Sarah Brown Charity Law WS

LEGAL • GOVERNANCE • TRAINING

FACTSHEET

Setting up a charity in Scotland

Charitable status can enhance an organisation's credibility, improve access to funding, and provide valuable tax reliefs. However, it also brings legal responsibilities, public reporting requirements, and ongoing regulatory obligations.

The starting point should always be: **"What are we trying to achieve, do we need to be a charity, and is charitable status right for us?"**

Before setting up a new charity, consider whether you could achieve your aims by working with an existing charity or through a non-charitable organisation. If your aim is simply to raise money for an existing charity, you do not necessarily need to establish a separate charity to do so.

1. The charity test

To register as a charity in Scotland with the Scottish Charity Regulator (OSCR), an organisation must:

1. have only **charitable purposes**; and
2. provide **public benefit**.

An organisation cannot become or remain a charity if it is a political party or has a purpose of advancing one, or if its governing document allows its assets to be used for non-charitable purposes, including when it is wound up. It will also normally fail the charity test if its governing document expressly permits Scottish or UK Ministers to direct or control its activities, unless a statutory exception applies.

In practice, this means thinking carefully about:

- **What the organisation will do**, both now and over the next few years.
- **Which charitable purposes** those activities will further.
- **Who will benefit and how**, including whether fees or other restrictions could limit access.
- **Whether anyone will receive a private benefit**, particularly trustees, members, founders or connected people. Some private benefit can be acceptable, but it must be incidental to the activities that further the charity's purposes, rather than an aim in itself.

2. Choose the legal structure

A charity can take a number of different legal forms. The right structure will depend on what the organisation plans to do, the risks involved and how it wants to operate. The main options are:

- **Scottish Charitable Incorporated Organisation (SCIO)**: an incorporated form designed for Scottish charities. It has its own legal personality, meaning it can enter into contracts and own property in its own name. It is regulated by OSCR.
- **Company limited by guarantee:** an incorporated structure registered with Companies House and, if charitable in Scotland, also registered with and regulated by OSCR. It must comply with both company law and charity law.
- **Community Benefit Society:** an incorporated legal structure established to benefit the wider community. It is registered with the Financial Conduct Authority (FCA) and, if charitable, is also registered with and regulated by OSCR. It can suit community-led organisations, but must benefit the wider community rather than exist primarily to benefit its members.
- **Unincorporated association:** often simple to operate, but it has no separate legal personality and trustees may face greater personal exposure.
- **Charitable trust:** can suit some grant-making or asset-holding arrangements, but it is unincorporated.

These days, most new charities will prefer an incorporated legal structure, which allows the charity to enter into contracts in its own name and generally protects trustees from personal liability for its debts and obligations. That protection is not absolute, and trustees remain responsible for complying with their legal duties. The SCIO is now the most common choice for new Scottish charities.

3. Choose the organisational structure

The organisational model available will depend on the legal structure chosen. A key decision is whether the charity trustees will also be the only members or whether there will be a **wider membership**.

Broadly speaking choice is between;

- **Trustee-only:** the charity trustees are also the only members of the organisation.
- **Membership organisation:** there is a wider membership, with certain powers reserved to the members, and a separate board of charity trustees responsible for the charity's management.

Think about what the charity may want to do in the future before making this decision.

A wider membership structure, together with particular provisions in the governing document, may be required if the charity plans to apply for a statutory Community Asset Transfer, register a community interest in land or apply to certain funders. The precise requirements depend on the route being used and the funder's criteria, so check these before finalising the governing document.

We can discuss the options with you and advise on the structure and governing document that

best suit your particular circumstances and future plans.

4. Choose the right charity trustees

Charity trustees are the people responsible for the overall control and management of the charity. Depending on its legal structure, they may also be called directors, committee members or board members.

Choosing the right people to serve as charity trustees is just as important as choosing the right legal structure. Think about the skills, experience and perspectives the charity will need, both when it starts and as it develops.

Try to build a board with a suitable mix of skills and experience. Trustees should understand the charity's purposes, be willing to take an active role in its governance and have enough time to carry out their responsibilities properly.

