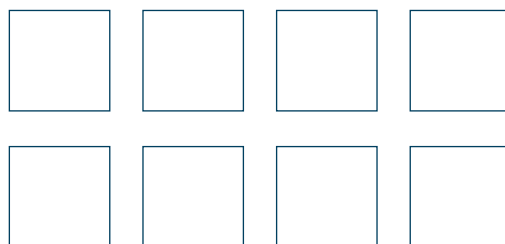
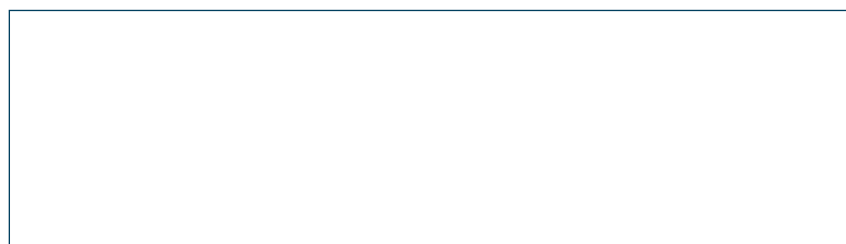


## 8. Useful contacts

We provide a lot of information and guidance on our website [www.oscr.org.uk](http://www.oscr.org.uk). As the regulator, we cannot advise you if becoming a SCIO is right for you. However, you can get further support and information from:

- Your local Third Sector Interface, which are organisations which offer support to voluntary organisations - [www.voluntaryactionsotland.org.uk](http://www.voluntaryactionsotland.org.uk)
- Scottish Council for Voluntary Organisations (SCVO) has lots of useful information about constitutions, charitable status and organisational structures. Contact its Information Service on 0800 169 0022 or go to the Governance section of its website – [www.scvo.org.uk](http://www.scvo.org.uk)
- The Scottish Government’s website has an Enterprising Third Sector Organisations Zone which gives details of help and practical support available – [www.scotland.gov.uk](http://www.scotland.gov.uk)
- If you want professional legal advice on becoming a SCIO, you can find a solicitor or law firm by using the ‘Find a Solicitor’ section of the Law Society of Scotland website – [www.lawsocietyofscotland.org.uk](http://www.lawsocietyofscotland.org.uk) – you can search by name, area of work or accredited specialism.
- If you have any questions about tax, contact the HMRC Charities Helpline on 0845 302 0203 or go to [www.hmrc.gov.uk/charities](http://www.hmrc.gov.uk/charities)
- If you have any questions about sequestration, contact the Accountant in Bankruptcy on 0845 762 6171 or go to [www.aib.gov.uk](http://www.aib.gov.uk)
- If you have any queries about company law or regulation, contact Companies House on 0303 1234 500 or go to [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)
- If you have any queries about IPSs, contact the Financial Services Authority on 0845 606 9966 or go to [www.fsa.gov.uk](http://www.fsa.gov.uk)



## 9. Glossary

### Accrued accounts

Accounts prepared using the accruals basis allocate the costs or income of a particular activity according to when the liability is incurred or when there is entitlement or certainty about income. This is not necessarily the date on which money is received or paid out. Accounts prepared using the accruals basis must be prepared in accordance with the methods and principles of the Accounting and Reporting by Charities: Statement of Recommended Practice (the 2005 Charities SORP). See the 'Scottish Charity Accounting' page on [www.oscr.org.uk](http://www.oscr.org.uk) for further details.

### Administrative receivership

The situation in which a receiver is appointed to a body to take over responsibility for that body's property. The receiver secures the body's assets and may realise those assets and/or manage the affairs of the body in order to settle the body's outstanding debts.

### Charity trustee

A person who has the general control and management of the administration of a charity. A charity may refer to its charity trustees in a number of ways including management committee members, directors and board members.

### Corporate body

A legal entity which results from one or more persons acting together as a group and on whom corporate status has been confirmed by law. The entity has a separate legal identity from the individual members' identities. Corporate bodies have, on the whole, the same status as a natural person. For example, the corporate body has many of

the same rights, protections, privileges, responsibilities and liabilities as a natural person would under the law. It can enter into contracts, employ staff, incur debts, own property, sue and be sued.

### Creditor

A person to whom money is owed.

### Debtor

A person who owes money.

### To expend (property)

To spend or use up.

### Governing document

The document which establishes a body and states its charitable purposes. Depending on the legal form of the body, the governing document may be referred to as a constitution, Articles of Association, trust deed or rules.

