

LEGAL STRUCTURES

In order to establish any type of voluntary organisation you'll first have to decide on a suitable legal structure for it to adopt. This isn't whether your organisation will be a charity or regard itself as a social enterprise, but the legal framework as defined in your governing document (*please see section 1.7*) and to which you must adhere. The key decision in selecting a legal structure is whether you wish to be **unincorporated** or **incorporated**. In Scotland, 61% of registered charities (July 2018) adopt an unincorporated legal structure which, as a consequence, exposes their charity trustees to potential risks. The table below describes the key differences between unincorporated and incorporated organisations.

<u>Unincorporated</u>	<u>Incorporated</u>
Unincorporated organisations are not regarded by the law as 'legal entities' as they do not have a separate legal personality distinct from their members or management committee. As such, they are essentially a group of individuals working towards a common purpose. If wishing to enter into agreements such as a lease or building contract, the individuals must do so on behalf of the organisation meaning that they therefore incur personal liability.	Incorporated organisations are regarded by the law as 'legal entities' meaning that they can enter into agreements in their own right. Such organisations can own assets such as land and buildings, employ staff, incur debts, sue and be sued. The liability of members is therefore limited (in the vast majority of instances).

Although many small organisations operate just fine with an unincorporated structure – perhaps their sole liability is the weekly £7 hall let – the consequences can be catastrophic when things go wrong as members have unlimited liability. Careful consideration should therefore be given when deciding on whether to adopt an unincorporated or incorporated legal structure. Common types of each structure are detailed below.

<u>Unincorporated legal structures</u>	
Unincorporated association	Can be registered as a charity.
Trust	Can be registered as a charity.

<u>Incorporated legal structures</u>	
Scottish Charitable Incorporated Organisation (SCIO)	Can only be a charity.
Company limited by guarantee	Can be registered as a charity.
Community Interest Company (CIC)	Cannot be registered as a charity.

For a full comparison of common third sector legal structures, please see the *Office of the Scottish Charity Regulator's (OSCR) [Legal Forms Factsheet](#)* and the relevant pages of our **Getting Started** section.

It's not necessary for your organisation to be a charity - in fact the *Office of the Scottish Charity Regulator (OSCR)* estimates that approximately only 50% of Scotland's third sector organisations are charities – and any application for charitable status should be considered carefully beforehand (*please see section 1.9*). As illustrated in the table above though, one significant benefit of charitable status is that it offers a route to establish an incorporated organisation in order to protect the charity trustees.

There are currently **24,485** charities in Scotland (July 2018). Despite only being introduced in 2011, the SCIO model already accounts for 3,498 (14%) of this figure and approximately 50% of all applications for charitable status are SCIOs. The table opposite illustrates that the sector is recognising the importance of incorporating and in particular, the SCIO as a vehicle for doing so.

Legal structure	Jan 2016	Jul 2018	+/-
Unincorporated	12,011	11,461	-550
Trust	3,814	3,570	-244
SCIO	2,051	3,498	+1,447
Company	5,003	4,878	-125
Other	1,173	1,078	-95
TOTAL	24,052	24,485	+433