Law Society of Scotland

Consultation Response

Scottish Charitable Incorporated Organisations – Dissolution Regulation Amendments

September 2025

Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Charity Law sub-committee welcomes the opportunity to consider and respond to the Scottish Government consultation: Scottish Charitable Incorporated Organisations – Dissolution Regulation Amendments.[1] The sub-committee has the following comments to put forward for consideration.

[1] Scottish Charitable Incorporated Organisations - Dissolution Regulation Amendments - Scottish Government consultations - Citizen Space

A. Changes to the SCIO dissolution application process

1. Do you agree or disagree that a SCIO should be 'inactive' once it submits an application for dissolution?

   Agree. In the case of a Scottish Charitable Incorporated Organisation (SCIO) applying for a solvent dissolution, we agree it should be inactive on the basis suggested in the question.

2. Do you agree or disagree that a SCIO should inform OSCR of any material changes in its assets and/or liabilities after it submits an application for dissolution?

   Agree. This makes sense in general terms, but we feel the Office of the Scottish Charity Regulator (OSCR) guidance should make clear what OSCR classes as 'material' for this purpose: in general we suggest that only very substantial changes to the SCIO's assets and liabilities would warrant notification to OSCR – otherwise the process will be bogged down by SCIO trustees feeling obliged to inform OSCR of all kinds of minor developments.

   We suggest that 'materiality' in this sense might be interpreted in similar terms to the requirements in OSCR's guidance[2] (jointly with CCEW and CCNI) on section 46 of the Charities and Trustee Investment (Scotland) Act 2005 ("the 2005 Act") where auditors and independent examiners are required to report on "matters of material significance" only where they are likely to be relevant for OSCR's regulatory purposes.

3. Do you agree or disagree with the changes set out in Annex 1 on the solvent dissolution application?

   Disagree. We feel the proposals in Annex 1 could be improved in a number of ways.

   (1) We assume that the current approach of having two forms (Part A (Statement of Solvency) and Part B (Application for Dissolution)) reflects the administrative preferences of OSCR. We would query whether consideration had been given to using a single form with one set of signatures. (If so, a similar approach could be applied to Annex 2.)

   (2) We disagree with the statement in para (b) of Part A. The trustees should not be required to state that the SCIO has MORE assets than liabilities. So long as the assets are AT LEAST EQUAL to the liabilities that should be sufficient. A SCIO seeking dissolution may have £nil assets and £nil liabilities if the trustees have already arranged an orderly

[2] 20190507_-_matters_of_material_significance_guidance__reissued_.pdf

wind-down (e.g. a grant-making charity spending out all its funds). This was an error in the form in Schedule 1 of the SCIO (Removal from the Register and Dissolution) Regulations 2011 ("the 2011 Regulations") and it should now be corrected.

(3) Where one trustee signs on behalf of all, the trustee concerned should be required to make a specific statement (e.g. by ticking an appropriate box) that he/she has been authorised to sign on behalf of all. This applies to all the forms.

(4) We are also concerned that if the form were to be introduced as drafted, SCIO trustees might too easily assume they could dispense with the members' resolution – see our comments on Q7. We suggest a prior question about the members' resolution.

4. Do you agree or disagree with the changes set out in Annex 2 on the insolvent dissolution application?

Agree, subject to our point at 3(1) above.

As an overarching comment, we understand that Scottish Government has taken into account the 2019 findings of the Working Group and has liaised with OSCR, concluding that a simpler regime for SCIO insolvency remains appropriate in Scotland based on available evidence and as distinct from other regimes.

We note, for example, that the Working Group considered whether legal obligations reflecting those relevant to wrongful and/or fraudulent trading should be introduced but we understand that these were rejected at the time on account of a need for primary legislation.[3]

5. Do you agree or disagree with our proposal to allow OSCR to publish notices anywhere it considers appropriate?

Agree. We agree in principle with this proposal, but some thought is needed about the requirements.

The Edinburgh Gazette is the normal place for publication of notices to dissolve companies and other corporate bodies in Scotland. No doubt the Gazetting of SCIO dissolutions would be helpful to some creditors. But the use of the Gazette should not be at OSCR's discretion – it should either apply to all SCIO dissolutions (solvent and insolvent) or to none.

[3] 2020-03-10_scio-dissolution-working-group-final-report.pdf PG19

However, we are happy for OSCR to have discretion to publish notices elsewhere if it considers this appropriate.

6. Do you agree or disagree with the changes proposed to the publication period for the notice of a solvent SCIO's dissolution application?