### Heritable property

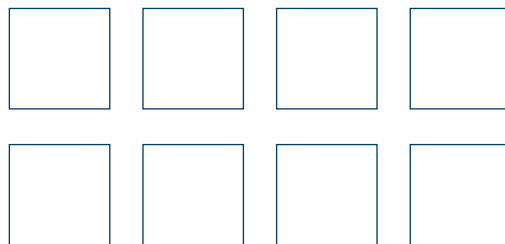
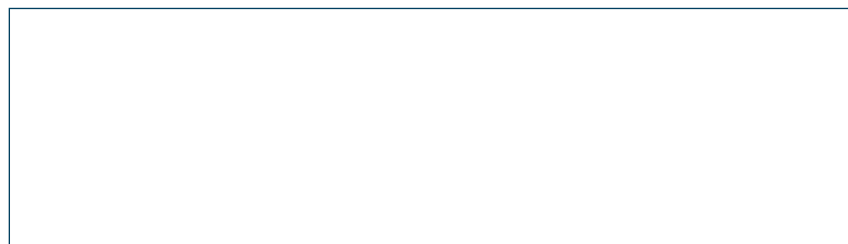
Land and buildings.

### Industrial and provident society

A registered society within the meaning of the Industrial and Provident Societies Act 1965 (c.12). Industrial and provident societies are registered with the Financial Services Authority (FSA).

### Insolvent

The state of being unable to pay debts owed as and when they fall due.



### Legal entity

An entity which is recognised by the law; this may be a natural person or a corporate body.

### Legal personality

A legal status enabling a body other than a natural person to enter into certain legal transactions such as contracts.

### Liquidation

The process by which a company (or part of a company) is brought to an end, and the assets and property of the company are redistributed.

### Natural person

A human being as distinguished from a corporate body.

### Quorum

The minimum number or proportion of persons with voting rights (members, charity trustees or their proxies if applicable) that must be present or represented at a meeting to make the proceedings of that meeting valid.

### Receipts and payments accounts

A simple form of accounting that consist of a summary of all monies received and paid via the bank and in cash by the charity during its financial year, along with a statement of balances. See the 'Scottish Charity Accounting' page on [OSCR's website](#) for further details.

### Resolution

A formal decision made at a meeting, typically after taking a vote.

### To restore (a body to a register)

To legally recreate a dissolved body with the effect that it is deemed to have continued in existence as if it had not been dissolved.

### Sequestration

Sequestration is the Scottish legal term for bankruptcy and is the process for the recovery of unpaid or overdue debts. During sequestration, the whole of the estate (including funds and other assets) of a person who is insolvent is removed from their control. The estate legally transfers to the Trustee in Bankruptcy whose duty it is to realise the estate for the benefit of the creditors. Following sequestration, the debtor no longer has any duty to pay any of the debts accumulated up to the date of the sequestration.

### Solvent

The state of being able to pay debts owed as and when they fall due.

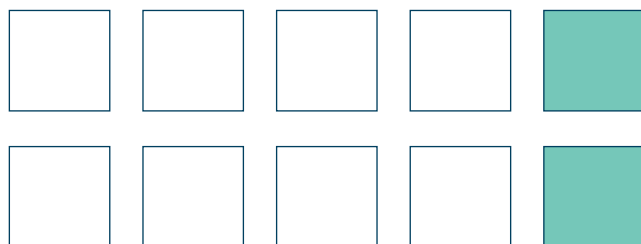
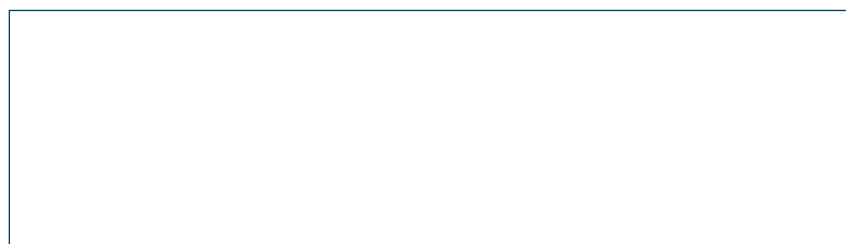
### Special resolution

A special resolution is a resolution which must be passed in a particular manner in line with the requirements of the applicable legislation. References to special resolutions in this guidance mean:

- In the case of companies, a special resolution as defined in section 283 of the Companies Act 2006
- In the case of industrial and provident societies, a special resolution as defined in section 52(3) of the Industrial and Provident Societies Act 1965 (c.12).

