



Scottish Charitable Incorporated Organisations (SCIO)

An Empirical Review

**A report prepared by Braw Data Ltd (Company No. SC615131) for
the Scottish Charity Regulator (OSCR)**

July 2019

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Introduction

Scottish Charitable Incorporated Organisations (SCIOs)

It is eight years since the introduction of Scottish Charitable Incorporated Organisations (SCIOs). In that time, they have become the most popular legal form for new charities and the fastest growing group in terms of number of organisations.

When introduced, they created the opportunity to address a number of issues for charities. For a sector, which prior to this consisted largely of unincorporated bodies, the SCIO offered incorporation with the protection of limited liability for its members (who are often the trustees), but without the complexity of company law and the additional burden of dual registration. Before SCIOs, the issue of personal liability was problematic, with some charity trustees not being fully aware of their obligations and undertakings. It also may have discouraged charity trustees from taking up positions. The other major advantage of SCIOs is corporate personality, offering a legally convenient means of owning property, being a party to contracts and taking or defending legal action (the benefits of limited liability originate from this advantage).

The SCIO form is straightforward and accessible to organisations of varying sizes and servicing different client groups. It was designed to be a credible legal structure, which would engender trust and confidence amongst those it interacted with. This benefit is particularly important in an era where public and private sector contracts continue to be an important source of funding for charities.

The expectation was that the SCIO form would be of interest to charities at the low to mid-range of incomes - £25k to £1m: charities above this threshold would most likely choose the company legal form, and it would be most sensible for many smaller associations to stay unincorporated.¹

Empirical Review

This piece of research responds to the call for further insight on the way SCIOs are shaping the charity sector, and in turn, how this is influencing the demands placed

¹ [Scottish Government Consultation on Options for the Implementation of the Scottish Charitable Incorporated Organisation \(SCIO\)](#). Informed by the SCIOs Working Group.

on the Regulator so that it can target and prioritise its work most effectively. The study was structured around four research questions:

1. For individual bodies, what have been the costs or benefits of changing to this legal form?
2. Has the uptake of SCIOs been with the bodies that were anticipated to take on the form?
3. How do important organizational and regulatory events, such as dissolution, public complaints and other compliance issues occur in SCIOs compared to other legal forms?
4. Are charity trustees of SCIOs aware of their obligations?

Report Structure

This document reports the results of an in-depth empirical study of SCIOs across a number of domains:

- Financial performance
- Uptake of this legal form among the population of registered charities
- Occurrence of regulatory and administrative events
- Trustee awareness of obligations

The study linked large scale administrative data held by OSCR to produce statistically useable data sets customized for each topic. The report is structured as follows: the next section summarises the main findings and insights produced by the study, followed by an account of the methodology underpinning the work. The main findings are then delineated according to each research question.

Executive Summary

The first research question asks, for individual charities, what have been the costs or benefits of changing to this legal form? We estimated a series of mixed effects models that sought to explain changes in four financial variables: Annual Income; Annual Expenditure; Reserves Ratio in Current Assets; and Reserves Ratio in Total Funds (see the methodology section for details of how these variables were measured):

- Annual Income – prior to becoming SCIOs, organisations were on average growing in income by 4.7% per annum. After becoming SCIOs, they experienced a bump of 18.5%, but this was followed by an average decline in income (see figure 1.3).
- Annual Expenditure – this measure grew by between 3% and 4% across the period in question, and was unaffected by becoming a SCIO (see figure 1.4).
- Reserves Ratio in Current Assets – this measure is flat across the period, with a small decline once a charity becomes a SCIO (see figure 1.5).
- Reserves Ratio in Total Funds – this measure shows small annual increases across the period, also followed by a drop in average reserve levels in the period following becoming a SCIO. (see figure 1.5).

We do not make causal claims in relation to the above changes i.e. that becoming a SCIO leads to a boost in income. A more plausible explanation is that charities anticipating a growth in their activities, or a new income source, found it useful to take on SCIO status (e.g. some funders have a policy of only funding corporate bodies). Finally, we compared SCIOs to unincorporated associations with respect to these four measures. Overall, SCIOs are similar in character to unincorporated charities in the financial measures considered (see figures 1.6 to 1.9).

The second research question asks, has the uptake of SCIOs been with the bodies that were anticipated to take on the form? Examining the group of charities that have changed legal form to a SCIO (n = 1,136), 65% were formerly unincorporated associations, 18% were companies and 16% were trusts (jointly these account for 99% of changes of legal form to SCIO). For the 968 SCIOs for which we have annual return information for the year prior to their change of legal form, 92% had less than

£250,000 in annual gross income (78% had less than £100,000). The median income of SCIOs in the year prior to their change of legal form was £37,621. In terms of total funds, 75% of SCIOs had less than £250,000 in the year prior to change of legal form and the median was £74,404, though this figure is based on a smaller number of observations due to this information only being captured for a subset of charities (n = 280). Our tentative conclusion is that charities with various levels of income and/or total assets have changed legal form to a SCIO, and there is no clear evidence to suggest that cash-poor, asset-rich charities constitute the majority of changes (see figure 2.3).

We examined the proportions of each legal form that decided to become SCIOs: the highest rate of uptake was among unincorporated associations (4%), followed by companies and trusts (both 3%). We also analysed the rate of uptake by income bands. In this instance, 6% of charities with an average income between £25,000 and £250,000 changed legal form to a SCIO, with the next highest rate observed for charities between £250,000 and £500,000 (see figure 2.5).

Finally the second question was also concerned with whether new SCIOs were different from other legal forms in terms of their beneficiary groups served, charitable purposes pursued and charitable activities undertaken. SCIOs are more likely to focus on older people, people with disabilities and no specific group, and less likely to serve younger people as a beneficiary group; more likely to focus on the provision of recreational facilities and promoting public participation in sport, and less likely to focus on citizenship or education; and more likely to carry out activities themselves, while being less likely to disburse grants (see figures 2.6 to 2.8). In summary, there is fairly robust evidence that new SCIOs are materially different from new non-SCIOs with regards to these organisational characteristics. However these differences are likely driven by particular types of organisations that prefer to register as unincorporated associations (e.g. scout and girlguiding groups).

The third research question asks, how do important organizational and regulatory events, such as dissolution, public complaints and other compliance issues occur in SCIOs compared to other legal forms? SCIOs have the lowest rate of dissolution, which could be due to one or more factors: it is a more stable, sustainable form of charity; organisations attracted to this form have a higher baseline chance of

survival; the dissolution process is more difficult to execute by both the SCIO and the regulator (e.g. OSCR cannot remove inactive SCIOs from the Register in the same manner as for other charities); and the SCIO legal form is a recent innovation and thus these organisations may be at an earlier stage in their lifecycle than other forms. Finally, dissolution can also be conceptualised as a positive outcome i.e. the charity has achieved its stated mission. When we just consider new charities (i.e. those registered since 2011), SCIOs still have the lowest rate of dissolution but the differences with other legal forms are smaller. Estimating a statistical model confirms the descriptive patterns: controlling for a charity's age, size, whether it has been subject to a regulatory inquiry, and whether it has defaulted on an annual return, the odds of dissolution are 63% lower for SCIOs than non-SCIOs.² However, there is not sufficient evidence to say that the SCIO legal form determines a charity's chance of survival, but simply that it appears less at risk of dissolution based on what we can observe from the data. We are not able to eliminate what is known as a 'selection effect', that is, organisations with good survival prospects are drawn to particular legal forms. To control for this selection effect, it would be necessary to identify a randomly-generated factor or process that strongly predicts the type of legal form chosen by a charity.

