

## Conversion into a SCIO: application form and guidance notes

The Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act) sets out a specific process for existing charitable companies, registered societies and community benefit societies (societies) to be converted into SCIO's. This process is not available to charities with any other type of legal form. Unincorporated organisations or trusts wishing to incorporate to a SCIO should refer to OSCR's website ([www.oscr.org.uk](http://www.oscr.org.uk)).

If your application to convert into a SCIO is granted and takes effect, the existing charitable company or society becomes a SCIO. This means that:

- those individuals or organisations who are the members of the converting company or society immediately before the conversion takes place become the first members of the SCIO, and
- all property, rights and liabilities of the converting company or society become those of the SCIO.

### Before you apply – things to consider

Before you submit your application to OSCR to convert a charitable company or society into a SCIO, there are a number of things to consider. If your application is granted, the conversion of the company or society will change the body's legal form and this change may affect the charity's existing contractual arrangements, including any loan or credit arrangements.

Key matters to consider before applying for conversion include:

#### 1. Clarifying title to property

While the transfer of the property, rights and liabilities from the company or society to the SCIO happens automatically due to the provisions in the 2005 Act, before submitting your application you should consider whether there are any practical implications which might arise from the conversion.

In particular, if the SCIO will own any heritable property, it may wish to clarify its title to that property. This can be achieved by registering a Notice of Title with Registers of Scotland, which is the Scottish Government agency responsible for records relating to property and other legal documents.

#### 2. Contracts and agreements

Some companies and societies will have existing contracts or agreements in place, such as loans, grant funding, leases, bank overdrafts, or Service Level Agreements. These companies or societies should consider whether the conversion into a SCIO will affect those contracts.

You should consider the terms and conditions of any contracts before applying to OSCR and, if necessary, discuss the proposed conversion with the other contracting party to identify and resolve any issues.

#### 3. Floating charges

Some types of complex loan instruments, such as floating charges, are not available to SCIOs. A company or society which has granted a floating charge must consider what effect the conversion to a SCIO would have on that charge, seeking appropriate independent advice on the matter as necessary before applying to OSCR for conversion.

Additionally, companies which have fixed or floating charges registered with the Registrar of Companies (Companies House) that are not yet satisfied should note that it is not possible to register a statement of satisfaction with Companies House (or OSCR) following the conversion, even if the charge was satisfied prior to the conversion taking place. This means that the charge will remain listed indefinitely against the converted company's entry in the Register of Companies (although the Register entry will show that the company has converted into a SCIO). If this is an issue for your company, you should consider how best to resolve the matter before submitting your application for conversion.

#### **4. Other regulators' requirements**

As part of the conversion process, OSCR must consult with either Companies House or the Financial Conduct Authority (the FCA) to determine whether those bodies have any objection to the conversion. OSCR has agreed a list of reasons for objection by those bodies which would likely result in the refusal of the application for conversion; these reasons include the company or society being in default with its filing requirements (accounts and annual returns) or having unpaid penalties due to the regulator.

Before submitting your application, you should ensure that you are up to date with any filing requirements at Companies House or the FCA (as appropriate) and that any outstanding penalties have been paid. Additionally, you should ensure that you comply with any filing deadlines which may arise while your application is being considered; the application may take up to three months to process, or longer if it is particularly complex.

#### **5. Proposed SCIO's name**

Company law states that, where a business name contains a sensitive word as specified in The Company, Limited Liability Partnership and Business Names (Sensitive Words and Expressions) Regulations 2009 (the 2009 Regulations), prior approval must be sought from Companies House to use that name. The 2009 Regulations apply to any type of business, whether or not it is a company. Further guidance on the 2009 Regulations can be found at:

<http://www.companieshouse.gov.uk/about/pdf/gp1.pdf>

If the SCIO's proposed name contains a sensitive word (even if the name of the SCIO is the same as that of the converting company or society), please contact OSCR for further guidance before you submit your application for conversion as you may be required to seek prior approval from Companies House to use the name.