Disagree. We agree that the current 28 day period is rather short but we would prefer to match the period of two months as in section 1003 of the Companies Act 2006 (as amended) for voluntary strike off of a solvent company. This allows an appropriate time for objections without delaying the process unduly.

7. Do you agree or disagree with our proposed approach to amend the requirement for a members' resolution?

Agree. However, it is very important that the requirement suggested in the consultation document is followed so that the charity trustees should be required to provide REASONS to OSCR as to why a members' resolution could not be obtained. The form in Annex 1 needs amending to incorporate this (Part B, para (a)).

A SCIO is fundamentally a body of members, and only in exceptional circumstances should the rights of members be overridden. Members will often be donors and/or volunteers and or/service users who may have had a substantial personal engagement with the charity: the trustees should not be afforded an easy route to wind up the charity without proper engagement with the members unless it is really impossible to do so. Sometimes the members may be other charities or organisations, which should certainly have the right to proper notification of a proposal to wind up the SCIO. Even if a member has not been very active in recent years, every effort should be made to engage with them if a dissolution is being considered.

OSCR should make clear that it will only grant consent to dispense with a members' resolution in exceptional circumstances, and the trustees should be required to provide evidence that they had taken ample steps to try to contact members in order to call a meeting. If the trustees say that they do not have a proper Register of Members of the SCIO this should not be accepted as a sufficient excuse as there is a statutory duty for a SCIO to maintain a register of members (2011 Regulations, regulation 5).

If the SCIO Constitution has a realistic quorum, even a thinly attended members meeting would be sufficient to pass a resolution under regulation 3(3) of the 2011 Regulations. The resolution does not have to be passed by two thirds of the entire membership – just by two thirds of those voting at

the meeting (so long as it is quorate). It is also worth noting that many SCIO constitutions are likely to include provisions for virtual meetings and/or postal (electronic) votes or proxy voting.

OSCR should only allow dispensation with the members' vote if it is satisfied that none of the above mechanisms can work. A detailed explanation from the trustees should therefore be required in all such cases.

We believe the drafting of the regulations and guidance could be improved to make clear that the members' vote is the first stage in the process.

B. Removal of SCIOs from the Scottish Charity Register

8. Do you agree or disagree with the proposal to allow OSCR to remove SCIOs from the Register where the SCIO is not meeting the charity test and has failed to respond to directions issued by OSCR?

Agree. Overall these changes would allow for the regulatory regime to be more effective, transparent, and fair, whilst still providing appropriate checks and balances to SCIOs and their stakeholders.

9. Do you agree or disagree with the proposal to align the process for removing a SCIO from the Register with that set out in Section 45A of the 2005 Act?

Agree. We believe there is strong support in the sector for aligning the process for removing a SCIO from the Register with that set out in section 45A of the 2005 Act. The current process for SCIOs is seen as cumbersome and less effective compared to other charity forms, as it requires OSCR to apply to the Court of Session to remove a non-compliant SCIO, creating uncertainty and administrative burden. In contrast, section 45A allows OSCR to remove charities that fail to submit accounts and do not respond to communications, after a notice period and with safeguards such as the opportunity for the charity to respond within three months.

It is worth noting that section 45A(6) already allows for the same procedure to be extended to SCIOs, subject to appropriate regulations.

However, it is important to note that the exercise of the section 45A power for charities other than SCIOs does NOT cause the dissolution of the organisation – it simply means that it is no longer a charity. If it continues to exist it can still hold assets as a non-charitable entity (either directly or via holding trustees).

By contrast, in the case of a SCIO, its de-registration will mean that it ceases to exist. The regulations will therefore need to specify what happens to any residual assets. In England and Wales, in the equivalent situation of a compulsory dissolution of a Charitable Incorporated Organisation (CIO) instigated by the Charity Commission, the CIO's residual assets pass to the Official Custodian for Charities.[4] With no equivalent in Scotland to the Official Custodian, we suggest the logical solution is for assets to vest in the King's and Lord Treasurer's Remembrancer (KLTR).

It will be important, therefore, that OSCR only exercises this power in situations where it does not consider that the SCIO holds significant assets. Where OSCR considers that a SCIO holds substantial assets but it nevertheless completely fails to file accounts and returns, OSCR would first need to use its other powers under the 2005 Act to direct the transfer of the assets to another charity. For example, we anticipate that OSCR might consider using a positive direction under section 30B, or appointment of a judicial factor.

10. Where OSCR is considering administratively removing a SCIO, what steps should OSCR take to ascertain the financial position of the SCIO?

When considering administratively removing a SCIO, OSCR must take specific steps to establish the SCIO's financial position. This is crucial to ensure that the interests of creditors, beneficiaries, and other stakeholders are protected.

