



Dear Chanonry Sailing Club Member,

LEGAL STRUCTURE CHANGE FOR CHANONRY SAILING CLUB?

You are receiving this briefing note because your committee is proposing a significant change to the legal status of our club; such a change would require membership support through a formal vote at a members' meeting as per the club's constitution. This note covers 'what?', 'why?', 'how?' and 'when?'.

WHAT?

Currently, Chanonry Sailing Club is an **unincorporated voluntary organisation** with a governing constitution. The club is also a **Community Amateur Sports Club (CASC)**.

CASC status means the club is registered with HM Revenue & Customs and this provides some tax relief.

The committee proposes that the club changes its status to a **Scottish Charitable Incorporated Organisation (SCIO)**.

WHY?

Currently, as an unincorporated organisation, the club has no legal status – in law the club is a collection of individuals. Any property is legally owned by individuals on behalf of the members and any undertakings are also by individuals on behalf of members and this increases the risk of personal liability for members and those involved in running the club and any of its activities. As an example, the lease for the harbour and dinghy park is held by the serving Commodore, Treasurer and Secretary who are personally liable for fulfilling the conditions of the lease. The clubhouse Title Deeds show the same three officers as holding the Title. The committee could be personally liable for debts if the organisation were unable to meet its debts and liabilities out of its own resources. Personal liability has been given as a reason by several members for not undertaking a committee post.

The committee believes that the club should seek **incorporation**. An incorporated organisation has a legal identity of its own. This means that it can own property and enter into contracts in its own name. Incorporation means the liability of committee members is limited (in most cases), providing they act lawfully, and members are not liable to contribute to the assets if it is wound up.

The committee believes that the most appropriate incorporated legal structure is a **SCIO**. The Royal Yachting Association also recommends that clubs consider becoming SCIOs.

A **charity** is a voluntary organisation which has been set up only for charitable purposes and to provide public benefit.

SCIOs have been purpose built for the charity sector in Scotland. They provide limited liability and a separate legal identity to organisations that want to become charities but do not want or need the complex structure of company law. They are regulated by the Office of the Charity Regulator (**OSCR**).

Advantages

- Limited liability
- Tax relief on surpluses and donations
- Access to funding only available to charities
- Rates relief for premises (as per CASCs)
- Special VAT concessions

Disadvantages

- Restrictions on spending
- Cannot engage in party political activities
- Must adhere to legislation
- Trustees have specific duties under legislation

All charities must submit an annual return and accounts to OSCR and seek their permission to make certain changes.

HOW?

The club would be a '**2-tier**' SCIO which involves trustees (at least 3) and members. The format would be very similar to today's club with an elected

committee (known as a board) who are the charity trustees. Trustees are responsible for the control of management and administration. Committees subordinate to the board would be possible similar to the current sub-committees.

We would need to **apply to OSCR** to be incorporated as a SCIO. This would require a **new constitution** to be submitted. This would be the beginning of an **implementation phase** that would be completed once assets and liabilities had been legally transferred and the current association wound-up.

Practically, we would need a single **General Meeting** to agree to the setting up of a new legal body. This includes agreeing to a new constitution and to the transfer of assets and liabilities to the SCIO and the winding up ('dissolution') of the current association to complete the implementation. Dissolution is covered in paragraphs 76 & 77 of the current constitution and requires a two-thirds majority of those present at a General Meeting with voting rights.

The transfer of moveable and heritable property to the SCIO would incur some legal expenses.

WHEN?

The committee intends to provide members with access to a draft SCIO constitution by **3 January 2019**. The draft would be available on the website and in printed form in the clubhouse. A newsletter to all members through email (and post for those with voting rights but no registered email address) will alert you to the availability of the draft and how to raise questions or concerns. This would be the start of a **consultation period** that would finish on **3 March 2019**. Questions and answers would be made visible to all members during the consultation period in the members' area of the website. The committee will call an **Extraordinary General Meeting** as per the current constitution to be held in **March 2019** with a resolution to enter the implementation phase (and all that entails as described above).

If there is agreement to go ahead, the implementation period could last for 12 months.

More information on SCIOs can be found here:

<https://www.oscr.org.uk/becoming-a-charity/becoming-a-scio>

<https://scvo.org.uk/setting-up-a-charity/decide-on-structure/scio>

The Committee

Frequently Asked Questions

Q: Why do we need to incorporate now, we've managed without problem for 62 years?

A: While a well-managed unincorporated association can limit the risks to committee members, our club holds a number of assets and carries out risky activities. The current climate is more litigious than it has been in the past.

Q: Why can't the liabilities of committee members be covered by insurance?

A: The club has taken out indemnity insurance, but this cannot cover all the potential liabilities of the committee members. It does not cover personal liability of committee members for contractual claims, nor provide protection against financial claims or debt which the organisation cannot meet.

Q: Are sailing and water sports charitable activities?

A: Yes. One of the charitable purposes is the "advancement of public participation in sport".

Q: Would it cost us more to run a SCIO?

A: There are no fees to set up a SCIO but we would incur legal fees to transfer the heritable property. Once the SCIO is running there should be no extra costs except we may need to pay for the independent examination of the accounts.

Q: Would we need a more complex accounting system as a charity?

A: Receipt & payment accounts, as used by the club at present, are acceptable for our level of turnover.

Q: What are the duties of charity trustees and SCIO members?

A: Trustees must operate in a manner consistent with the charity's purpose, act with care and diligence and manage any conflict of interest between the charity and any person or organisation who appoints trustees. Members are subject to some of the same duties as charity trustees, specifically, they must act in the interests of the SCIO, and seek, in good faith, to ensure the SCIO acts in a manner which is consistent with its charitable purposes.