Having at least three suitable trustees is sensible and is required for a SCIO. Before appointing trustees, check that they are eligible to act, obtain trustee declarations and consider any actual or potential conflicts of interest.

Charity trustees do not generally have to be resident in the UK, however, having trustees who live outside the UK can make it more difficult to open a bank account for the charity. Banks' eligibility and identity-checking requirements vary, so check these early with prospective banks.

5. Choose the charity's name

- Choose the charity's name carefully before finalising the governing document. Check the Scottish Charity Register: the name must not be the same as, or too like, another charity's name, mislead the public about its purposes or activities, suggest a connection that does not exist, or be offensive.
- For a SCIO or charitable company, additional naming rules apply, and certain words may require approval from Companies House. It is also sensible to check for existing trade marks and the availability of a suitable website address before committing to the name.

6. Prepare the governing document

Every charity needs a governing document. The type of document will depend on the legal structure you have chosen. For example, a SCIO has a constitution, a charitable company has articles of association, a charitable trust has a trust deed and a Community Benefit Society has rules.

The governing document sets out what the charity exists to do, how it will be run, the powers it has, how trustees and any members are appointed and make decisions, and what happens if the charity is

wound up.

It should be tailored to the organisation and reflect how it intends to operate in practice, as well as any particular requirements arising from its future plans.

We can advise on the form and content of the governing document and prepare one tailored to your particular circumstances and future plans.

7. Put the foundations in place

Before the charity starts operating:

- **Agree roles and responsibilities**, conflicts procedures, financial controls and who can sign contracts or authorise payments.
- **Prepare a realistic first-year budget and funding plan.**
- **Plan for trustee induction and ongoing training**, so that new and future trustees understand their role, the charity and their legal duties and responsibilities.
- **Consider what governance policies and procedures need to be in place**, taking account of the charity's size, activities and risks.
- **Identify what other laws and regulatory requirements apply** to the charity because of its legal structure and the activities it will carry out, and consider how it will meet those requirements. Common examples include data protection law, safeguarding requirements and, where the charity fundraises, the Code of Fundraising Practice.

Plan the practical arrangements too: a suitable bank account, appropriate insurance and any licences or permissions needed for the charity's activities. Allow time to put these in place before the relevant activities begin.

8. The application process

The steps and their order depend on the legal structure. A SCIO is created through registration with OSCR. A charitable company or Community Benefit Society also needs separate incorporation or registration with Companies House or the FCA, as appropriate. OSCR will generally accept a draft governing document for assessment as part of the application.

Once the key decisions have been made, the process will usually involve:

- **Preparing the governing document** appropriate to the charity's chosen legal and organisational structure.
- **Each proposed charity trustee completing and signing an OSCR trustee declaration.**
- **Completing and submitting the online application to OSCR**, together with the governing document and any other supporting information required for the application.
- **Responding to any questions from OSCR** or making any changes required as part of the

application process.

- **If the application is successful, putting the governance framework into practice**, including adopting the policies and procedures the charity needs, inducting the trustees, ensuring that everyone understands their role and responsibilities, and arranging annual accounts and regulatory reporting. Policies, training and safeguards needed for particular activities must be in place before those activities begin.

The application should give a clear and consistent picture across the governing document, activities, budget and public-benefit explanation.

Registration with OSCR does not automatically give the charity recognition for tax purposes. A separate application to HM Revenue and Customs (HMRC) is needed to access charitable tax reliefs and claim Gift Aid on eligible donations.

Useful official guidance

- OSCR: Becoming a charity
- Scottish charity law

Contact Sarah Brown Charity Law WS

E: info@sarahbrowncharitylaw.com | T: 01738 718 338 | W: sarahbrowncharitylaw.com

Sarah Brown WS is accredited by the Law Society of Scotland as a specialist in charity law.

Important note

This factsheet gives general information only. It is not legal advice and may not cover your circumstances. The law and regulatory guidance can change. Please take specific advice before acting or deciding not to act. Sarah Brown Charity Law WS accepts no responsibility for loss arising from reliance on this factsheet.

© 2026 Sarah Brown Charity Law Limited. All rights reserved.