In terms of being subject to a regulatory investigation (our term for what OSCR calls inquiries i.e. Compliance and Investigations records), companies were most likely to experience this event (7%), followed by SCIOs (5%) and unincorporated associations (4%).³ There is no association between the number of times a charity has been investigated and its legal form. There is little-to-no correlation between a charity's legal form and the outcome of an investigation (e.g. no action taken, advice given, regulatory action). Similarly, the type of concern lodged with OSCR does not show a strong or meaningful association with whether a charity is a SCIO or not.

The fourth research questions asks, are trustees of SCIOs aware of their obligations? We approached this question using two sources of data: information on defaults (i.e. instances where a charity failed to meet its annual reporting obligations

² Odds ratios should be interpreted cautiously, as the underlying outcome (i.e. dissolution) is uncommon. Thus, the odds of dissolution being 63% lower does not mean that SCIOs are 63% less likely to dissolve.

³ The three legal forms with the highest rate of investigation – registered societies, community benefit societies and statutory corporations – all have fewer than 15 observations, therefore the sample sizes are too small to make meaningful comparisons with other types of charity.

in a timely manner), and responses to the governance questions contained in the annual return. In terms of defaults, unincorporated associations were most likely to experience this outcome (17%), followed by organisations classed as 'other' (14%), trusts and SCIOs (both 11%). If we categorise our sample into two groups – SCIOs and non-SCIOs –, we observe no significant differences in the defaulting rate (11% vs 13% respectively). There is a small correlation between legal form and whether a defaulting case has been resolved: 55% of defaulting cases for SCIOs have been completed, compared to 73% for non-SCIOs. There is no association between the number of times a charity has defaulted and its legal form.

Incidences of SCIOs failing to comply with the legally required minimum number of trustees are low (3% of financial years). In terms of differences compared to other charities, SCIOs typically have 6 trustees, while non-SCIOs typically have 4; this difference of 2 is statistically significant, strongly suggesting that SCIOs have larger boards than non-SCIOs, on average. Finally, a higher percentage of SCIOs (76%) compared to non-SCIOs (69%) indicated they reviewed their charity's governing document in the last 12 months, however the differences are small-to-non-existent across other categories of this variable (e.g. a similar percentage of SCIOs and non-SCIOs last reviewed their governing document between 1 and 3 years ago (22%), or have never reviewed it (1%)). When asked whether a trustee or person connected to a trustee received private benefit, SCIOs were more likely to respond "No" compared to non-SCIOs (82% vs 70%); in instances where private benefit occurred, the typical amount was lower in SCIOs than non-SCIOs (£3,678 vs £5,356).

Methodology

Research Design

The analysis was structured around the following questions:

1. For individual bodies, what have been the costs or benefits of changing to this legal form?
2. Has the uptake of SCIOs been with the bodies that were anticipated to take on the form?
3. How do important organizational and regulatory events, such as dissolution, public complaints and other compliance issues occur in SCIOs compared to other legal forms?
4. Are charity trustees of SCIOs aware of their obligations?

Data

The analysis contained in this report derives from the cleaning and linking of three regulatory data resources: Scottish Charity Register, annual returns, and case files on defaults, investigations, consents and notifications, SCIO dissolutions etc. We describe which data sets contribute to which analyses below.

Research Question 1

The data file containing all annual returns submitted to OSCAR as of 18/12/2018 served as the base data set for this analysis. We define two measures of a charity's level of reserves:

- Reserves Ratio in Current Assets is defined as the number of months of income covered by what the charity holds in current assets.
- Reserves Ratio in Total Funds is defined as the number of months of income covered by what the charity holds in total funds.

For example, Charity X earned £120,000 in annual gross income and held £30,000 in net current assets in 2012. Its average monthly income is £10,000 ($£120,000 / 12$), therefore it holds three months' worth of income in current assets ($£30,000 / £10,000$). Both reserve ratio figures are proxy indicators as it is not possible to calculate an accurate reserves figure using the information gathered in the annual return (this would require knowing the level of unrestricted funds and fixed assets).

Current assets was measured using two fields in the annual returns data: MonitoringReturnSection1NetCurrentAssets (pre April 2016 version of annual return form) and MonitoringReturnSection2CharityNetCurrentAssets (post April 2016 version of annual return form). Similarly, total funds was measured using two fields: MonitoringReturnSection1TotalFunds and MonitoringReturnSection2CharityTotalFunds.

Research Question 2

The master file containing all organisations that were or are registered Scottish charities served as the base data set for this analysis. Once we removed a tranche of invalid records, we were left with 34,755 observations for the same number of charities: 23,042 registered, 10,331 removed, and 1,382 not monitored or submitted. To examine differences between SCIOs and non-SCIOs, we created a number of binary variables capturing whether a charity served a particular beneficiary group, engaged in a given charitable activity, and pursued a certain charitable purpose.

We linked this data set to records for annual returns for the following purposes:

- To measure organisation size, we create a categorical variable based on average income for each charity. We construct this measure by using annual returns data to calculate mean income for each charity (i.e. the sum of income divided by the number of annual returns for a given organisation), and then create income bands that are broadly in line with current reporting and regulatory requirements: Under £25k, £25k to £250k, £250k to £500k, £500k to £1m, and Over £1m. We also used median income as a basis for measuring organisation size but this method produced similar numbers of charities in each category as using the mean.
- To measure the financial profile (i.e. annual gross income and total funds) of a charity in the year prior to changing to a SCIO, we linked information from the annual returns data set. For the 1,136 charities that changed legal form to SCIOs, we were able to find 968 of them in the annual returns data file.⁴

⁴ We assume the difference is accounted for by newer organisations not yet submitting an annual return.

Research Question 3

The master file described in the above section also served as the base data set for this research question. We linked this data set to other case file records so that we had binary measures of whether a charity had dissolved, been subject to a regulatory inquiry (i.e. investigation), or had lodged an application for consent (complemented by a handful of other variables capturing the number of times a charity was investigated, the source of complaint against the organisation etc).

Research Question 4

The Scottish Charity Register was linked to defaulting data in order to capture whether and how many times a charity had defaulted on an annual return. To examine trustees' awareness of obligations, we employed annual returns data: the number of trustees was derived from 201,873 annual returns for 29,975 charities for financial years between 2007-2018; the new governance questions were derived from 23,887 annual returns for 10,276 charities for financial years between 2015-2018.

