



This information note is one of a series produced by the Community Woodlands Association. It describes the various organisational forms which are available to community woodland groups. It is intended as an introduction to the options and includes a brief discussion of their pros and cons but should not be read as recommending any particular structure. The note signposts to sources of more detailed information: other CWA information notes or external bodies. Many of the general principles are applicable across the UK but references to some organisational forms, funders and regulators are relevant only to Scotland.

Introduction

Community woodland groups (CWGs) are extremely varied in terms of their size, their activities and aspirations, and the communities they represent. They also use a range of constitutional forms. If you are considering establishing a group it is important that you choose a structure appropriate for both current circumstances and future objectives and aspirations, and we recommend you seek external advice: a list of contacts and references is included at the end of this note.

Informal Groups

It is quite possible for voluntary groups to operate without being formally constituted: there are a number of informal groups carrying out small scale activities (e.g. litter-picking, tree-planting) in woods owned by e.g. Forestry Commission Scotland (FCS), Local Authorities and the Woodland Trust. These groups do not usually claim to be representative of the wider community and tend to be led by, and be dependent on, a staff member from the land-owning organisation.

As long as the group's members are content with the (usually) limited responsibility and input to management objectives they can be very productive, as participants' focus is entirely on the management of the wood, rather than the management of the group.

However, such arrangements can also be vulnerable to policy and budget changes: without the on-going support of the landowner the group has no rights or status and can quickly be dissolved.

Establishing a Formal Group

Many CWGs begin life as an informal steering group, tasked with scoping out the feasibility of a project and assessing the extent of community support. Once it is apparent that the project will progress, and particularly once money, property and land tenure are involved, a constituted group is required. (In some cases it may be possible to proceed as a "working group" of an existing community organisation, avoiding the need to establish a new body). Agreeing a formal structure provides a framework for future operations and gives the group an identity, continuity, credibility and a means of establishing common objectives.

There are a number of different possible forms for constituted bodies: the first critical distinction is that some are "**incorporated**", others "**unincorporated**". The main advantage of incorporated forms is that the organisation is considered a legal entity – a company or SCIO can own property, enter into contracts etc., in its own right, and that the liability of members is limited to their investment (in the case of shares) or their guarantee. Without this legal status, any formal contracts would need to be in the names of individuals (e.g. office-bearers), and members could be held personally liable for the body's actions or for debts if the organisation became insolvent.

This Note considers 6 types of organisation, as listed in the table overleaf. 4 are incorporated, the other 2 unincorporated. Charitable status is compulsory for one of the types, optional for 4 and not possible for the other.

Type of Organisation	Incorporated	Charity	Primary Regulator
Voluntary Association	No	Can be	(OSCR if charity)
Trust	No	Can be	(OSCR if charity)
Company Limited by Guarantee	Yes	Can be	Companies House (plus OSCR if charity)
Community Interest Company	Yes	Can't be	Companies House, CIC Regulator
Community Benefit Society	Yes	Can be	FCA (OSCR if charity)
Scottish Charitable Incorporated Organisation	Yes	Must be	OSCR

Charitable Status

A charity is not in itself a separate type of organisation, rather, charitable status is like a badge that incorporated and unincorporated bodies can apply for from The Office of the Scottish Charity Regulator (OSCR) (Note: SCIOs **must** be a charity). An organisation can only become a charity if it meets the 'charity test', meaning that it must have only charitable purposes and it must provide public benefit. Additionally, it must not be directed by Ministers or allow its property to be distributed or applied for non-charitable purposes.

The acceptable charitable purposes are:

- the prevention or relief of poverty;
- the advancement of education;
- the advancement of religion;
- the advancement of health;
- the saving of lives;
- the advancement of citizenship or community development;
- the advancement of the arts, heritage, culture or science;
- the advancement of public participation in sport;
- the provision of recreational facilities, or the organisation of recreational activities;
- the advancement of human rights, conflict resolution or reconciliation;
- the promotion of religious or racial harmony; the promotion of equality and diversity;
- the advancement of environmental protection or improvement;

- the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage;
- the advancement of animal welfare; and
- any other purpose that may reasonably be regarded as analogous to any of the preceding purposes.

The **advantages** of charitable status include tax benefits, and the ability to register for Gift Aid, access to a wide range of charitable funders who can or will only fund other charities, and, perhaps most importantly, the widespread public goodwill and trust which charities enjoy.