Additionally, if the name of the converting company or society includes the word 'limited' (or 'ltd') as a suffix, you must omit that suffix from the proposed name of the SCIO. That is because company law states that only companies or societies may use such a suffix in their name.

## **How to apply**

A company or society which wishes to convert into a SCIO must complete the 'Application for conversion into a SCIO' form, which follows these guidance notes, and submit it to OSCR with the following documents:

- signed trustee declaration forms for the proposed charity trustees of the SCIO
- a copy of the existing charity's constitution

- a copy of the SCIO's proposed constitution (this must include provision about a number of basic governance matters – see Appendix 1 for details)
- a copy of the notice of resolution of the company or society that it be converted into a SCIO, and
- a copy of the notice of resolution of the company or society adopting the proposed constitution of the SCIO.

The resolutions referred to above must be passed in line with the requirements of either company or Co-operative and Community Benefit law, as applicable. OSCR has prepared model notices of resolution for companies and societies respectively which detail how each type of resolution must be passed. These notices are available on OSCR's website ([www.oscr.org.uk](http://www.oscr.org.uk)).

## Process for conversion into a SCIO

The process for conversion into a SCIO is as follows:

1. OSCR will check to ensure that the application is complete, that all required documents have been submitted, and that the company or society has followed the correct procedures in making the resolutions. OSCR will also check that the constitution of the company or society does not prohibit the conversion taking place.
2. In assessing the application for conversion, OSCR must consider whether:
  - the proposed new SCIO will pass the charity test
  - the proposed constitution contains the required elements
  - the proposed name of the SCIO is objectionable, and
  - there are any grounds to refuse the application following consultation with Companies House, FCA or any other appropriate person.
3. If OSCR refuses the application, it will write to the applicant explaining its decision and explaining the procedure for requesting a review of the decision.
4. If OSCR grants the application, it will add a note to the entry on the Scottish Charity Register for the existing company or society stating that it is to be converted into a SCIO.
5. OSCR will then send the resolutions which accompanied the application and a copy of the converting charity's Scottish Charity Register entry to Companies House or the FCA (as appropriate).
6. Companies House or the FCA (as appropriate) will register the resolutions and cancel the registration of the company or society which wishes to convert. Once this has been done, the company or society is automatically converted into a SCIO; the Scottish Charity Register will then be updated to reflect this.  
In the case of converting companies, the former entry on the Company Register will show that the body has been converted into a SCIO and will state the name and charity number of that SCIO.

In most cases, the process of conversion will be completed within three months. However, in some cases where the application is complex or novel, this may take longer.

## Appendix 1 – Required elements for a SCIO constitution

The 2005 Act and the Scottish Charitable Incorporated Organisations Regulations 2011 set out a number of required elements which must be contained within a SCIO's constitution.

A SCIO's constitution must contain:

- Its name and the charitable purposes for which the SCIO is established.
- Membership rules
  - Who is eligible to be a member?
  - How does a person become a member?
- Charity trustee rules
  - Who is eligible to be a charity trustee?
  - How are charity trustees appointed? A SCIO must have at least three charity trustees.
- Details of the procedure members and charity trustees must follow to withdraw from membership or their positions as charity trustees, and how they may be removed from the SCIO.
- Any restrictions on the powers of the SCIO. A SCIO has powers under the 2005 Act to do anything to further its charitable purposes unless the constitution restricts those powers.
- The organisational structure of the SCIO
  - For example, are the charity trustees and the members identical (a single-tier structure), or does it have a separate body of members (a two-tier structure)?
- Procedures for meetings
  - How will meetings be convened and recorded? This should cover both members' meetings and charity trustees' meetings.
  - What is the quorum for any meetings of the SCIO? Again, this covers both members' meetings and charity trustee meetings.
  - What voting rights do members and charity trustees have?
  - How will resolutions be passed?
- Any restrictions on the remuneration of charity trustees which are additional to the restrictions in section 67 of the 2005 Act, for example, a ban on remuneration being paid to charity trustees. Please see our guidance publication, '[Guidance and Good Practice for Charity Trustees](#)', for further details on the remuneration of charity trustees.
- Procedures for dealing with any conflict of interest.
- Details of how the SCIO will use any surplus assets it has at the time of its dissolution. These assets must be used for charitable purposes which are the same as or which resemble closely the SCIO's own purposes.