### Succession

The action or process of inheriting property etc.



## Appendix 1

### Changing legal form: unincorporated associations and trusts

The following procedure may only be used where the unincorporated association or trust has the power to wind up and transfer its assets to the new SCIO. If this is not the case, the unincorporated association or trust may instead have to apply to OSCR for a Charity Reorganisation Scheme; please contact OSCR to discuss this process in more detail or read our [Charity Reorganisation Guidance](#).

The process of changing legal form from an unincorporated association or trust to a SCIO consists of two main stages; an application for the incorporation of a new SCIO, and an application under section 18 of the 2005 Act to remove the existing unincorporated association or trust from the Scottish Charity Register.

1. In summary, the stages of the change to legal form process are as follows:

Two or more individuals will submit to OSCR a Change to SCIO Application (Stage 1) form (available on the [Scottish Charitable Incorporated Organisations](#) page of OSCR's website) together with:

- a copy of the proposed SCIO constitution (including the required elements described in Section 3.1)
- a copy of the existing charity's constitution
- Trustee Declaration forms for the proposed charity trustees of the new SCIO (there must be at least 3 charity trustees)
- minutes of the meeting of the existing unincorporated association or trust agreeing to change its legal form
- any outstanding compliant accounts of the existing charity due to be filed with OSCR at the point of making the application

It is likely that the individuals who make this application will be the charity trustees of the existing unincorporated association or trust. If the application is successful, they will become the first members of the new SCIO.

2. The Change to SCIO Application (Stage 1) form includes:

- All information required for an application to incorporate a new SCIO, as set out in section 3.1.
  - A statement of the assets and liabilities of the existing charity at the point of making the application. This information is required because any body which is removed from the Register remains under a duty to apply its property at the time of removal for its charitable purposes, and OSCR is required to monitor whether this duty has been fulfilled (in this case, until all the assets are transferred to the new SCIO). Please see [OSCR's publication, Guidance on OSCR Monitoring under Section 19](#), for more detail.
  - A statement outlining how the existing charity proposes to transfer these assets and liabilities to the new SCIO once it is incorporated (should the application be successful), and whether there are any known impediments to the transfer.
3. The application to create a new SCIO will be assessed in the same way as described in section 3. If OSCR is satisfied that the proposed SCIO will meet the charity test and that its constitution contains the required elements outlined in section 3.1, it will write to the applicant giving its approval in principle to the granting of charitable status to the SCIO, pending the removal of the existing unincorporated association or trust from the Register. If OSCR refuses the application, the applicants have the right to seek a review as set out in section 3.4 above.
4. The existing charitable unincorporated association or trust will then submit to OSCR the Change to SCIO




Application – Removal from Register (Stage 2) form (available on the [Scottish Charitable Incorporated Organisations](#) page of OSCR’s website). This is the existing charity’s formal request to be removed from the Register under section 18 of the 2005 Act.

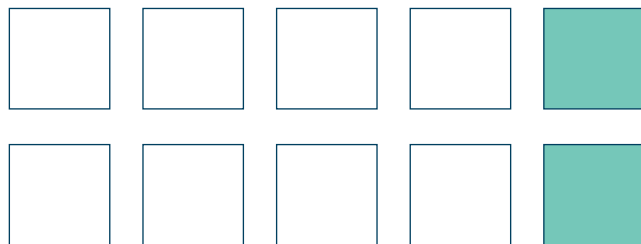
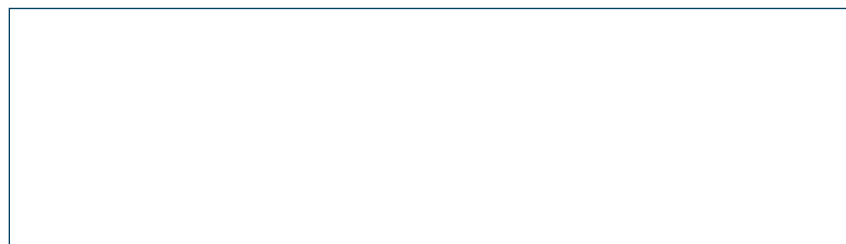
5. Within 28 days of receipt of the Change to SCIO Application – Removal from Register (Stage 2) form, OSCR will remove the existing unincorporated association or trust from the Register. At the same time, it will enter the new SCIO in the Register and so the SCIO will become a corporate body. This will enable the new SCIO to retain the same name and charity number as the existing unincorporated association or trust.
6. The existing unincorporated association or trust may then transfer its assets to the new SCIO. Please note that transferring certain assets, such as stocks, shares and heritable property, and certain liabilities, such as pension liabilities, can be a complex and lengthy process, and these issues are for the existing unincorporated association or trust to resolve in line with independent advice if appropriate.