Identifying SCIOs

A fundamental aspect of the analysis was to correctly identify a charity's current and previous legal form: for the former we used the CurrentConstitutionalForm field to derive the following variables:

- scio – a binary measure of whether a charity's most recent legal form was a SCIO or not.
- new_scio – a binary measure of whether a charity was registered since 2011 and its most recent legal form was a SCIO or not; this excludes those organisations already established and that changed to a SCIO)

To capture an organisation's previous legal form, we employed two fields: PreviousConstitutionalForm and Notes. The former provided information for 753 charities, while the latter provided information for 244 charities.⁵ We employed pattern matching methods to extract a SCIO's old charity number from the Notes field, which we then looked up on the Scottish Charity Register data file in order to

⁵ For the remaining 139 charities that changed legal form to a SCIO, we were not able to identify the previous charity number from the Notes field due to data quality issues.

capture its previous legal form from the PreviousConstitutionalForm field. The Notes field is messy and we were unable to identify the old charity number for 139 SCIOs. Once we completed this process we could derive the following variable:

- scio_colf – a binary measure of whether an existing charity changed legal form to a SCIO or not.

The table below summarises the number of observations we have for our key SCIO variables.

Table 1. Number of observations for SCIOs

Organisation Type	N
SCIO	3,903
New SCIO	2,767
Change of Form SCIO	1,136

Note: Number of observations derived from Scottish Charity Register (18/12/2018).

Change of Form SCIO category includes organisations that used the change of legal form process, or the new incorporation process.

Results

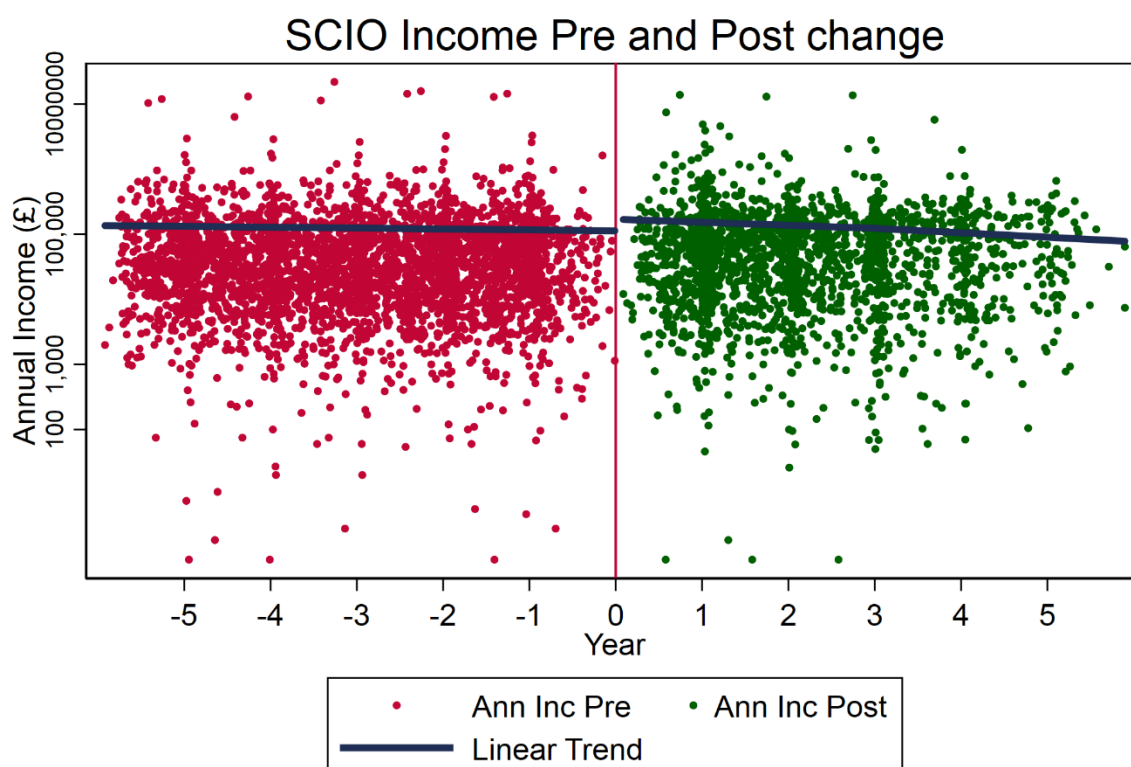
1. For individual bodies, what have been the costs or benefits of changing to this legal form?

Existing charities who choose to become SCIOs

We begin our analysis by examining how existing charities which became SCIOs fared before and after their change.

Figure 1.1 shows a scatter plot of Annual Income before and after taking on SCIO status (shown as year zero), as well as a linear trend. There is no significant trend in income before or after the change. There is little evidence of an increase in average income in the population of SCIOs after the change.

Figure 1.1 SCIO Annual Income before and after taking SCIO status

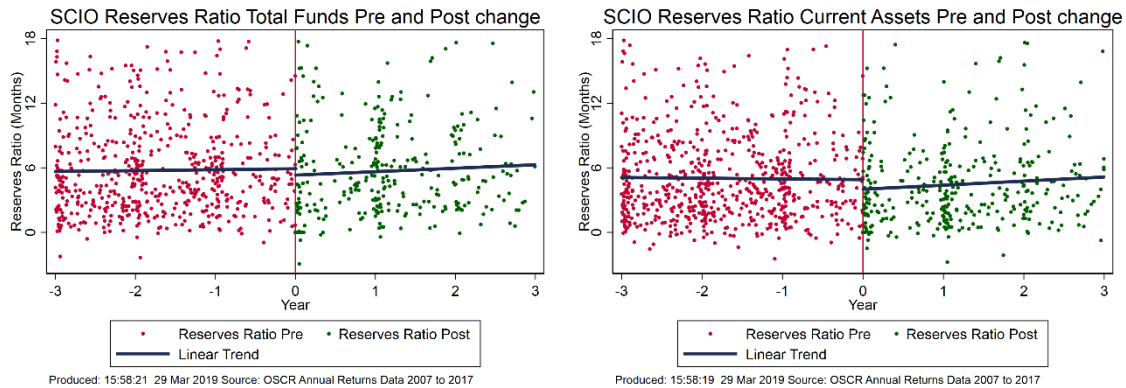


Produced: 15:58:17 29 Mar 2019 Source: OSCR Annual Returns Data 2007 to 2017

We also find little evidence descriptively of a significant change in the level of reserves held by organisations that changed to be SCIOs in the three years before

and after taking on the new organisational form, shown in Figure 1.2 as Reserves Ratios⁶ for both Net Current Assets and Total Funds.