The **disadvantages** include the additional reporting requirements, such as the OSCR annual return and the need to ask permission before making certain constitutional changes. For some organisations the restrictions on employees serving on the Board and the need to ensure that activities remain within the charitable purposes also militate against charitable status.

Note: Charities and Trading

There is a widespread misconception that charities are not allowed to "trade"; in reality many do. There are however restrictions. Firstly, of course, everything the charity does must be covered by its charitable purposes; secondly, whilst trading in the course of carrying out a primary purpose of the charity is exempt from tax, trading for fundraising purposes isn't (except within certain financial limits). (Note: it doesn't matter that the funds raised will be spent charitably!).

Trading Subsidiaries

If a charity wishes to undertake a project involving activities and trading which falls out-with their charitable purposes, they may set up a separate (non-charitable) trading company, typically a company limited by shares. In the most common model the shares are owned by the main charitable body, and to minimise tax, virtually all of the taxable profits of the trading company are paid over to the charity.

Other rationales for setting up a subsidiary company include to insulate the parent company from risk (so if a business venture fails it will not bankrupt the parent charity) and to create a vehicle for investment.

Several community groups have established trading subsidiaries. For example the Isle of Eigg Heritage Trust (a charitable company) has three: Eigg Trading Limited - owns and manages An Laimhrig which houses the island shop and Post Office, tearoom, craft shop, Trust office, waiting area and toilet /shower facilities; Eigg Electric - set up to build and manage the island's electricity grid; and Eigg Construction Limited - set up to undertake renovation works on the Trust's properties.

The Basics

Regardless of what type of organisation is to be set up, there are some basic questions that need to be addressed. The first is the **name**, which should ideally describe the Who, Where and What of the organisation, whilst avoiding confusion with existing bodies. OSCR will not register a charity whose name is the same or too similar to an existing one, or is misleading or offensive. A check for similar names can be made in the register of Scottish charities kept by OSCR and the register of companies at Companies House.

The next, and perhaps most fundamental, are the **Objects**, or **Purposes** of the organisation: what is it being set up to achieve? These are for the guidance of future Boards, members and funders, and should reflect the aims and activities that the organisation is realistically likely to pursue. If charitable status is sought then the objects must all meet the "charity

test". It can be very useful to search the OSCR register to see the form of words used by other organisations with similar aims.

Eligibility criteria for **Membership** must be defined; the members are the people who ultimately "own" the organisation and elect a Committee or Board to manage it on their behalf. Some voluntary organisations define their membership by common interests, but most CWGs have a membership defined by residence in a specific geographic area.

There are very specific requirements if a group wishes to use the provisions of the Land Reform (Scotland) Act 2003 or the Community Empowerment (Scotland) Act 2015, covered on p6 of this note6+.

Other issues to consider are whether organisations as well as individuals can join, and whether there will be an associate membership for those who would like to be members but cannot qualify directly (e.g. they are under 16, or live outside the area).

And finally, there must be rules for electing the **Committee** or **Board** of Trustees or Directors (or sometimes just Committee Members) who "manage" the organisation:

- how many on the Committee?
- how are they elected?
- what is the maximum period in office?
- do they all stand down every year?

There are no right or wrong answers here; each organisation must strike a balance between the need for continuity and the desire for renewal.

Unincorporated Bodies:

Voluntary Association

Voluntary Associations are the simplest and oldest organisational form: a group of individuals who come together to tackle an issue, and agree to work according to a constitution that sets out membership criteria, objectives and rules. Voluntary associations can set up bank accounts, apply for some types of funding and seek charitable status if they wish.

For small groups not intending to own property or employ staff this is often the most appropriate form; and in some cases is a useful intermediate step for new groups, allowing them to carry out feasibility studies, community consultation etc., prior to acquiring assets and establishing an incorporated body.

The **advantages** are simplicity and the absence of a formal registration process or requirement to submit an annual return (unless the organisation registers as a charity).

The **disadvantages** are that a voluntary association isn't considered to have a separate legal existence, and therefore cannot itself own property or be party to legal contracts, so any formal contracts (like leases) need to be in the names of individuals (e.g. office-bearers), and that without limited liability members could be held personally liable for the body's actions or for debts if the organisation became insolvent. Voluntary associations may be seen as less serious or stable by funders, partners etc.

A Trust

A Trust may be set up by individuals or a group of people to hold and manage land and other property for clearly defined purposes. Trusts are single tier organisations, where those taking the management decisions (i.e. the trustees) are not answerable to any wider body of people. Trustees cannot be paid, or receive any share of profits on winding up, and they themselves appoint new trustees (sometimes places are reserved for nominees of outside bodies).

