

Starting a Community Group

2. Legal Structures and Organisation Types

Getting the legal structure of an organisation right is essential when setting up a community group. The wrong structure may obstruct your groups' development and changing structure at a later date may be costly and time-consuming. The type of legal structure adopted by your group will depend on the scale of your activities and the level of risk involved.

There are six main legal structures a community group can adopt:

Voluntary/Unincorporated association – This is a simple structure with no formal registration requirements or specific statutory rules on how it should be run unless the group is a charity. The group has no legal structure and therefore the management committee enter into transactions and own assets on behalf of the group. The management committee could have personal liability for the groups' actions and debt, and legal proceedings would be taken by and against the committee. This structure is best for small organisations who do not intend to enter into legal agreements/contracts such as owning property, leasing premises or employing staff.

A Company Limited by Guarantee – The key feature of a Company Limited by Guarantee is that it is an incorporated organisation, which means that it has a separate legal identity to that of its members and can enter into transaction in its own right, limiting member's liability. Regulated by Companies House, and OSCR if they are a charity. It is bound by the Companies Act 2006 and as such committee members (referred to as Directors) are accountable to Companies House. This structure is good for organisations who intend to enter into legal agreements/contracts or provide services/goods. For information about becoming a Company Limited by Guarantee visit <https://www.gov.uk/limited-company-formation>

Scottish Charitable Incorporated Organisation (SCIO) - A SCIO is a legal structure exclusive to groups with registered charitable status in Scotland. To be a SCIO your group must have charitable purposes and deliver activities which provide community benefit. Regulated by the Office of the Scottish Charity Register (OSCR) and bound by the Charities and Trustees Investment (Scotland) Act 2005, committee members (referred to as Charity Trustees) are responsible for the running of the charity. A SCIO is an incorporated organisation and has the benefits of limited liability being a separate legal entity from that of its members and Trustees. This structure is good for organisations who intend to enter into legal agreements/contracts and who operate with charitable purposes. For information about becoming a SCIO visit <https://www.oscr.org.uk/becoming-a-charity/>

Community Interest Companies (CICs) – This is an incorporated social enterprise providing services or activities for community benefit. CICs cannot be Charities and are governed by Company Law and the Community Interest Company Regulations 2005. Compliance is regulated by Companies House and the CIC Regulator who assess new CIC applications against the Community Interest Test. This structure is good for organisations who want to trade with a social purpose, carry out other activities for the benefit of a community and ensure assets are used for the benefit of the community. For information about becoming a Community Interest Company visit <https://www.gov.uk/government/publications/community-interest-companies-business-activities>

Societies – Societies are incorporated bodies registered under the Co-operative and Community Benefit Societies Act 2014 they are registered with the Financial Services Authority (FSA) and are regulated by the FSA under a regime which is similar to that for registered companies. There are two legal forms a society can adopt, Co-operative Society and a Community Benefit Society. A co-operative society operates for the benefit of its members, a community benefit society operates to benefit a wider community rather than just the society's membership. Profits must generally be ploughed back into the business. Where part of the profits are used for another purpose, that purpose should be similar to the main aim of the society. For information about Societies visit <https://www.uk.coop/developing-co-ops/start-co-operative>

Organisational Types

Organisational type tends to be used by groups to describe their operating processes. This is separate from the legal structure of the group and in legislation it is the legal form that is recognised.

A Charity – An organisation cannot choose to call itself a charity. Charitable status can only be awarded by the Office of the Scottish Charity Regulator (OSCR) after a group has passed the Charity Test and proven it has only charitable purposes and provides public benefit in achieving those purposes. For more information see the OSCR website <https://www.oscr.org.uk/becoming-a-charity/>

A Development Trust – Development trusts are community-owned organisations which aim to achieve the sustainable regeneration of a place or address a range of economic, social, environmental and cultural issues within a community. They often work in partnership with other organisations and generate income through enterprise and the ownership of assets. All trading surpluses are principally reinvested in the organisation or the community. For more information see the Development Trust Association website <https://dtascot.org.uk/resources/publications>

Social Enterprise - a social enterprise is an organisation that has a social/environmental purpose and will generate a significant portion of their income through trading activities i.e. through selling goods or services. It will have clear rules about what it does with its profits, reinvesting these to achieve its social mission. For more information visit the Social Enterprise UK website <https://www.socialenterprise.org.uk/looking-to-start-a-social-enterprise/>.

A Social Firm - A social firm is a specific type of social enterprise where the social mission is to create employment, training, meaningful work and volunteering opportunities for people who face significant barriers to employment. For more information visit Social Firms Scotland website

<https://socialfirms.org.uk/socialfirms/>

A Co-operative - A co-operative is a member-owned business where people work together to achieve a common shared goal. It is jointly-owned and democratically controlled by its members and can be many different types such as a worker co-operative, credit union, housing co-operative, a community co-operative enterprise etc. For more information see the Co-Operatives UK website

<https://www.uk.coop/developing-co-ops/start-co-operative>

Community amateur sports club (CASC) - This applies to an amateur sports clubs that have applied to HM Revenue & Customs to be registered as a CASC. In order to be considered as a CASC the club must meet all the qualifying conditions for registration including: Be open to the whole community and have affordable membership fees. Be organised on an amateur basis and provide facilities for, and promote participation in one or more eligible sports. Have at least 50% of members taking part in these sports. For more information see <http://www.cascinfo.co.uk/>

Deciding on the right legal structure for your group

To help you decide on which legal structure is best for your group answer the following questions:

- Will your group have a membership?
- Who will make the decisions about running your group? Will it be a committee of members or the membership as a whole?
- Does your group need to be incorporated? Will the organisation need to be a separate legal entity from that of its governing body and members?
- Does your group want to be a charity? Does the group operate with charitable purposes?

For more information see Community Toolkit

- 3: Governing Documents, Policies and Procedures
- 10: Financial Management

Document produced March 2020