# Step-by-step guidance to completing your application form

These notes will take you through the questions in the application form in order and explain what information we are looking for and, in some cases, what we will consider when we assess your response.

## Section 1 – About the existing charity

### Q1. Charity registration details

Please enter the name and Scottish Charity Number of the existing charity which is applying to change to a SCIO. You must also include either the charity's company number or Financial Conduct Authority Reference number (as applicable).



### Q2. Applicant details and correspondence address for this application

Please enter the name and address of the person who will be the main point of contact for the application to convert into a SCIO.

We will also send an acknowledgement of receipt of the application to the charity's registered office address as entered in the Companies Register or the FCA Register (as applicable), if that address is different.



# Application for conversion into a SCIO

## Sections 56 to 58 of the Charities and Trustee Investment (Scotland) Act 2005

This is an application to OSCR to convert a charity which is a company, a registered society or a community benefit organisation into a SCIO.

## Section 1 – About the existing charity

### Q1. Charity registration details

Charity name

Scottish Charity Number

Company Number or Financial Conduct  
Authority Reference Number (as applicable)

### Q2. Applicant details and correspondence address for this application

Title

First Name

Last Name

Address

Postcode

Tel No

Fax

Mobile

Email

### Q3. New principal office details

All SCIOs must have a principal office in Scotland. Please provide the name of the person who will act as the contact for the charity, and also the principal office address. Section 3 (3)(b) of the 2005 Act, requires that the principal office address be entered on the Register



### Q4. Eligibility to convert into a SCIO

Applications for conversion into a SCIO may only be submitted by a charitable company or society where:



- **In the case of a company, there is more than one member**

There must be at least two members of the company because these members will become the first members of the SCIO when the company converts; it is a requirement of the 2005 Act that a SCIO always has at least two members.

A society will always have at least three members as this is a requirement of the Co-operative and Community Benefit Societies Act 2014.

- **Any shares are fully paid up**

Share capital is the capital paid to a company or society by shareholders in return for shares, and forms the basis of one form of funding for the organisation. Some shares may be issued with payment deferred, so the shareholders are still due to pay the company or society something for shares they hold. If payment has been deferred in that way, the share capital is not 'paid up' and full payment will be required prior to conversion.

The majority of charitable companies will not have share capital as they are companies limited by guarantee, rather than limited by shares. However, all societies will have share capital; often in charitable societies, the share capital is used as a token of membership, allowing members to hold a single share of nominal value.

If you believe that you do not meet one or both of these conditions, please contact us to discuss the matter further before submitting your application for conversion.



**Q3. New principal office details**

**Q4. Eligibility to convert into a SCIO**

Please complete either section 4a or 4b below (as applicable) to confirm that you are eligible to apply for conversion into a SCIO.

**Q4a. Applications by charitable companies**

	Yes	No	N/A
Does your company have share capital?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If yes, are all of the shares fully paid up?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does your company have more than one member?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Q4b. Applications by charitable societies**

	Yes	No	N/A
Are all of the society's shares fully paid up?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## Section 2 – About the SCIO

### Q5. SCIO name

#### Q5a. Proposed legal name of SCIO

Please enter the full name of the SCIO as it appears on its proposed constitution.



You should ensure that this name is not an **objectionable name**, that is, a name which is:

- **the same as, or too like**, the name of a charity (other than the charity which is making the application to change to a SCIO). Check the Scottish Charity Register at [www.oscr.org.uk](http://www.oscr.org.uk) to ensure the proposed name is not already taken by another charity.
- **likely to mislead** the public as to the true nature of the purposes of the body or of the activities which it carries on, or intends to carry on, in pursuit of those purposes.
- likely to give the impression that the body is **connected in** some way to the Scottish Administration, Her Majesty's Government in the United Kingdom, or any local authority, or with any person, when it is not so connected (the term 'any other person' may mean either an individual or a legal body such as a company).
- **offensive**

#### Q5b. English translation

If the SCIO's name is in a language other than English, please enter the English translation if the name can be readily translated. This will allow us to more easily assess whether the name is objectionable as described in Q5a above.