The main **advantage** is the limited administration required: there is no membership to service or report to, and no formal registration or accounting procedures to follow, unless the Trust is a charity.

The **disadvantages** are that there is no accountability to a wider membership, and Trusts are not full legal entities, so where the trust holds property this has to be done in the names of the trustees. Trustees may have personal liability for the body's actions

although there are certain protections in trust law and common law.

Trusts aren't common in the community woodland sector (many bodies that have "Trust" in their name are actually companies) because of the lack of wider accountability but they could be an effective vehicle for land ownership in some circumstances.

Incorporated Bodies:

Company Limited by Guarantee

Companies Limited by Guarantee are common in the voluntary sector, and most of the larger and land-owning Community Woodland Groups have adopted this structure. Unlike normal private sector limited companies, they have no share capital or shareholders. Instead they are owned by members (typically defined by geographic residence) who act as guarantors, undertaking to contribute a nominal amount (typically £1) in the event of the winding up of the company. They are non-profit distributing and governed by a Board of Directors who are not paid (other than reimbursement of expenses). Many are also charities, but this is not compulsory.

The main **advantage**, in addition to the limited liability of members described above, is that the company is a legal entity in its own right and can own property, take on leases and employ people in its own name; and none of these are affected when individual board members are replaced. As a result a company may be regarded as more stable than a voluntary association by public agencies and other funders.

The **disadvantages** are largely related to additional bureaucracy and cost (although these aren't huge and shouldn't be overstated). Setting up the company requires formal registration procedures with Companies House, who must also be notified of changes to registered office, directors and company secretary. Accrued annual accounts must be filed, a register of members kept, and there are statutory procedures to be followed for the Annual General Meeting (AGM).

Community Interest Company

A Community Interest Company (CIC) is a special type of company limited by shares (or in some cases company limited by guarantee), rather than a completely separate organisational structure. Registration of a company as a CIC has to be approved by the CIC Regulator who also has a continuing monitoring and enforcement role.

A CIC must satisfy the “community interest test”: it must carry on activities which are for the benefit of the community (and report on this annually), it cannot have charitable status, even if its objects are charitable, it cannot distribute profits beyond a limit set by regulations, and any surplus assets remaining on the winding up of a CIC must not be paid/transferred to its members (except to the extent of the amount paid up on the shares); surplus assets must be transferred to other CICs or to charities.

The **advantages** are the flexibility of set up and structures, (e.g. using the company limited by shares model allows employees to serve on the Board) and the CIC label which should set the company apart from the rest of the private sector and reassure socially motivated investors.

The **disadvantages** include the non-availability of charitable status, which may limit access to funding, and the restrictions of the CIC status, which may inhibit other investors.

When the CIC model was being developed, it was suggested that CICs would be the dominant organisational form for social enterprises. That now seems unlikely, as many organisations wish to secure the advantages of charitable status, but CICs are becoming more common, either as stand-alone social enterprises or as trading subsidiaries of existing charitable companies.

Community Benefit Society (formerly Industrial and Provident Society)

A Community Benefit Society (CBS) is an incorporated body with limited liability registered with the Financial Conduct Authority (FCA). Most register through a

sponsoring body using model rules that have been pre-approved by the FCA (a list of organisations that sponsor model rule books for use by societies can be downloaded from the FCA website), as any departure from the model rules can result in a time consuming and expensive registration process.

At registration, CBSs must be able to show a special reason for being a community benefit society rather than a company. This is usually the desire to enshrine democratic decision-making into their legal structure. They are eligible for charitable status, provided they can satisfy the charity test. Most have a single category of open membership, and there is an optional statutory asset lock which prevents residual assets being distributed to shareholders on sale or dissolution of the society. CBSs are “one-member-one-vote”, regardless of how much money a member has invested. Members can receive interest on their share capital but are not entitled to share profits as these are reinvested for community benefit.

The main **advantage** of a CBS is the ability to issue withdrawable share capital, which allows investors to get their money back, subject to the terms and conditions of withdrawal, without having to find a buyer for the shares. These share issues are exempt from regulation under the Financial Services and Markets Act 2000 and also from money laundering regulatory requirements, which greatly reduces administrative requirements.

The **disadvantages** are that it is difficult (and expensive) to tailor the rules to the needs of the particular organisation, and the CBS / IPS structure may be unfamiliar to banks and other bodies dealing with the organisation. Various returns have to be sent to the FCA whose processes are reportedly slower and more complex than say, Companies House.

