

## Contemplating a change in Charitable Structure?

There is an understandable trend in Scottish Baptist churches to explore a change in charitable structure. It may be because you have heard that the Scottish Baptist College and BMS World Mission have already changed, and that our Union is in the process of changing. Perhaps you have become more aware of the challenge of attracting good leaders for your church.

Most Baptist churches, founded many years ago, are currently constituted as unincorporated voluntary associations (UVAs) and many will no doubt continue to be so for years to come. However, it would be wise for churches to consider the question, **“Do we wish to remain unincorporated or should we change to an incorporated form of charity?”**

The decision is entirely yours as a church. What follows seeks to help you make an informed decision and gives links to other sources of information which you should explore fully before deciding whether to pursue a new structure or to remain in your current form.

### Why Incorporation?

Most churches consider incorporation for two main reasons:

- **IDENTITY**-Incorporated bodies have their own identity in law (“legal personality”) and can therefore own property, enter into employment and other contracts, take out loans and sue and be sued in their own right. UVAs have to do these things in the names of their individual leaders as trustees for the UVA.
- **PROTECTION**-Incorporation provides general protection for trustees, as they are no longer the direct targets of legal action against the church, with the potential for unlimited liability even when they have not personally been at fault. Trustees can still incur some personal liability but this is generally restricted to extreme situations involving negligence, recklessness, illegal activity or operating outside charitable purposes.

### Two Forms of Incorporation

There are two forms of incorporation increasingly considered by churches:

- **SCOTTISH CHARITABLE INCORPORATED ORGANISATION (“SCIO”)**  
Introduced in 2011, this still relatively new SCIO format allows charities to be incorporated, but to be regulated by a single body, the Office of the Scottish Charity Regulator (“OSCR”). The advantage of this form for local churches is that it provides the identity and protection described above, while maintaining the relative simplicity of dealing only with OSCR. Therefore, while each church must reach its own conclusions and take its own legal and other advice required, this may well be the most appropriate structure for the vast majority of Baptist churches in Scotland in membership of our Union.

Converting to a SCIO requires a new type of Constitution to be formulated by the church and agreed by OSCR. The assets (including land, buildings and equipment, and bank accounts and investments) and liabilities (including pension and other debts) are transferred to the new SCIO by the old UVA (which is then wound up). This is a detailed process which has to be carefully followed through. Legal services will definitely be required for the purposes of conveying title to any properties owned by the church to the new SCIO and might well also be needed in relation to the transfer agreement between the UVA and the SCIO and any employment related matters. However, the church leadership may be able to carry through a good part of the other procedures themselves with minimal legal input.

One possible disadvantage of the SCIO form is that in the hopefully unlikely event of the church potentially losing its charitable status, it would need to find a new legal identity (as being a SCIO depends on being a registered charity), and again transfer its assets and liabilities.

The following documents are available on this website to assist churches considering converting to a SCIO:

- **Draft Model SCIO Constitution for a Scottish Baptist Church\*** [\[LINK\]](#). This model has been approved by OSCR. Each individual church will require to adapt the model as appropriate to their own context and requirements.
- **Commentary on Draft Model SCIO Constitution\*** [\[LINK\]](#)
- **Companion Guide to Re-structuring a Scottish Baptist Church as a SCIO\*** [\[LINK\]](#)

- **COMPANY LIMITED BY GUARANTEE (“CLG”)**

This format has the advantage of a long established legal pedigree. If the church should lose charitable status for any reason, it would continue to exist as a CLG. All CLGs which have a registered office in Scotland are registered with the Registrar of Companies in Scotland. This gives the church two regulators, OSCR and Companies House, and the church must comply with the separate requirements of both.

During the company formation process, a Memorandum and Articles of Association must be completed:

- **The Memorandum** states the names of the original guarantors and their agreement to set up the company and become its founding members.
- **The Articles** outline the rules and regulations the company has to follow.

A CLG must register its annual accounts, submit an annual Confirmation Statement and make various other filings with Companies House when certain events occur. The CLG must maintain statutory registers. The level of reporting far exceeds that with which Baptist churches are familiar, save for a few of our larger churches. The penalties for failing to report to Companies House in the correct way and at the right time should be considered carefully if your church is thinking of choosing this form of charity.

As well as the specific additional dimension of forming and registering a company for which detailed legal advice from a solicitor familiar with the relevant areas of charity and company law will be necessary, many of the procedures detailed above in relation to converting from a UVA to a SCIO will also apply, including the transfer of assets and liabilities. Legal services will therefore also be needed for the conveyancing aspects of transferring title to the church's properties as well as any employment related issues.