#### Q5c. Any other name by which the SCIO will be known

Please enter any other name by which the SCIO will be known. For example, the SCIO may wish to operate under an acronym or a shorter 'trading name'.



## Section 2 – About the SCIO

### Q5. SCIO name

#### Q5a. Proposed legal name of SCIO

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#### Q5b. English translation

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#### Q5c. Any other name by which the SCIO will be known

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## Q6. Members' names

Please enter the names of the first members of the proposed SCIO; these will be the members of the converting company or society immediately before the conversion takes place. The members may be either individuals or organisations, or a combination of both.

A SCIO must always have at least two members who may also be charity trustees.



## Q7. Charitable purposes

The purposes of the SCIO are stated in its proposed constitution; these may be referred to in a number of ways including purposes, objects or aims.

In completing this part of the form, you should consider the wording of the SCIO's purposes and tell us to which of the charitable purposes set out in the 2005 Act they most closely relate (the purposes of the 2005 Act are set out in full below).

There is no need to feel that you have to enter multiple charitable purposes in Question 7; the SCIO only needs to be carrying out one of the charitable purpose to meet the charity test. Please only select the charitable purpose(s) which most closely reflect what your organisation plans to achieve.

The charitable purposes set out in the 2005 Act are:

<b>a</b>	The prevention or relief of poverty.	<b>j</b>	The advancement of human rights, conflict resolution or reconciliation.
<b>b</b>	The advancement of education.	<b>k</b>	The promotion of religious or racial harmony.
<b>c</b>	The advancement of religion.	<b>l</b>	The promotion of equality and diversity.
<b>d</b>	The advancement of health.	<b>m</b>	The advancement of environmental protection or improvement.
<b>e</b>	The saving of lives.	<b>n</b>	The relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage.
<b>f</b>	The advancement of citizenship or community development (including rural or urban regeneration).	<b>o</b>	The advancement of animal welfare.
<b>g</b>	The advancement of the arts, heritage, culture or science.	<b>p</b>	Any other purpose that may reasonably regarded as analogous to any of the preceding purposes*.
<b>h</b>	The advancement of public participation in sport.		
<b>i</b>	The provision of recreational facilities, or the organisation of recreational activities with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended.		



\*If you enter (p) as your charitable purpose you will need to explain what your purpose is, to which of the other charitable purposes from a) to o) it is analogous and how.

### **Q6. Members' names**

**Continue on a separate sheet if necessary.**

### **Q7. Charitable purposes**

Which of the charitable purposes in section 7(2) of the 2005 Act do you think apply to the SCIO?

## Q8. Providing benefit to the public

The activities of the SCIO should demonstrate how it intends to achieve its purposes as stated in its constitution and how it intends to provide public benefit. We need this information in as much detail as possible to establish how people will benefit from what it is you do or plan to do. If you do not give us this information, your application is likely to be delayed while we ask you to gather and provide more detail of your activities.

If you have a business plan, or any other document which sets out your planned activities in detail, please send it in support of your application.

### Q8a. Main activities

Please tell us about the main activities the SCIO intends to carry out in order to further the purposes stated in its proposed constitution.



### Q8b. Delivery of activities

Please tell us how you intend to carry out and deliver the proposed main activities of the SCIO. For example, how often and where will the activities be carried out? Will the SCIO work alone or in partnership with other organisations?



### Q8c. Providing benefit to the public

In order to pass the charity test, the SCIO must demonstrate that its activities provide benefit to the public in furtherance of one or more charitable purposes.

Please explain how the activities the SCIO intends to carry out will impact on the public in a positive way.



### Q8d. Link between activities and purposes

Please tell us exactly how the activities you intend to carry out will further the purposes set out in the SCIO's proposed constitution.

When we make an assessment of whether an applicant intends to provide public benefit, there needs to be link between the benefit, the activities it intends to carry out and its charitable purposes.