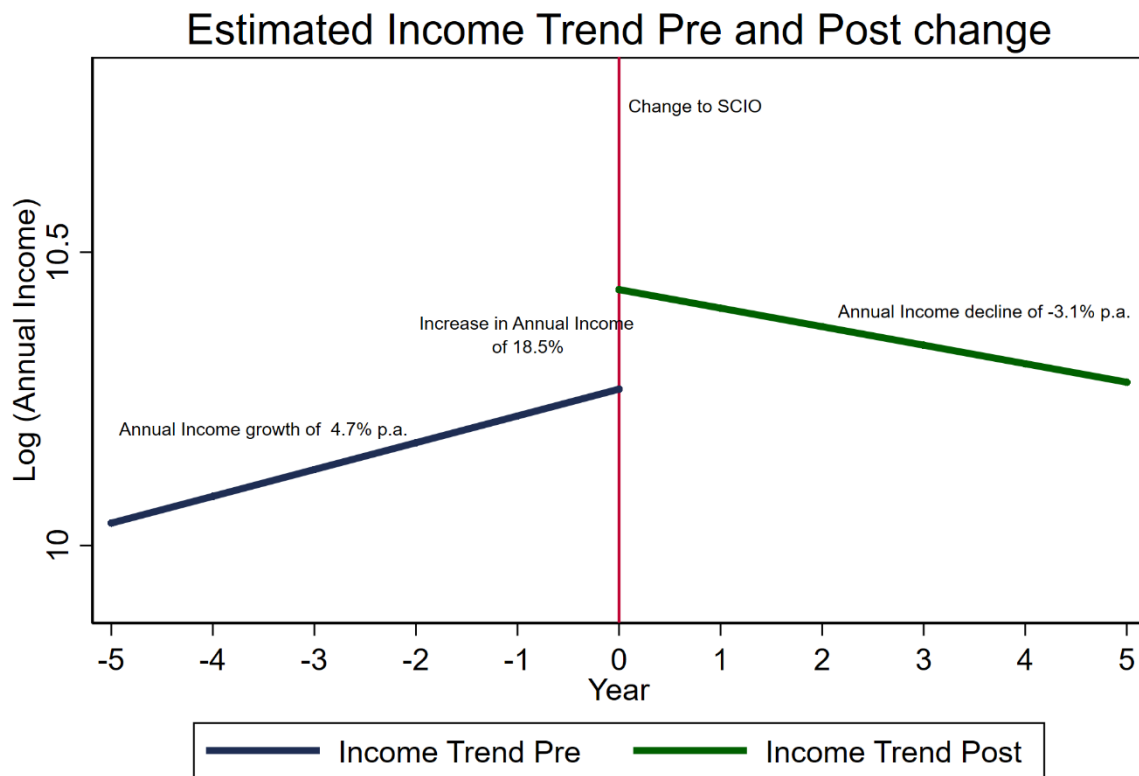
Figure 1.2 SCIO Reserves ratios before and after taking SCIO status



However, this descriptive analysis doesn't take account of the income trajectories of individual organisations. In order to estimate average trajectories, and how these might have shifted after the change to a SCIO, we estimate a mixed effects regression model of financial measures with a linear time trend and a break at the point which an organisation became a SCIO. We estimate these models for four financial measures: Annual Income; Annual Expenditure; Reserves Ratio in Current Assets; and Reserves Ratio in Total Funds.

⁶ "Reserves Ratio" is measured in the number of months of Annual Income covered by the respective reserves.

Figure 1.3 Mixed Effects Model of Annual Income Trajectories

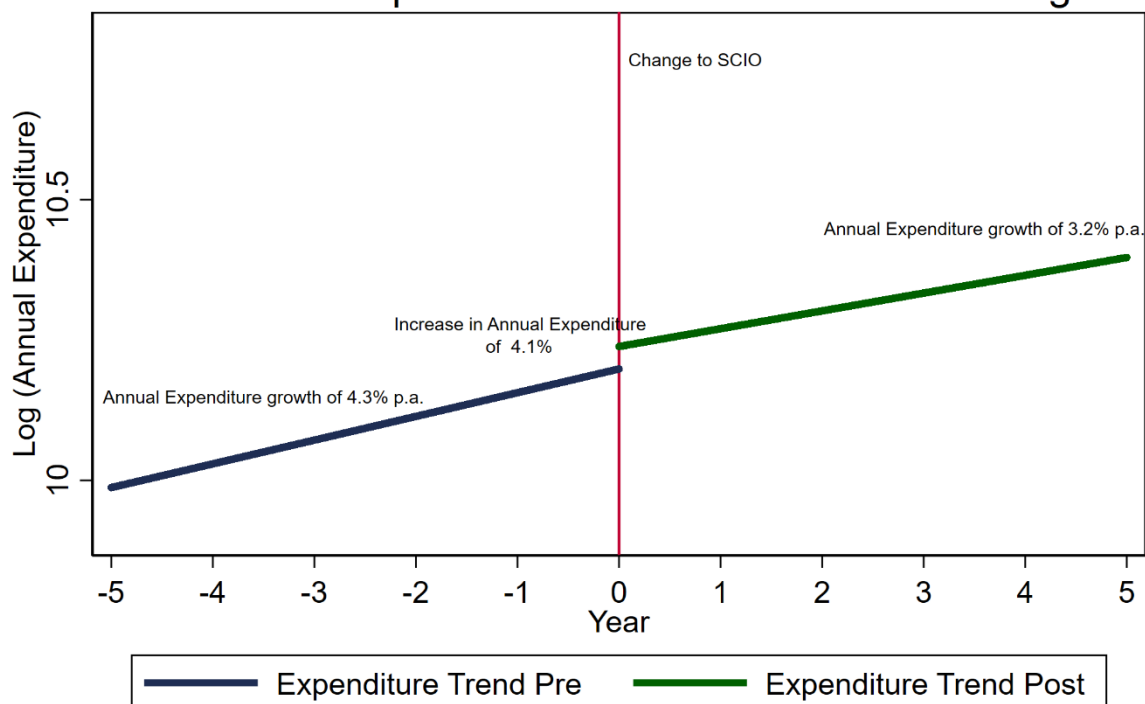


Source: OSCR Annual Returns Data 2007 to 2017 | N=6052 obs from 853 organisations

Figure 1.3 shows the estimated trends from the mixed effects model of Annual Income. Prior to becoming SCIOs, organisations were on average growing in income by 4.7% per annum. After becoming SCIOs, they experienced a bump in Annual Income of 18.5%, but this was followed by an average decline in income. This pattern suggests that conversion to a SCIO might have coincided with a particular funding event, such as receiving a large grant, but that over time the average incomes of the charities that became SCIOs returned to normal.

