

CHANGING LEGAL STRUCTURE

With the introduction of the Scottish Charitable Incorporated Organisation (SCIO) legal structure in 2011 providing a more convenient alternative for establishing an incorporated charity, many existing charities and non-charities have taken the opportunity to 'convert' to this new charitable form. Although particularly beneficial for organisations with unincorporated legal structures such as trusts and unincorporated associations, existing incorporated organisations including Community Interest Companies (CICs) and companies are also applying to change to SCIOs. The table below describes the process involved when changing to a SCIO from each common third sector legal structure.

Process of changing to a SCIO from common third sector legal structures	
<p>Unincorporated associations & trusts > SCIO</p> <p><i>(steps 3 and 5 do not apply to unincorporated associations and trusts that are not charities)</i></p>	<ol style="list-style-type: none"> 1. Apply to OSCR to incorporate a SCIO. The SCIO's name must be different to that of the existing charity as OSCR cannot enter two charities with the same name on the <i>Charity Register</i>. 'SCIO' or '2018' can simply be added to the existing name (which can be reverted back to once the existing charity has been dissolved). 2. Charitable status awarded. If the SCIO successfully passes the charity test, charitable status will be awarded. 3. Apply for consent to dissolve the exiting charity. Complete and submit the Application for Consent to Wind-up or Dissolve a Charity to OSCR, giving at least 42 days' notice of the effective date of dissolution (the next AGM or an EGM called for that purpose). 4. Dissolve the existing charity & transfer its assets. Dissolve the existing charity in accordance with its governing document and transfer the assets and liabilities to the new SCIO. Independent legal advice is advised if contracts are involved. 5. Notify OSCR that the existing charity has been dissolved. Within three months of the existing charity being dissolved, complete and return to OSCR the declaration sent when permission to dissolve is granted along with any evidence requested (closing bank statements etc.).
<p>Company > SCIO</p>	<ol style="list-style-type: none"> 1. Pass the necessary resolutions. At a general meeting of the company's members or via a written resolution, the company must pass a resolution that it is to be converted into a SCIO and another adopting the proposed SCIO constitution. OSCR provides template resolutions. 2. Complete the Conversion into a SCIO application form. The form should be submitted to OSCR along with the proposed SCIO constitution, existing articles of association, trustee declaration forms and copies of both resolutions. 3. Application approved. If OSCR grants the application it will add a note to the company's listing on the Charity Register and send both of the resolutions to Companies House. Companies House will register the resolutions and cancel the registration of the company. Once this has been completed the company will automatically convert into a SCIO.
<p>CIC > SCIO</p>	<ol style="list-style-type: none"> 1. Apply to OSCR to incorporate a SCIO. The SCIO's name must be different to that of the CIC as the <i>Registrar's Index of Company Names</i> cannot have two names that are the same or similar. (Once the CIC has been dissolved, the SCIO can apply to change its name accordingly if desired.) 2. Charitable status awarded. If the SCIO successfully passes the charity test, charitable status will be awarded. 3. Amend the CIC's articles of association. A special resolution should be passed to amend the CIC's articles of association so that the new SCIO is nominated as the asset locked body that will receive the CIC's assets on dissolution. 4. Transfer the assets. Once the CIC's resolution and amended articles have been filed at Companies House, the assets can be transferred to the SCIO without the involvement of the CIC Regulator's Office. 5. Dissolve the CIC. With the SCIO now delivering its services, the CIC can apply for voluntary dissolution by submitting the DS01 form to Companies House along with a cheque for £10.

Needless to say, careful consideration of all factors should be given prior to changing legal structure, including the implications for existing contracts and agreements etc. For a comprehensive overview of these considerations and further information on changing to a SCIO, please see OSCR's [A Guide to Incorporation](#) and p16-17 of [SCIOs: A Guide](#).