## **Q8. Providing benefit to the public**

### **Q8a. Main activities**

### **Q8b. Delivery of activities**

### **Q8c. Providing benefit to the public**

### **Q8d. Link between activities and purposes**

**Continue on a separate sheet if necessary.**

## Q9. Private benefit

In assessing the public benefit an organisation intends to provide, we must look at how this compares to any benefit received by anyone (including the organisation's members) as a 'private' individual or organisation, rather than as a beneficiary of the charity. We refer to this type of benefit as 'private benefit'.

### Q9a. Payments to individuals and organisations (including charity trustees and connected persons)



Please tell us whether the SCIO intends to make payments (other than out of pocket expenses) to any organisation or individual for providing services to the SCIO, including services provided as an employee. If so, please provide details of these payments. You should also tell us if any person will benefit from the SCIO in any other way as a private individual or organisation.

In particular, please tell us whether the SCIO intends to make payments to its charity trustees, or any person who is connected to a charity trustee (including any connected business or organisation). By 'charity trustee' we mean a person who is in general control and management of the administration of a charity (often referred to as management committee members, directors or trustees).

The 2005 Act states that a charity trustee (and anyone connected to a charity trustee) must not be remunerated by the charity unless particular conditions are met. See Remuneration (Paying charity trustees and connected persons) in our [Guidance and Good Practice for Charity Trustees](#).

### Q9b. Membership benefits



Please tell us whether the SCIO intends to offer any benefits to its members which are not available to the general public and, if so, tell us what those benefits are.

For example, do you intend to offer your members reduced charges for the SCIO's services? Can its members access additional services which are not available to the general public?



**Q9. Private benefit**

**Q9a. Payments to individuals and organisations (including charity trustees and connected persons)**

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**Q9b. Membership benefits**

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## Q10. Access to benefit

In assessing whether the SCIO intends to provide public benefit, we must look at whether any conditions on accessing this benefit are 'unduly restrictive'. Most organisations which apply for charitable status do not intend to benefit the public as a whole, but rather just a section of it. It is acceptable practice for organisations to put in place a limit on who will benefit from their activities but this limit cannot be unduly restrictive. Unduly restrictive conditions are those which are excessively restrictive, unreasonable, not justifiable or which contradict legal or moral standards.

### Q10a. Who can benefit?

Please tell us who can access the benefits the SCIO will provide. If the services are not open to all members of the public, please tell us what section of the public you intend to benefit.

Please also tell us if you have to be a member of the SCIO to benefit from what it does and, if so, tell us how a person can become a member.



### Q10b. Fees and charges

If there are any fees or charges for the SCIO's services, please tell us if they apply to all services or, if not, specify which services are subject to a fee.

If your organisation makes a charge for benefiting from what it does, we will consider the charge to be a restriction on access to the benefit. This is because it restricts access to those who can afford to pay the charge.

Again, we need to decide whether the charge amounts to an undue restriction. This is a complex area and if your organisation does charge for what it does, you should look at our full guidance, [Meeting the Charity Test](#), before completing this question.



### Q10c. Charging structure and concessions

Please tell us the charges the SCIO will apply for its services, and details of any concessions it offers to particular groups of people.



## **Q10. Access to benefit**

### **Q10a. Who can benefit?**

### **Q10b. Fees and charges**

### **Q10c. Charging structure and concessions**

### Q10d. Membership fees

Please tell us if the SCIO will charge a fee for becoming a member and, if so, how much those fees are. Again, please tell us whether the SCIO will offer concessions to particular groups of people.



### Q10e. Physical or practical restrictions

Please tell us whether there are any physical or practical restrictions to accessing the benefit the SCIO will provide.



For example, will the SCIO operate limited opening hours, or is there a lack of disabled access to the building where you will carry out your services?

### Q10f. Protected characteristics

The Equality Act 2010 (the 2010 Act) aims to ensure that all people are treated fairly. In general terms, it prevents discrimination on the grounds of 'protected characteristics' as follows:



- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex or
- sexual orientation

However, part of the 2010 Act allows charities in certain circumstances to limit the group of people which they help.