Figure 1.4 Mixed Effects Model of Annual Expenditure

Estimated Expenditure Trend Pre and Post change

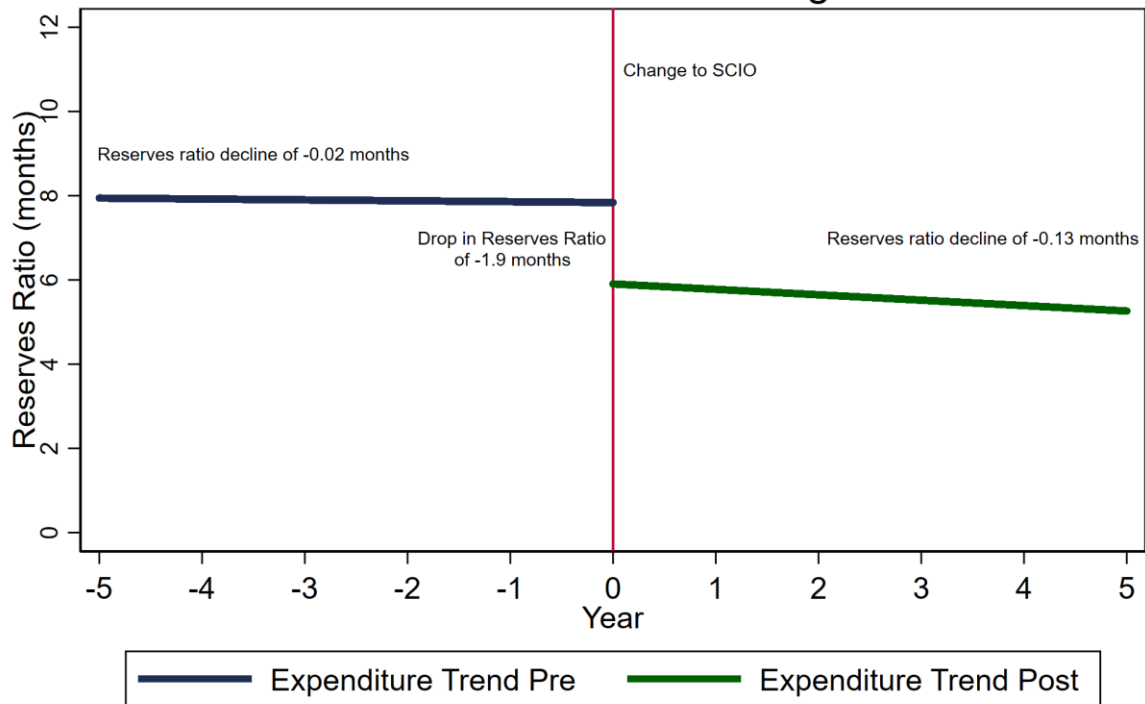


Source: OSCR Annual Returns Data 2007 to 2017 | N=5371 obs from 849 organisations
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Figure 1.4 shows the estimates from a mixed effects model of Annual Expenditure. It shows an upward trend in expenditure of between 3% and 4% across the period. The difference in expenditure across the SCIO-change is not statistically significant. This pattern would also be consistent with receipt of significant funding coinciding with the change to become a SCIO, where there was a spike in income around the time of becoming a SCIO, where there was a spike in income around the time of becoming a SCIO with that funding then spent over the years following conversion.

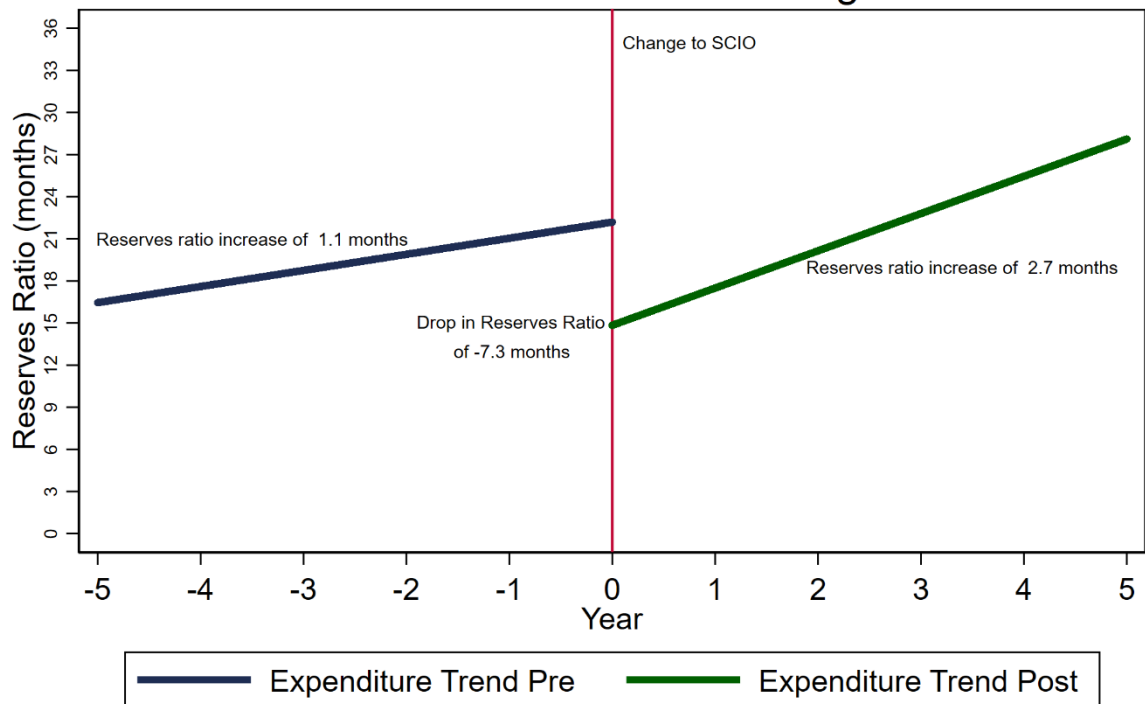
Figure 1.5 Mixed Effects Model of Reserves Ratios

Reserves Ratio Trend Pre & Post Change: Current Assets



Source: OSCR Annual Returns Data 2007 to 2017 | N=1975 obs from 437 organisations
 mixed months_assets t post c.t#post || charnumber: t pint if months_assets<360

Reserves Ratio Trend Pre & Post Change: Total Funds



Source: OSCR Annual Returns Data 2007 to 2017 | N=1963 obs from 436 organisations
 mixed months_funds t post c.t#post || charnumber: t pint if months_funds<360

Figure 1.5 shows the estimations from a mixed effects model of the Reserves Ratio, for two measures of reserves. Reserves in Net Current Assets are flat across the period, with a small decline following becoming a SCIO. Total Funds show small annual increases across the period, also with a drop in average reserve levels in the period following becoming a SCIO.