The following link gives further information on the process:

<http://www.gov.uk/topic/company-registration-filing/starting-company>

## **Other Matters to bear in mind**

### **MINISTERS DEFINED BENEFIT PENSION SCHEME**

Your church may be part of the Ministers Defined Benefit Pension Scheme operated in conjunction with the Baptist Union of Great Britain ("the Scheme"). A change in charitable structure, whether to a SCIO or to a CLG, and the consequent dissolution of the UVA, would normally constitute a cessation event triggering immediate full payment of the church's debt. The **SCIO Companion Guide** referred to above explains the steps to be taken to obtain and document the consent of the Scheme Trustees to avoid the triggering of the cessation payment by transferring responsibility for the pension debt to the SCIO. Similar considerations will apply in relation to a CLG.

### **LEGAL ADVICE**

Reference has been made to the necessity for legal advice in relation to the conveyancing and employment aspects of the transfer, whether to a SCIO or to a CLG, and also for the charity and company law issues surrounding the formation of a CLG.

All these legal issues (conveyancing/employment/charity/company) have very specific aspects when applying to a church, in particular a Baptist church. It is therefore vital to ensure that the solicitors you choose to instruct have the relevant knowledge and experience to give your church the full and proper advice required. An understanding of Baptist ecclesiology (as discussed below) would also be helpful.

The conveyancing element of the work required is likely to be one of the most costly aspects, both as regards legal fees and outlays. However, as explained in more detail in the **SCIO Companion Guide** referred to above, many of these costs may have to be incurred in any case to comply with Scottish Government policy to complete the Land Register of Scotland by 2024. Accordingly, if this expense is going to be required anyway, this might as well be done in conjunction with the positive benefit of transferring the property titles to the SCIO. The same considerations would apply in relation to a CLG.

### **REFLECTING A BAPTIST UNDERSTANDING OF CHURCH**

As Baptists we believe in and have practised the priesthood of all believers. Under Christ we have practised the belief that the church meeting (not the minister, elders, deacons, trustees or leadership team) is the ultimate authority in the church. While we recognise that gifts of leadership are essential to the health and wellbeing of the church, we maintain a belief that even our leadership structures are overseen by the whole body.

We have also historically maintained a membership of believers who profess Christ as their Saviour and Lord. This has been practised in two forms, either a “closed membership” position where all members are required to have been baptised as believers and predominantly by immersion, or the alternative “open membership” position that accepts believers who profess Christ as Saviour and Lord without the requirement of believers baptism (although baptism in another tradition rather than no baptism at all may be preferred or required).

The **Draft Model SCIO Constitution** referred to above reflects these historical founding beliefs as well as adherence to the **Declaration of Principle** of the Union as set out below. Churches seeking to become CLGs should ensure that their Articles of Association continue to reflect these beliefs and that the company’s objects comply with the Declaration of Principle.

### **Declaration of Principle**

The basis of the Union is:

1. that the Lord Jesus Christ our God and Saviour is the sole and absolute authority in all matters pertaining to faith and practice, as revealed in the Holy Scriptures, and that each church has liberty, under the guidance of the Holy Spirit, to interpret and administer His laws.
2. that Christian baptism is the immersion in water into the name of the Father, the Son and the Holy Spirit, of those who have professed repentance towards God and faith in the Lord Jesus Christ, who died for our sins according to the Scriptures, was buried and rose again the third day.
3. that it is the duty of every disciple to bear witness to the Gospel of Jesus Christ, and to take part in the evangelisation of the world.

*\*The draft Model Constitution with related Commentary and Companion to re-structuring a Scottish Baptist Church as a SCIO have been prepared by Alan Holloway, Solicitor to the Baptist Union of Scotland (“the Union”), and trading as Diakoneo Legal Services Limited. It is hoped that churches will find these to be helpful. However, nothing contained in the Model Constitution, the Commentary, or the Companion, is intended to be, nor should it be construed as containing, legal advice to any particular church. Each church is responsible for deciding on its own structure and on the terms of its own constitution and carrying through its own re-structuring process, and should take its own legal advice in that connection. Neither the Union nor Alan Holloway or Diakoneo Legal Services Limited (unless specifically engaged by a particular church to advise in relation to such matters) can accept any responsibility or liability arising out of the terms of the draft Model Constitution, Commentary or Companion.*