Please tell us whether the benefit the SCIO intends to provide will be restricted to people who have any of the protected characteristics listed above and why it will be restricted in this way.

**Q10d. Membership fees**

**Q10e. Physical or practical restrictions**

**Q10f. Protected characteristics**

**Continue on a separate sheet if necessary.**

### Q11. Activities: how will the SCIO operate?

In support of the information you have already provided about your activities, this information summarises the type of activity your organisation undertakes.

You must tick at least one box. We will use this information to help us compile statistics on Scottish charities.



### Q12. Beneficiary groups: who will the SCIO help?

In support of the information you have already provided about your beneficiaries, this information summarises the groups within the community that the SCIO aims to serve.

Please tick every group that the SCIO will exist specifically to benefit. If you are set up for the benefit of the general public, rather than for any specific group of people, tick box f). We will use this information to help us compile statistics on Scottish charities.



### Q13. Geographical spread: where the SCIO will work

In support of the information you have already provided about your activities, this information summarises the areas in which the SCIO will operate.

Please tick the box that best describes how local or wide spread the work of the SCIO will be, or best reflects the location of the recipients of the grants it will give. We will use this information to help us compile statistics on Scottish charities.



**Q11. Activities: how will the SCIO operate?**

- a) It makes grants, donations, loans, gifts or pensions to individuals
- b) It makes grants, donations or gifts to organisations
- c) It carries out activities or services itself
- d) It does none of these

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**Q12. Beneficiary groups: who will the SCIO help?**

- a) Children or young people
- b) Older people
- c) People with disabilities or health problems
- d) People of a particular ethnic or racial origin
- e) Other defined groups
- f) No specific group, or for the benefit of the community
- g) Other charities or voluntary bodies

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**Q13. Geographical spread: where the SCIO will work**

- a) A specific local point, community or neighbourhood
- b) Wider, but within one local authority area
- c) More than one local authority area in Scotland
- d) One or a few bases or facilities servicing people who come from a broad area
- e) Operations cover all or most of Scotland
- f) Scotland and other parts of the UK
- g) UK and overseas
- h) Overseas only

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## 14. Document checklist

Have you:

Completed all sections of the application form using the Guidance Note?

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Included signed trustee declaration forms for all of the proposed charity trustees of the SCIO? There must be at least three trustees

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Enclosed a copy of the constitution of the company or society?

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Enclosed a copy of the SCIO's proposed constitution? If this is a model constitution, please state from which organisation it was obtained:

☐

Ensured that the SCIO's proposed constitution includes the required elements as specified in the Guidance Note?

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Included any relevant supporting information about the SCIO's proposed activities? e.g. a business plan or copy of a funding application.

☐

Enclosed a copy of a notice of resolution of the company or society?

- that it be converted into a SCIO, and
- adopting the proposed constitution of the SCIO

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### **Q15. Signature and Data Protection statement**

This application and Data Protection statement must be signed by one of the charity trustees of the converting company or society on behalf of all of the charity trustees.



## 15. Signature and Data Protection statement

### Data Protection Statement

OSCR is a Non-Ministerial Department of the Scottish Administration. Our data processing activities have been notified to the UK Information Commissioner, and appear on the Public Register with the registration number Z9409201.

Information on this form is processed for the following purposes:

- To regulate charities in Scotland
- To inform investigations into allegations of misconduct, mismanagement or misrepresentation
- To develop a regime of proactive monitoring
- To encourage and facilitate compliance and best practice within charities
- To inform research into the charity sector in Scotland

The information on this form may be shared with Her Majesty's Revenue and Customs and other regulatory bodies. If this application is successful, selected information will be publicly available on the Register of Scottish Charities.

### Certification

The charity named at section 1 above hereby applies for conversion into a SCIO, and certifies that the information given in the attached form is correct to the best of its knowledge.

Signed by one of the  
trustees on behalf of all

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Print name

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Date

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**Please scan and email the completed documentation to [info@oscr.org.uk](mailto:info@oscr.org.uk) or post to:  
OSCR, 2nd Floor, Quadrant House, 9 Riverside Drive, Dundee, DD1 4NY.**