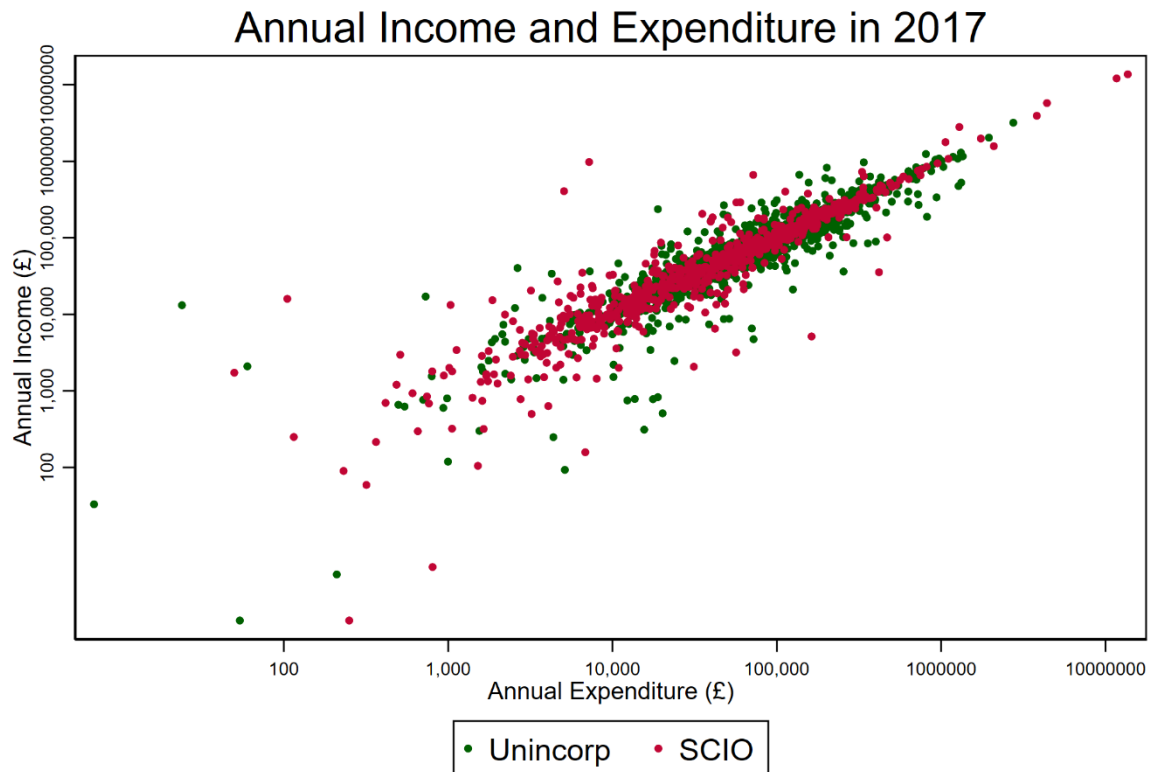
Overall, there is evidence that the change to take on SCIO as a constitutional form seems to have coincided with a short term increase in Annual Income and corresponding decrease in Reserve Ratios, that would be consistent with an expansion of a charity's activities. Our analysis does not estimate causal effects: so we are not suggesting that becoming a SCIO leads to a boost in income. A more plausible explanation is that charities anticipating a growth in their activities, or a new income source, found it useful to take on SCIO status.

Comparing SCIOs to other similar charities

Next, we move to compare the charities that took on SCIO status to other similar charities that did not. We examine how SCIOs fared across time, compared to unincorporated charities with incomes between £25,000 and £1 million. In our analysis we report both mean and median measures, as the means are prone to being affected by outliers where a small number of charities have large fluctuations in financial variables. The median, as a measure of characteristics of the central charity, is robust to the effect of these outliers and provides a more stable measure over time.

Figure 1.6 shows that the income and expenditures of SCIOs are very similar to unincorporated organisations.

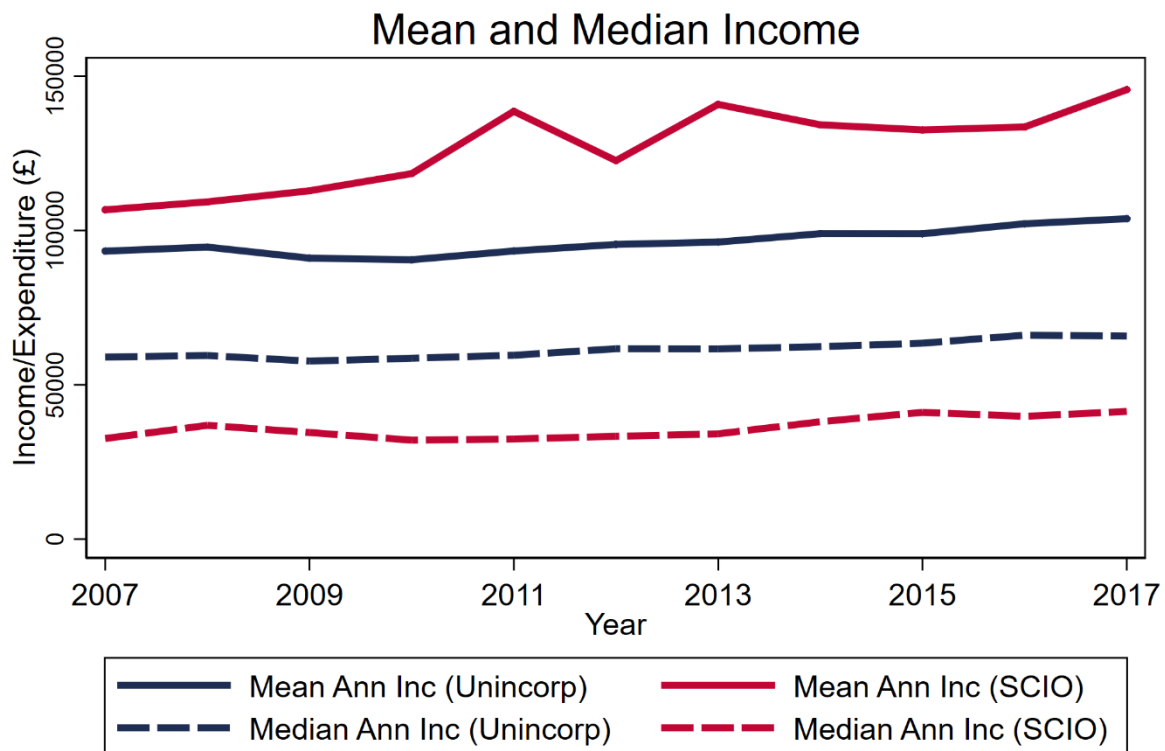
Figure 1.6 Scatterplot of Annual Income and Expenditures comparing SCIOs and unincorporated charities



Source: OSCR Annual Returns Data 2007 to 2017

Comparing SCIOs more broadly to these unincorporated charities, SCIOs are very similar in size. Across the time period organisations that are (or that were to become) SCIOs had a slightly higher mean annual income and lower median annual income compared to other unincorporated charities (see Figure 1.7).