CBSs haven't been widely used in the Community Woodland sector to date, but interest is growing in using them as a vehicle to raise funds for acquisition or development of woodlands through a share issue.

Scottish Charitable Incorporated Organisation (SCIO)

A Scottish Charitable Incorporated Organisation (SCIO) is a corporate body which is a legal entity with limited liability able to enter into contracts, employ staff, own property, etc. in the same way as a limited company.

The obvious **advantage** is that a SCIO requires registration only with OSCR, rather than Companies House, making the registration and charity recognition process simpler and hopefully easier. Likewise the legal and reporting requirements (e.g. not having to produce accrued accounts for smaller organisations) for a SCIO should be streamlined.

A possible **disadvantage**, and certainly an important point to note, is that whereas charities with other forms can continue to exist after charitable status is withdrawn, a SCIO would cease to exist as a legal entity if removed from the Register, and cannot choose to convert to another legal form or amalgamate with a non-SCIO.

The SCIO form has only been available to new organisations since 2011 but a number of community woodland groups have adopted this model and it is becoming increasingly familiar to regulators and funders.

Additional External Considerations

Community bodies may need to add specific provisions to their constitutions to meet the requirements of statutory mechanisms or funders. For CWGs, the most important are likely to be those to meet the requirements of the Community Right to Buy and Community Asset Transfer provisions, and those of the Scottish Land Fund.

Community Right to Buy

The Community Right to Buy (Part 2 of The Land Reform (Scotland) Act 2003 as modified by Part 4 of the Community Empowerment (Scotland) Act 2015) allows eligible community bodies (CBs) to apply to register an interest in land and the opportunity to buy that land when it comes up for sale.

The CB may be a company limited by guarantee, a SCIO or a CBS. The Act requires that the CB's governing document has provisions that there must be at least 10 members, at least $\frac{3}{4}$ of the members must be from the community and the community members must have control of the CB.

Any surplus funds or assets must be applied for the benefit of the community, which must be defined using postcode units or another prescribed type of area, and Scottish Ministers must have given written confirmation that the main purpose of the body is consistent with furthering the achievement of sustainable development.

Community Asset Transfer

Part 5 of the Community Empowerment (Scotland) Act 2015 gives communities of geography and communities of interest the opportunity to buy, lease or occupy land and assets owned or leased by Scottish public authorities, whether or not it is up for sale. Eligibility requirements for asset transfer vary according to the tenure sought, and some details are still being worked out, but it is worth noting that community bodies which have constitutions meeting Community Right to Buy requirements have been designated by Ministers as eligible to use the Asset Transfer provisions. Forest Enterprise Scotland has developed a bespoke Community Asset Transfer Scheme to community acquisition.

The Scottish Land Fund

The Scottish Land Fund supports communities of geography to acquire land and other assets. Applicants must be representative of their community and have a defined boundary. The organisation must have a social purpose, open membership, demonstrate community control and be non-profit distributing.

CWA info note 3 outlines the statutory rights provided by the Community Empowerment and Land Reform Acts and describes the requirements and process of the Forest Enterprise Scotland Community Asset Transfer Scheme.

Resources and Links

Support

Community Woodlands Association (advice and support for community woodlands)

<http://www.communitywoods.org>

Making Local Woods Work (advice, tools and resources for woodland social enterprises)

<https://makinglocalwoodswork.org>

Community Ownership Support Service (general support and resources for communities taking on assets) <http://www.dtascommunityownership.org.uk/>

Scottish Council for Voluntary Organisation (general advice and resources on setting up a voluntary organisation) <http://www.scvo.org.uk/setting-up-a-charity/>

Regulators

Companies House

<https://www.gov.uk/government/organisations/companies-house>

The Office of the Scottish Charities Regulator (OSCR)

<https://www.oscr.org.uk/>

The Financial Conduct Authority (FCA)

<https://www.fca.org.uk/>

Office of the CIC Regulator

<https://www.gov.uk/government/organisations/office-of-the-regulator-of-community-interest-companies>

Funders

The Scottish Land Fund

<https://www.biglotteryfund.org.uk/scottishlandfund>

Model Governing Documents

Community Right to Buy

<http://www.gov.scot/Topics/farmingrural/Rural/rural-land/right-to-buy/Community/excludedland>

Asset Transfer

<http://www.gov.scot/Topics/People/engage/AssetTransfer/Resources>

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