

DRAFT

**SCOTTISH SOCIETY FOR CROP RESEARCH
SCOTTISH CHARITY NUMBER SC011854**

**EXPLANATORY PAPER FOR MEMBERS IN CONNECTION WITH PROPOSED
TRANSFER TO A SCOTTISH CHARITABLE INCORPORATED ORGANISATION
(SCIO)**

1. BACKGROUND

The current legal form of the Scottish Society for Crop Research (“the Society”) is Specially Authorised Society registered under the Friendly Societies Act 1974 and a Scottish Charity registered with the Office of the Scottish Charity Regulator.

The current legal structure as a Specially Authorised Society registered under the Friendly Societies Act 1974 is rare these days and not well understood compared to other legal structures for charities, where Friendly Societies are now more commonly used for financial services and insurance.

The Society’s status under the Friendly Societies Act 1974 means that it requires to file annual accounts with the FCA, and has other reporting requirements to the FCA.

In addition, as a Scottish Charity, the Society also has reporting requirements to the Office of the Scottish Charity Regulator (OSCR) under the Charities and Trustee Investment Scotland Act 2005.

The current governance model of the Society is what is known as a two-tier model. That is a model where there is a separate membership that, in terms of the Rules, have certain powers in respect to the Society’s decision making. Members pay a subscription in order to benefit from such rights, together with any other membership benefits that are in furtherance of the Society’s objects.

The Society has an unincorporated legal structure which means that it does not currently have its own separate legal personality, this means that it cannot hold property or contract in its own name. Being unincorporated also means risk of personal liability to those who are in charge of the Society.

Being unincorporated leads to an arrangement where property is held by a small number of individuals who are referred to as the Trustees within which the property vests on behalf of the Society. However, OSCR regards the Charity Trustees as being those individuals who are responsible for the general management and control of a charity which means that both the Trustees **and** the Management Committee as all likely to be Charity Trustees in terms of the law.

To summarise the main drawbacks to the current legal structure include that:

1. A Specially Authorised Society is not commonly understood and is historic
2. The structure is unincorporated, which means there is not limited liability, the structure does not have a separate legal personality
3. Registration with both OSCR and the FCA creates dual reporting and regulation

2. PROPOSAL TO BECOME A SCIO

The SCIO was introduced in 2011 as a legal structure unique to Scottish Charities which allows Scottish Charities to benefit from a limited liability legal structure without having to become a UK company.

The benefits of becoming a SCIO include only being registered, and having reporting requirements to OSCR and having one set of legislation to consider, being the Charities Act.

The proposal is that the SCIO proceeds with two-tier governance structure (as now) with a Board of Charity Trustees and a separate membership, who will usually elect the majority of Charity trustees, be entitled to attend AGM's and require to take decisions in relation to some matters which Charity Trustees cannot take alone, to include altering the governing document in the future, or winding-up the SCIO.

The legislation does not provide a conversion process for the Society to become a SCIO.

This means that the process effectively involves setting up a brand new charity with the new charity name and number, transferring the assets of the Society to the new charity and thereafter dissolving the existing Society.

As the SCIO will be set-up as a new charity, with a new charity number it will require to have a different name, to the existing Society, at least initially. This is because there will be a period of time where both charities will be registered on the Scottish Charity Register, and it is not possible for two charities of the same name to be registered at the same time. A different name could be achieved by simply adding the word "SCIO" to the end of the current name.

A brief summary of the process is as follows:-

- a) Obtaining the members approval to proceed, subject to approval again later at (e) below.
- b) Preparing and agreeing the SCIO Constitution.
- c) Obtaining Companies House consent for name (if necessary).
- d) Obtaining member's approval to SCIO Constitution.
- e) Preparing and lodging OSCR application for charitable status for the SCIO (OSCR will take around 3 months to respond).
- f) Once the SCIO is registered to take steps to formally dissolve the Society. This will include:
 - i. obtaining OSCR's consent to dissolve;

- ii. finalising a Deed of Transfer between existing charity and new SCIO to convey the formers entire assets, liabilities and undertaking; and
- iii. following the dissolution process for the Society with the FCA.

The Committee are of the view that the change to a SCIO will be beneficial to SSCR, benefits including:

1. Having a modern legal structure, with up-to-date charitable purposes, which is well recognised in the Scottish Charity Sector
2. Having a limited liability legal structure which has its own separate legal personality and can contract in its own name
3. Registration with only OSCR, instead of OSCR and the FCA
4. Having a new Constitution which reflects the requirements of modern charity law, best practice, and will be fit for purpose for many years to come