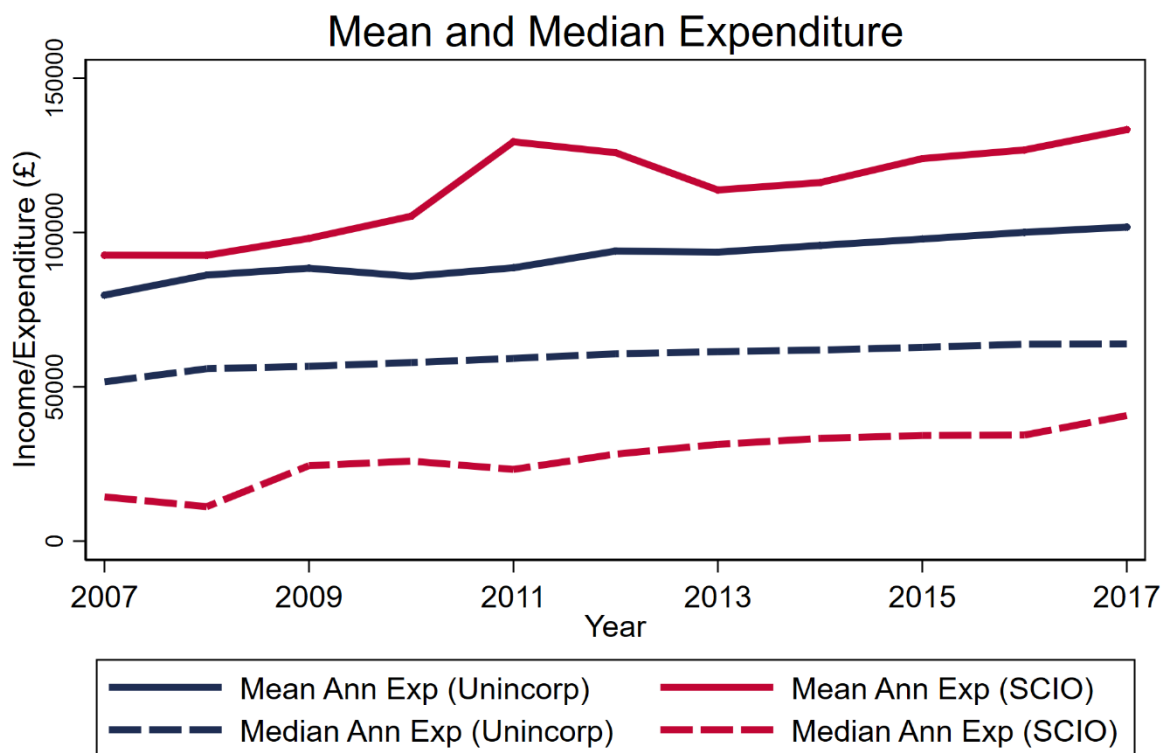
Figure 1.7 Average Annual Income comparing SCIOs and unincorporated charities



Source: OSCR Annual Returns Data 2007 to 2017
Comparison Group

Figure 1.8 shows a similar pattern, in that SCIOs had slightly higher mean expenditures and lower median expenditures, compared to unincorporated charities.

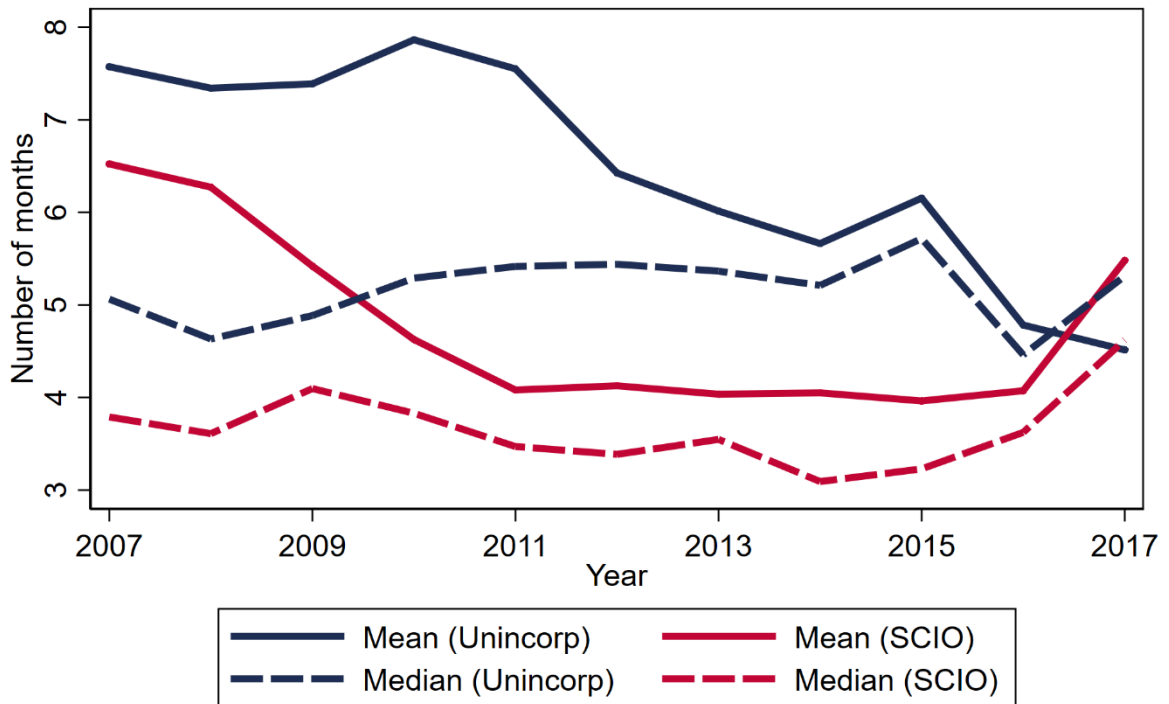
Figure 1.8 Average Annual Expenditure comparing SCIOs and unincorporated charities



SCIOs also appear to have on average a lower level of reserves, calculated as the number of months of annual income held as either Current Assets or Total Funds (see Figure 1.9), compared to other unincorporated charities.

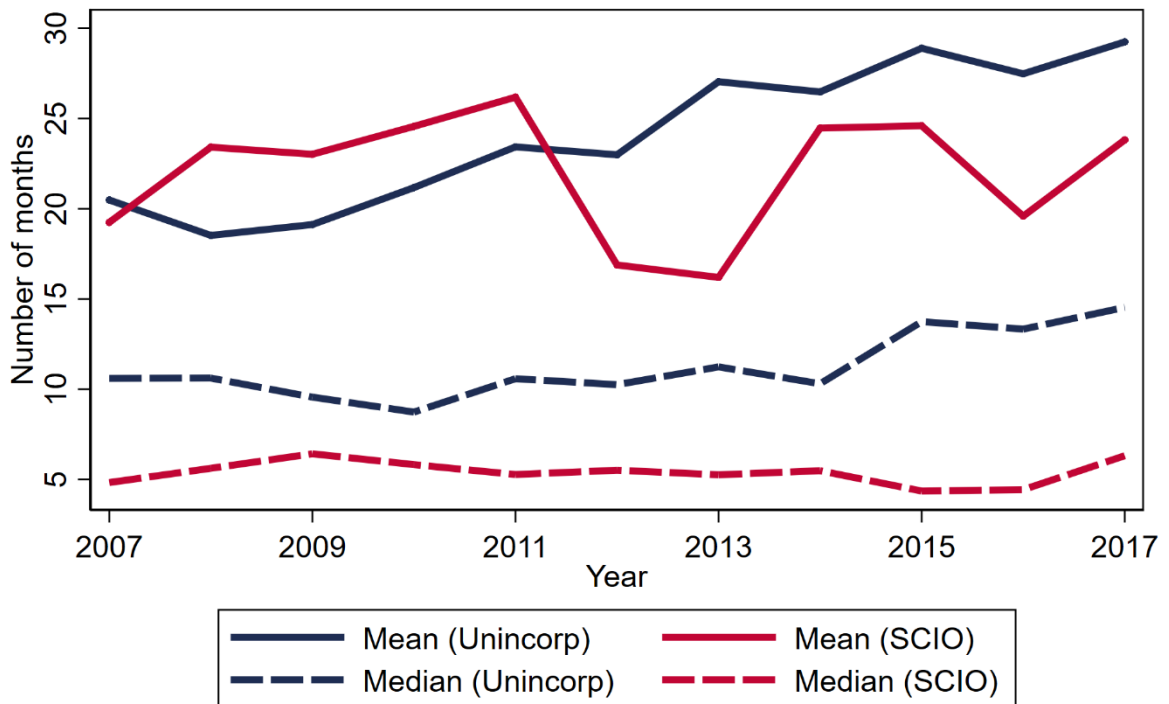
Figure 1.9 Average Months of Reserves comparing SCIOs and unincorporated charities