The key steps which OSCR should take are:

- Inquiries and Information Gathering;
- Notice and Publication;
- Assessment of Solvency: If OSCR considers that the SCIO is insolvent (i.e., it cannot pay its debts), provision should be made for reference of the matter to the Accountant in Bankruptcy (AiB), who will oversee the sequestration (bankruptcy) process. The SCIO's dissolution should not proceed until the insolvency process is completed and all creditors' interests have been addressed) in accordance with the process in regulation 6 of 2011 Regulations.

As noted above, we understand that Scottish Government has taken into account the 2019 findings of the Working Group and has liaised with OSCR, concluding that a simpler regime for SCIO insolvency remains appropriate in Scotland based on available evidence and as distinct from other regimes.

[4] The Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012, S23

11. Should the removal provisions proposed in Section B only be introduced if there is an ability for restoration?

Agree. Introducing the removal provisions in Section B without a corresponding ability for restoration would place the creditors and other stakeholders of SCIOs at a disadvantage compared to those of other charity forms and could lead to irreversible consequences. Therefore, the removal provisions should only be introduced if accompanied by a mechanism for restoration, as recommended by the Working Group and supported by comparative charity law practice.

C. Restoration of SCIOs to the Scottish Charity Register

12. What types of SCIO removal should require a route to restoration?

- Solvent dissolution on application of the SCIO,
- Insolvent dissolution on application of the SCIO,
- Creditor-led sequestration
- SCIOs that were not meeting the charity test, have failed to respond to a regulation 8 direction and have been removed by OSCR (new proposal - see section B),
- SCIOs that have failed to submit accounts, have failed to respond to OSCR's reminders and have been removed under a process aligned with Section 45A (new proposal - see section B).

SCIOs currently have no restoration mechanism, which could lead to irreversible consequences even in cases of mistake or subsequent rectification of issues. Comparative practice in England and Wales allows restoration of a CIO in a range of circumstances, including voluntary dissolution, insolvency, and regulatory removal, typically within a time-limited period (often six years).

However, we suggest that in the case of a creditor-led sequestration, an application to the court should be required to trigger a restoration, given that the court will have supervised the original application (this is analogous to the position in England and Wales). See our comments on Q15.

In other cases, we feel OSCR should have the power and discretion to grant the restoration, but should be required to refuse any such request where it is not satisfied that the SCIO, once restored, would meet the charity test.

13. What reasons should a SCIO be considered for restoration?

Restoration should be available in any case where it is necessary to protect rights, correct errors, resolve outstanding matters, or serve the interests of

justice and public benefit (provided in all cases that the charity test would be met).

14. Should it be possible for a SCIO that had no assets at the point of removal to be restored?

Yes. The absence of assets at the point of removal should not, by itself, prevent restoration if there are valid legal, procedural or public interest reasons for doing so.

15. Should the Court of Session be given the power to order the restoration of a dissolved SCIO following its sequestration?

Yes. Empowering the Court of Session to restore dissolved SCIOs following sequestration would address gaps in the current law, align with best practice elsewhere, and protect the interests of creditors, beneficiaries, and the public.

16. Please describe any other situations in which the Court of Session should be able to order the restoration of a dissolved SCIO.

We feel the Court of Session should only be involved in the case of reversing a creditor-led sequestration as we indicate in our answer to Q12. In other cases, applications should be made to OSCR. If OSCR refused, the applicant would be free to trigger the normal appeals process in the 2005 Act.

17. What time limit (if any) should apply to restoration of SCIOs by OSCR?

Six years.

18. What time limit (if any) should apply to the making of court applications for restoration of SCIOs?

Six years.

19. Please describe any advantages of introducing the possibility for SCIOs to be restored.

Introducing restoration powers for SCIOs strengthens legal certainty, fairness, and public confidence in the Scottish charity sector, while aligning SCIOs with best practice in charity regulation in E&W.

20. Please describe any disadvantages of introducing the possibility for SCIOs to be restored.

Whilst restoration brings important benefits, it also introduces legal, administrative, and practical challenges that must be carefully managed to avoid uncertainty, disputes, and unnecessary complexity in the Scottish charity sector.

21. Where should the responsibility for any costs or administrative requirements associated with a SCIO restoration lie?

The responsibility for any costs or administrative requirements associated with the restoration of a SCIO should generally lie with the applicant seeking restoration, in line with the approach taken for CIOs in England and Wales.

This approach ensures that public and regulatory resources are not unduly burdened by restoration applications and that those seeking restoration bear the primary responsibility for the associated costs and administrative steps.