7. Once the transfer of assets and liabilities is complete, the existing unincorporated association or trust must provide evidence of this transfer to OSCR. The evidence required will be dependent on the particular circumstances, but in general will include information from the unincorporated association or trust such as:

- closing bank statements
- final accounts
- the date on which the transfer was complete and the date on which the unincorporated association or trust was wound up.

The existing unincorporated association or trust remains under a duty to apply any assets it held at the point of its removal from the Register for charitable purposes and to report to OSCR on those assets until they are transferred to the new SCIO.

8. If OSCR is satisfied that the transfer of assets and liabilities has been completed as agreed during the application process, the change of legal form will be complete.

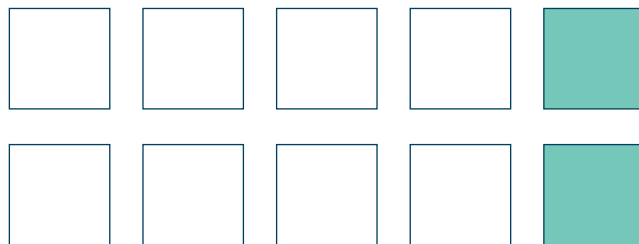
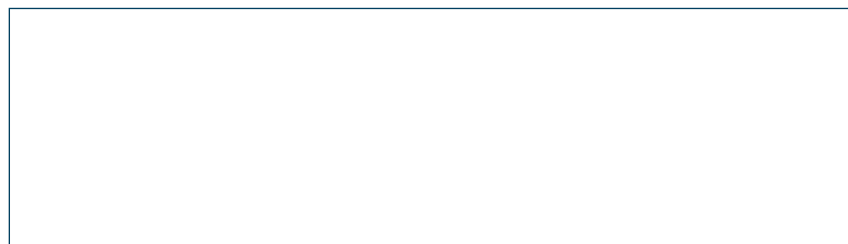


## Appendix 2 Conversions to SCIO form: companies and industrial and provident societies

As the conversion of the company or IPS into a SCIO involves the cessation of one corporate body and the creation of another, there are a number of steps to be taken before the conversion can fully take effect:

1. The company or IPS will submit to OSCR an Application for Conversion form (this will be available at [www.oscr.org.uk](http://www.oscr.org.uk) by 1 January 2012), together with:
  - the documents set out at section 3.1 of this guidance, and
  - a copy of both of the resolutions of the company or IPS agreeing to the conversion and adopting the proposed SCIO constitution (as outlined at section 4.2).
2. OSCR will check to ensure that the application is complete, that all required documents have been submitted, and that the correct procedures have been followed by the company or IPS in making the resolutions (as outlined at section 4.2).
3. In assessing the Application for Conversion, OSCR must consider:
  - whether the proposed new SCIO will pass the charity test (see section 3)
  - whether the proposed constitution contains the required elements (see section 3.1)
  - whether the proposed name is objectionable (see section 3), and
  - whether there are any grounds to refuse the application following consultation with Companies House, FSA or any other appropriate person (see section 4.2).
4. If OSCR grants the Application for Conversion, it will add a note to the entry on the Scottish Charity Register for the existing company or IPS stating that it is to be converted into a SCIO (see section 4.2 for details of the applicant's rights if an application is refused).
5. OSCR will then send the following documents to Companies House or the FSA (as appropriate):
  - a copy of the Register entry of the company or IPS showing that it is to be converted into a SCIO, and
  - a copy of both of the resolutions of the company or IPS agreeing to the conversion and adopting the proposed SCIO constitution (as outlined at section 4.2).
6. Companies House or the FSA (as appropriate) will register the resolutions and cancel the registration of the company or IPS which wishes to convert. Once this has been done, the company or IPS is automatically converted into a SCIO. Its name and constitution will be those which were specified during the application process and its first members will be the members of the company or IPS immediately before the conversion took place. At this point, all property, rights and liabilities of the converting company or IPS become the property, rights and liabilities of the new SCIO.
7. Companies House or the FSA (as appropriate) will then notify OSCR that the conversion has taken effect. OSCR will in turn update the entry on the Register of the company or IPS to show that it has been converted into a SCIO. The new SCIO's entry in the Register will state that its legal form is a SCIO, note the date on which it was entered in the Register and include the name of the company or IPS which was converted into the SCIO. The new SCIO will retain the Scottish Charity Number of the company or IPS which converted into the SCIO.





