g. on OSCAR website but also in the public domain

Option 3 - Members Voluntary Liquidation - requires appointment of a liquidator in addition to OSCAR's involvement, thereby significantly increasing the cost of the dissolution

Option 4 - Only option would be to use an insolvency process - follows the regime for insolvent companies; which will be more complex and more costly

- The questions regarding winding up and insolvency are unfortunately quite technical and we do not have a particular expertise in this area. However, it seems clear that options 3 and 4 amount to overkill. Option 1 is preferable. However, this option could raise concerns about what to do with creditor claims that cannot follow an individual once the organisation is dissolved.
- The policy aims should be to make this as simple, accessible and cost sensitive as possible – particularly as we are in the realm of solvent organisations. There are obvious public policy reasons for ensuring that a maximum of a charity’s assets go to another charity (or SCIO) rather than towards paying a liquidator or other third party.
- We support the introduction of an absolute minimum of additional requirements to protect creditors. The idea of a duty to publish a notice of dissolution both with OSCR and within the wider public domain could be a proportionate way of increasing awareness (with the public as well as creditors) of an organisation’s intent to dissolve, thereby enhancing the comfort level of potential creditors.
- We are not persuaded of the appropriateness of a requirement for a trustee ‘declaration of solvency’. Trustees must already sign off the charity’s accounts annually and financial information must be provided to OSCR in the application form for winding up under s.16, including details of assets and liabilities that are currently held by the charity, how the remaining assets will be distributed, and how any remaining liabilities will be dealt with. This application form is signed by a trustee on behalf of the board and so we don’t see the need for additional trustee declarations.

Q25

Which of the options for the dissolution of an insolvent SCIO do you think strikes the right balance between protecting creditors and reducing the administrative burden on charities? If you have selected option 5, the interim option, please tell us which of options 1-3 you would prefer to be developed for the longer term.

Option 1 - Apply the insolvency regime that currently applies to companies; involves a more complex and costly process.

Option 2 - Apply the current insolvency regime, with modification (i.e. removing provisions from current regime that are not relevant to SCIOs); involves working on new regulations, would take time and resources plus result in delay for introduction of SCIOs.

Option 3 - Appointment of an independent third party to manage the most complex or contested insolvency cases - this would involve creating a bespoke new insolvency framework specific to SCIOs and result in delay for introduction of SCIOs

Option 4 - The default regime - use of sequestration, which is better suited to smaller, simpler organisations; is simpler and low cost and does not require new legislation; but requires an act or consent of a third party (i.e. a creditor)

Option 5 - Apply the default regime in the interim, whilst a dedicated insolvency regime for SCIOs is developed.

- We support the introduction of the SCIO as soon as possible and understand that the different possibilities for insolvency procedures will have an impact on how quickly the SCIO can be introduced.
- However, we also want to get it right. We think it will become the vehicle of choice for most, if not all new charities in Scotland, if we design it well.
- OSCR statistics show that approximately 100 charities de-register each month. The vast majority of them are solvent.
- Therefore the insolvent dissolution regime is going to be used in a tiny minority of cases. That is not to say we don't need to pay attention to it. But we must bear that in mind when designing a process to deal with such a small number of cases. In other words, proportionate resources used and a proportionate system that can be flexible enough and light-touch enough to cope with very small organisations dissolving. It would be helpful to know the percentage of charities that dissolve due to insolvency and of those, what size they are.
- Option 5 seems to make the most sense at this stage, with the aim of producing tailored regulation that looks more like option 3 rather than 1 or 2. The idea of a judicial factor has appeal because it appears to offer a reliable third party to independently manage creditor claims, without involving high costs. This is subject to the work that is being done by the Scottish Law Commission on the law on Judicial Factors.
- We support the view that OSCR's role in the dissolution should be limited to oversight of charitable assets.
- In relation to the dissolution of a SCIO generally, under s.55 (7) of the Act, if a SCIO ceases to be a charity, it stops being a SCIO too. What does this mean for its assets and liabilities? What does it become? If the default legal form is an unincorporated association, who takes on responsibility for its contractual obligations, e.g. employment contracts, leases, pension liability, etc.? The trustees, members, person who signed the documents? These issues need to be clarified. Our initial view is that the loss of charitable status should trigger a winding up of the organisation with transfer of assets to a similar SCIO or other charity.

Conclusion

- We welcome and support the Scottish Government's work to implement the new SCIO form. The voluntary sector welcomes the news that it will at last become an option for those looking to constitute themselves as separate legal entities.
- We believe it should be based on existing charity law with a minimum of additional regulation. The ideal framework should be simple and accessible, straightforward to take up, and offer significant advantages over the company model, including a single regulator and a more flexible accounting regime.
- The following are some additional comments we have on issues that are outside the scope of this consultation but are related to SCIOs and are important for the sector:

- Members' duties: S. 51 of the Act places a general duty on the members of a SCIO, parallel to the duties of trustees. We think this needs clarification, particularly in relation to the meaning of 'members'. What is the impact on members and how will OSCR step in over misconduct of a SCIO in the event of members not acting in the best interests of the SCIO? Many voluntary sector groups use the term 'member' quite loosely. This can cause confusion. It also highlights the importance of keeping a register of members, which is recommended good practice in all organisations. Any training, guidance and general awareness-raising about the new SCIO will need to support a clear understanding of the duty on members and how the term should be interpreted.
- Where a SCIO transfers its assets and liabilities to another SCIO under s.61 of the Act, we would like to see some clarity on whether the transferee SCIO becomes liable for things that it didn't know about? If so, what recourse would they have where the transferor SCIO no longer exists?
- Offences provisions: we support the conclusion that there is no justification for including additional offences over and above those that currently apply to charities (paras 145-147).
- Phased roll-out: The consultation suggests the possibility of a phased roll out of the SCIO, to manage demand on OSCR's resources. This will have to be carefully thought through so that those organisations that may benefit most do not experience additional delays in taking up the form.
- Pensions transfer issue: A move by an unincorporated association to a SCIO will trigger crystallisation of pension liabilities for those organisations that have a final salary pension scheme such as the Scottish Voluntary Sector Pension Scheme, administered by the Pensions Trust. This is an issue which we cannot resolve within the SCIO regulations because the rules on pensions are contained in different legislation that is UK and not Scottish legislation. However, for most groups this should not create an insurmountable barrier to becoming a SCIO. Unincorporated groups with this type of pension scheme who are considering taking up the SCIO form will need to discuss the possibility with their pension provider who should be open to the idea.
- Understanding limited liability: the limited liability that will come with the SCIO will not protect trustees from responsibility for negligence. The SCIO form cannot be a replacement for good governance and sensible risk management.
- Limited liability and trustee indemnity insurance: it is important to note that the latter is not a replacement for the limited liability provided by the SCIO. As explained in the consultation document (footnote 25), trustee indemnity insurance is intended to cover trustees against having to personally pay legal claims made against them for a breach of trust, duty or negligence, committed by them in their capacity as trustees. It does not protect trustees of an unincorporated association against claims for the debts of an organisation. The SCIO would provide that kind of protection: e.g. employment tribunal damage awards, outstanding contractual obligations where the organisation dissolves, or pension liabilities, subject to circumstances of gross negligence as noted above.