However, the court should retain discretion to make different orders regarding costs in exceptional circumstances, such as where an error by the regulator or a third party led to the need for restoration.

22. Are there any alternatives to restoration we should consider?

Whilst there are several procedural and structural alternatives to restoration—primarily focused on preventing errors before dissolution or providing limited recourse for creditors and third parties—none offer the comprehensive remedy of restoring a dissolved SCIO to legal existence. The introduction of a restoration mechanism would fill this gap and, in broad terms, align SCIOs with charitable companies under company law and the treatment of CIOs in England and Wales under charity law.

D. Assessing Impact

23. Data Protection: Are you aware of any impacts positive or negative, of the proposals in this consultation in terms of data protection or privacy?

We are not aware of specific positive or negative data protection or privacy impacts highlighted in the consultation proposals themselves, but existing requirements for publication and record retention will continue to apply, and SCIOs should remain mindful of their legal obligations when handling personal data. This is particularly important in complex matters. In particular, the trustees of a dissolved SCIO should be required to maintain its accounting records for the following six years, in accordance with section 44(1)(2) of the 2005 Act. In almost all cases, this would include any personal data held by the SCIO regarding donors, service users, etc.

In cases where OSCR considers that a SCIO is likely to hold important personal data on beneficiaries that needs to be retained for long periods (the obvious examples are adoption data or other long-term medical records), OSCR will need to take steps to ensure this is transferred to another appropriate charity (following relevant processes in the Data Protection Acts) before consenting to the dissolution of the SCIO.

24. Business and Regulation: Do you think that the proposals contained in this consultation are likely to increase or reduce the costs and burdens placed on any business or the charities?

The proposals contained in the consultation are likely to have a mixed impact on the costs and burdens placed on charities and, to a lesser extent, businesses. Overall, while some costs and administrative burdens may increase due to more robust and transparent processes, these are balanced by the potential for reduced risk, greater legal certainty, and avoidance of more significant costs arising from errors or disputes. The net effect will depend on the specific details of the amendments and how they are implemented, but the intention must be to provide a fairer, more reliable regulatory environment for charities.

25. Equality: Are there any additional likely impacts the proposals contained in this consultation may have on particular groups of people, with reference to protected characteristics? (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation)

Based on the available consultation materials, there is no evidence to suggest that the proposed amendments to SCIO dissolution regulations are likely to have direct, disproportionate impacts—positive or negative—on particular groups of people with protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation).

However, as with any regulatory change, it is important to be vigilant for potential indirect impacts. For example, if a particular group is overrepresented among SCIO trustees, members, or beneficiaries, changes to dissolution or restoration processes could have a greater practical effect on that group. The equality impact assessment (EIA) process will require the regulator to consider these possibilities, assess evidence, and mandate them to take steps to eliminate discrimination, advance equality of opportunity, and foster good relations.

26. Children's Rights and Wellbeing: Do you think that the proposals contained in this consultation are likely to have an impact on children's rights and wellbeing?

Any impact on children's rights and wellbeing would be indirect and case-specific, rather than a general consequence of the proposed regulatory amendments.

27. Island Communities: Do you think that the proposals contained in this consultation are likely to influence an island community significantly differently from its effect on other communities in Scotland?

Unless there are specific, locally-identified factors (such as unique challenges in accessing digital notices or a higher prevalence of SCIOs in certain island areas), the proposals are not expected to have a significantly different impact on island communities compared to other Scottish communities. The regulatory framework is designed to be inclusive and accessible across all regions.

28. Fairer Scotland Duty: Do you think that the proposals contained in this consultation are likely to have an impact in relation to the Fairer Scotland Duty?

The proposals in the SCIO dissolution regulation amendments consultation are likely to have an impact in relation to the Fairer Scotland Duty, which requires public bodies to actively consider how to reduce inequalities of outcome caused by socio-economic disadvantage when making strategic decisions. For example, if the regulations make it easier for SCIOs serving disadvantaged groups to be dissolved without adequate safeguards or restoration mechanisms, there is a risk of exacerbating inequalities of outcome. Conversely, proposals that enhance transparency, accountability, and the ability to restore dissolved SCIOs could help protect the interests of vulnerable communities and support the Fairer Scotland Duty's aims.

29. Environment: Do you think that the proposals contained in this consultation are likely to have an impact on the environment?

Unless a respondent can identify a specific link between the dissolution or restoration of a SCIO and an environmental outcome, it is reasonable to conclude that the proposals are unlikely to have an environmental impact.

For further information, please contact:

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