

Why Consider Restructuring to a SCIO?

Why should my church think about becoming a:

Scottish Charitable Incorporated Organisation?

Most Baptist churches in Scotland, unless they have been established or have restructured within the last few years, will probably be:

Unincorporated Voluntary Associations

What is wrong with being a UVA? It is a form which churches have operated successfully for generations. However, there is a time and a season for everything, and this structure will most likely not best serve the church and its leaders in 2022.

YOUR CHURCH LACKS PERSONALITY. This does not mean that your church is not full of interesting people! But in the eyes of the law, the church is not a legal person. It is a collection of individuals banded together in a common cause, not an entity in its own right. A UVA cannot in itself own property, enter into employment, building or other contracts, take out loans or sue or be sued. It must do all these things in the names of representative individual leaders as trustees for the church.

YOUR TRUSTEES LACK PROTECTION. This is where the lack of personality hits home. Any debt or action or claim against the church cannot effectively be pursued through the UVA, as it has no legal existence. The trustees and their personal property (possibly their homes and/or finances) will be the direct targets. The trustees may have rights of relief against the assets of the church and against the other members. But these may be difficult to realise or insufficient to meet what is a potentially unlimited liability.

Please bear in mind:

- We live in an increasingly litigious culture.
- Churches look after complex and fragile buildings and people.
- Fingers of blame can be pointed at the church from outside and from within.
- Not every claim can be insured against.
- Not every risk can be predicted-who saw COVID-19 coming?
- More people may be trustees of a church than they or the church realise. The law says that “charity trustees” are **“the persons having the general control and management of the administration of a charity”**. If that includes you, then you are a trustee.
- Well-informed and risk averse people may be reluctant to serve as trustees of a UVA.

The solution lies in incorporation, possibly as a Charitable Company Limited by Guarantee, but most likely as a Scottish Charitable Incorporated Organisation (“SCIO”). SCIO is a relatively flexible and not too heavily regulated format, the Constitution of which can be readily adapted to reflect Baptist ecclesiology. This is not some clunky or secular corporate structure. It can express the purposes, relationships and governance of a Christian church,

and the creative balance between the roles and responsibilities of members and servant leaders.

A SCIO provides personality and protection. The SCIO as an incorporated entity is a legal person, which can hold property, enter contracts, undertake loans and other obligations and sue and be sued. The SCIO has the benefit of limited liability. The assets, funds and property of the SCIO can be targeted by litigants and claimants, but trustees are sheltered under the canopy of the SCIO and are no longer in the immediate firing line if these assets should prove to be insufficient.

Charity trustees still of course have legal duties and re-constituting as a SCIO does not give trustees carte blanche to do as they please. However, liability would generally be restricted to cases of gross negligence, recklessness, illegal activity or acting contrary to charitable purposes.

If you love your leaders and if you care about your church, you should give careful thought to your UVA restructuring as a SCIO.

What does restructuring as a SCIO involve?

Whistle-stop summary:

- UVA Church decides to re-structure as SCIO
- Prepare a new SCIO Constitution (**Help is at hand-see below**)
- Apply to OSCR for
 - Approval of SCIO, which enters Scottish Charity Register as a new charity
 - Consent to Winding up of UVA, and Transfer of Assets and Liabilities to SCIO
- Fix Transfer Date
- Transfer to SCIO
 - Assets (Properties, Funds, Staff etc)
 - Liabilities (Ongoing Expenses, Loans Due, Pension Debt etc)
- Request OSCR to remove the UVA from the Scottish Charity Register

What resources are available?

- 1) If you look on this website, you will find the **Model Baptist Church SCIO Constitution**. This reflects three years practical experience of helping churches to restructure as SCIOs, so it has been thoroughly road-tested and constantly improved over that time. The Model has been approved by OSCR as containing all that is necessary to meet the detailed statutory requirements of a SCIO Constitution. It states what I consider to be best practice as at January 2022, even including clauses responding to the challenges of COVID-19 and providing for gathered, remote or hybrid members meetings as required. The Model refers to the mythical “Wharf Baptist Church” (named after the BUS Office at Speirs Wharf), but it can be adapted as appropriate to meet the specific context and preferences of any Baptist Church in Scotland.
- 2) I am currently updating a clause by clause Commentary on the Model Constitution, and that will be posted on this website shortly.

- 3) Thereafter I will be working on a **Companion Guide** to the SCIO restructuring process, taking account of all that has been learned over the past three years, and this will appear as soon as practicable.
- 4) In the meantime, I am willing to **meet over Zoom with any church leadership team** to provide a full explanation of restructuring as a SCIO, and the practical implications for that particular church. That will be offered **free of charge and on a no obligation basis**. Following that meeting I will explain the services my company Diakoneo Legal Services Limited can offer to assist the church with the SCIO process and the transfer of the assets, including the conveyancing of any land and/or buildings. The church can make its own choice in this respect and may take legal or other advice from whatever source it considers to be in its best interests.

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