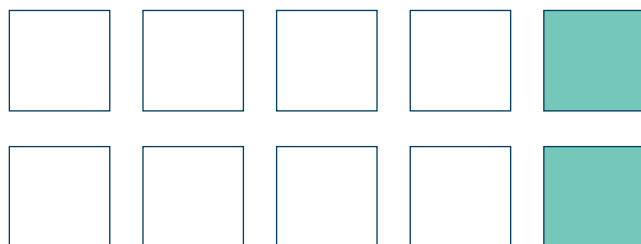
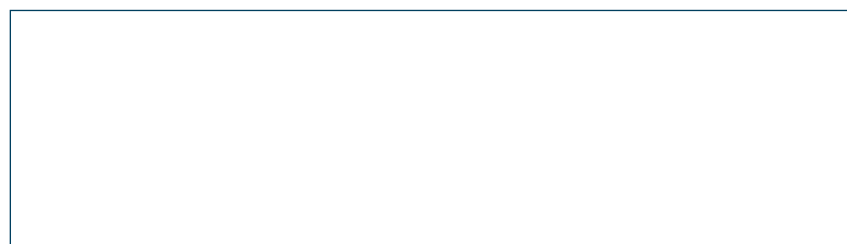
### Appendix 3 Documents required with an application to dissolve a solvent SCIO

When applying to dissolve a solvent SCIO, the following documents must be submitted to OSCR:

1. An Application for Consent to Dissolve a Solvent SCIO (this will be available on the [Scottish Charitable Incorporated Organisations](#) page of OSCR's website). This application will include the following details of the proposed dissolution of the SCIO:
  - The SCIO's assets and liabilities at the time of the application
  - Details of any funds to be returned to a funding body or any other body under a contract or other terms
  - Proposals for how the outstanding liabilities will be met
  - The name of the body or bodies which will receive any surplus assets of the SCIO.
2. A signed statement from the SCIO that it will notify all its known creditors to advise them that it has applied to OSCR to be dissolved.
3. A copy of a resolution of the SCIO's members that, subject to OSCR's consent, the SCIO will:
  - wind up its affairs
  - transfer any surplus assets to another named body (or bodies) whose purposes are the same as or resemble closely those set out in the SCIO's constitution, and
  - be removed from the Register and therefore dissolved.

The resolution must be passed by a two-thirds majority of those members voting at a general meeting, or otherwise than at a general meeting, and certified by either at least two-thirds of the charity trustees, or by one of them on behalf of them all if so authorised. Additionally, it must have been passed no more than 21 days before making the application to OSCR.

4. A copy of the SCIO's constitution, including any amendment.
5. A copy of the register of the SCIO's charity trustees.
6. A Declaration of Solvency of the SCIO signed by at least two-thirds of its charity trustees, or by one charity trustee on behalf of them all if so authorised (this Declaration will be available on the [Scottish Charitable Incorporated Organisations](#) page of OSCR's website).
7. A Notice of Application for Dissolution of the SCIO (this Notice will be available on the [Scottish Charitable Incorporated Organisations](#) page of OSCR's website).



## Appendix 4 Documents required with an application to dissolve an insolvent SCIO

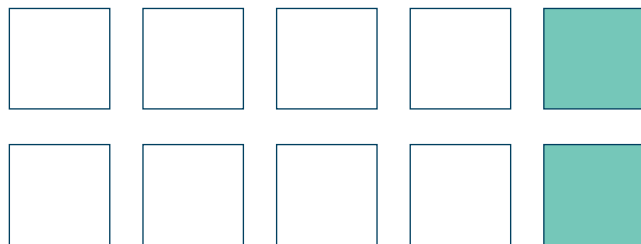
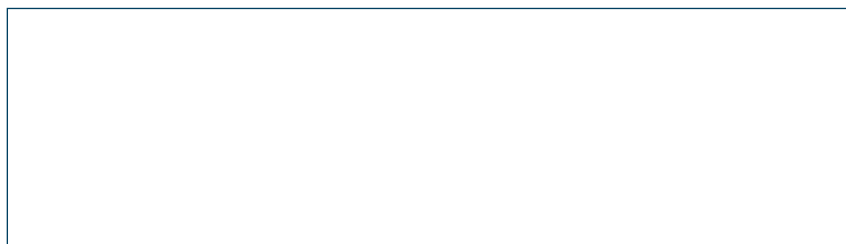
When applying to dissolve an insolvent SCIO, the following documents must be submitted to OSCR:

1. An Application to Dissolve an Insolvent SCIO (this will be available on the [Scottish Charitable Incorporated Organisations](#) page of OSCR's website). This application will include the name of the body (or bodies) which will receive any surplus assets of the SCIO.
2. A copy of a resolution of the SCIO's members that, subject to OSCR being satisfied that the application meets the requirements of the Dissolution Regulations:
  - the SCIO's estate will be sequestrated
  - any surplus assets will be transferred to another named body (or bodies) whose purposes are the same as or closely resemble those set out in the SCIO's constitution, and
  - the SCIO will be removed from the Register and therefore dissolved.

The resolution must be passed by a two-thirds majority of those members voting at a general meeting, or otherwise than at a general meeting, and certified by either at least two-thirds of the charity trustees, or by one of them on behalf of them all if so authorised. Additionally, it must have been passed no more than 21 days before making the application to OSCR.

3. A copy of the SCIO's constitution, including any amendment.
4. A copy of the register of the SCIO's charity trustees.
5. A Declaration of Insolvency of the SCIO signed by at least two-thirds of its charity trustees, or by one charity trustee on behalf of them all if so authorised (this Declaration will be available on the [Scottish Charitable Incorporated Organisations](#) page of OSCR's website).
6. An application by the SCIO to AiB for the sequestration of the SCIO's estate signed by at least two-thirds of the charity trustees of the SCIO or by one of them on behalf of them all if so authorised (this application will be available on the [Scottish Charitable Incorporated Organisations](#) page of OSCR's website).
 

The application for the sequestration of the SCIO will be forwarded by OSCR to AiB if OSCR is satisfied that the SCIO has met the requirements of the Dissolution Regulations.
7. A Notice of Application for Dissolution of the SCIO (this Notice will be available on the [Scottish Charitable Incorporated Organisations](#) page of OSCR's website).



## Appendix 5 Debtor application fee - methods of payment

As outlined in section 7.3.2, all applications for sequestration submitted to AiB must be accompanied by a debtor application fee, which is currently set at £200.

This fee must be paid by the SCIO (or by someone else on its behalf) to AiB within 21 days of AiB receiving the application from OSCR; if the fee has not been paid within this timescale, AiB must refuse the application to award sequestration. The fee cannot be waived and is not refundable.

There are a number of ways to pay this fee to AiB as set out below:

### Payment by post:

1. You should enclose postal orders or a cheque payable to the 'Accountant in Bankruptcy' for the full amount (currently £200). You must not post-date cheques. Ensure that you write the SCIO's name and address on the back of the postal orders or cheque.
2. Do not send cash through the post.
3. If someone else is paying for the application fee, AiB will accept a cheque in that person's name. The SCIO's name and address must be written on the back of the cheque.

### Payment in person or over the phone (0300 200 2600):

1. You can pay by cash, cheque, debit card, or postal order at AiB's office (1 Pennyburn Road, Kilwinning, KA13 6SA). Cheques must be made payable to 'Accountant in Bankruptcy' and you must have a valid cheque guarantee card with you.
2. If someone else is paying for the application fee by cheque, AiB must also see that person's cheque guarantee card at the time of payment.

3. AiB accepts payment by debit card, either in the office or over the phone by calling 0300 200 2600. AiB cannot accept payment by credit card. Once your payment has been processed, you will be given a receipt number.
4. You must then write to AiB quoting this receipt number and the SCIO's name and address. This will allow AiB to match your payment with the application form it has already received from OSCR. You should keep a copy of the receipt number for your own records.

### Payment at a bank (sort code 830608, account number 11444655):

1. You can pay by cash, postal order, cheque or debit card from your own bank account at your local Royal Bank of Scotland (RBS). Payment must be made into RBS account number: 11444655, sort code: 830608.
2. You cannot pay by credit card.
3. Cheques must be made payable to 'Accountant in Bankruptcy' with the SCIO's name and address on the back.
4. You must get a receipt from the bank which shows that payment has been made. To allow AiB to match your payment with your application, your receipt(s) should show:
  - the date
  - the amount you have paid, and
  - the account number the money was paid into.
5. You must write your name and address on the back of the receipt and send it to AiB as soon as possible. You should keep a copy of the receipt for your own records.

**Without a receipt AiB is unable to process your application. Do not use the Quick Deposit envelopes at your bank as you will not have a receipt to send to AiB.**