Months of Net Current Assets



Source: OSCAR Annual Returns Data 2007 to 2017
Comparison Group 3

Months of Total Funds



Source: OSCAR Annual Returns Data 2007 to 2017
Comparison Group 3

Overall, SCIOs are similar in character to other unincorporated charities in the financial measures considered.

2. Has the uptake of SCIOs been with the bodies that were anticipated to take on the form?

2.1 Of the population of charities that converted to SCIOs, which income band and legal form has the highest rate of conversion?

The analysis is approached from two perspectives:

- 2.1.1 Examining the group of charities that have changed legal form to a SCIO, which legal forms and income bands did they convert from?
- 2.1.2 Examining the population of charities, which legal form and income band had the highest rate of uptake?

2.1.1 In the data we identified 1,136 charities that changed their legal form to that of a SCIO; this figure includes the 150 organisations that converted to a SCIO from a company or IPS form. For the 997 charities for which we could identify their previous legal form, 65% changed from unincorporated associations, 18% from companies and 16% from trusts (jointly these account for 99% of changes of legal form to SCIO). Of those that changed from an unincorporated association, 53% serve older people as a beneficiary group, compared to 63% of former trusts and 72% of former companies. There are also differences in terms of charitable activities: SCIOs that used to be trusts are less likely to carry out activities themselves (62%) compared to those that were companies (81%) or unincorporated associations (82%). On the other hand, former trusts are much more likely to disburse grants to individuals or organisations (17%) than companies (10%) or unincorporated associations (10%). Unincorporated charities that changed legal form to SCIO were more likely to have a parent charity (4%) than former companies (2%) or trusts (1%) but the differences are small.

For the 968 SCIOs for which we have annual return information for the year prior to their change of legal form, 92% had less than £250,000 in annual gross income (78% had less than £100,000). The median income of SCIOs that changed legal form was £37,621 - Figure 2.1 summarises the distribution of income in the year prior to the charity becoming a SCIO. For the subset of charities that reported more detailed financial information to OSCR (i.e. those completing Section C of the new annual return, or Section B of the old annual return), 75% of SCIOs had less than

£250,000 in total funds in the year prior to change of legal form and the median was £74,404 (n = 280). Figure 2.2 summarises the distribution of total funds in the year prior to the charity becoming a SCIO. Finally, we can attempt to answer the question are cash-poor, asset-rich charities changing to SCIOs? Figure 2.3 below presents the distribution of annual gross income and total assets for the 280 charities for which we have both pieces of information. A majority of these organisations (68%) had more in income than total funds in the year prior to changing to a SCIO; using our Reserves Ratio in Total Funds measure, these are charities with less than 12 months of income covered by their total funds. Our tentative conclusion is that charities with various levels of income and/or total assets have changed legal form to a SCIO, and there is no clear evidence to suggest that cash-poor, asset-rich charities constitute the majority of changes.

Figure 2.1. Distribution of income in year prior to changing legal form to SCIO

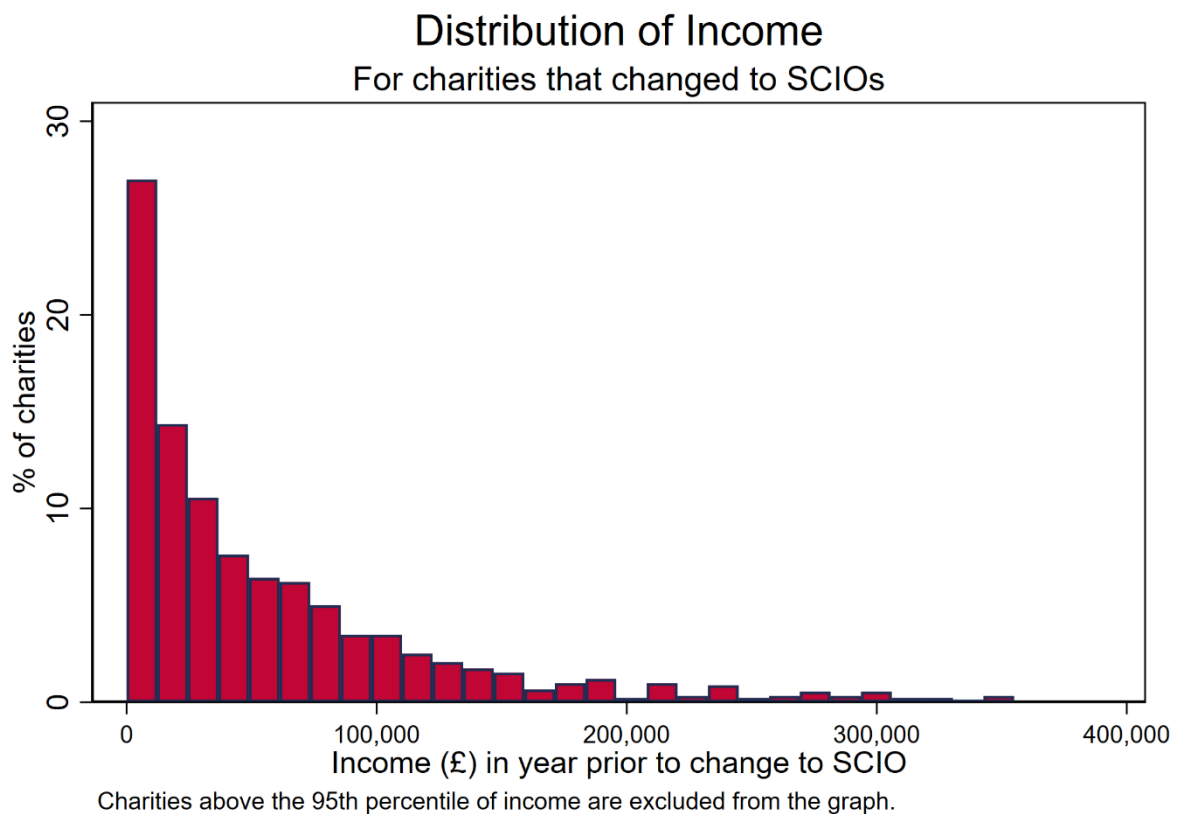


Figure 2.2. Distribution of total assets in year prior to changing legal form to SCIO

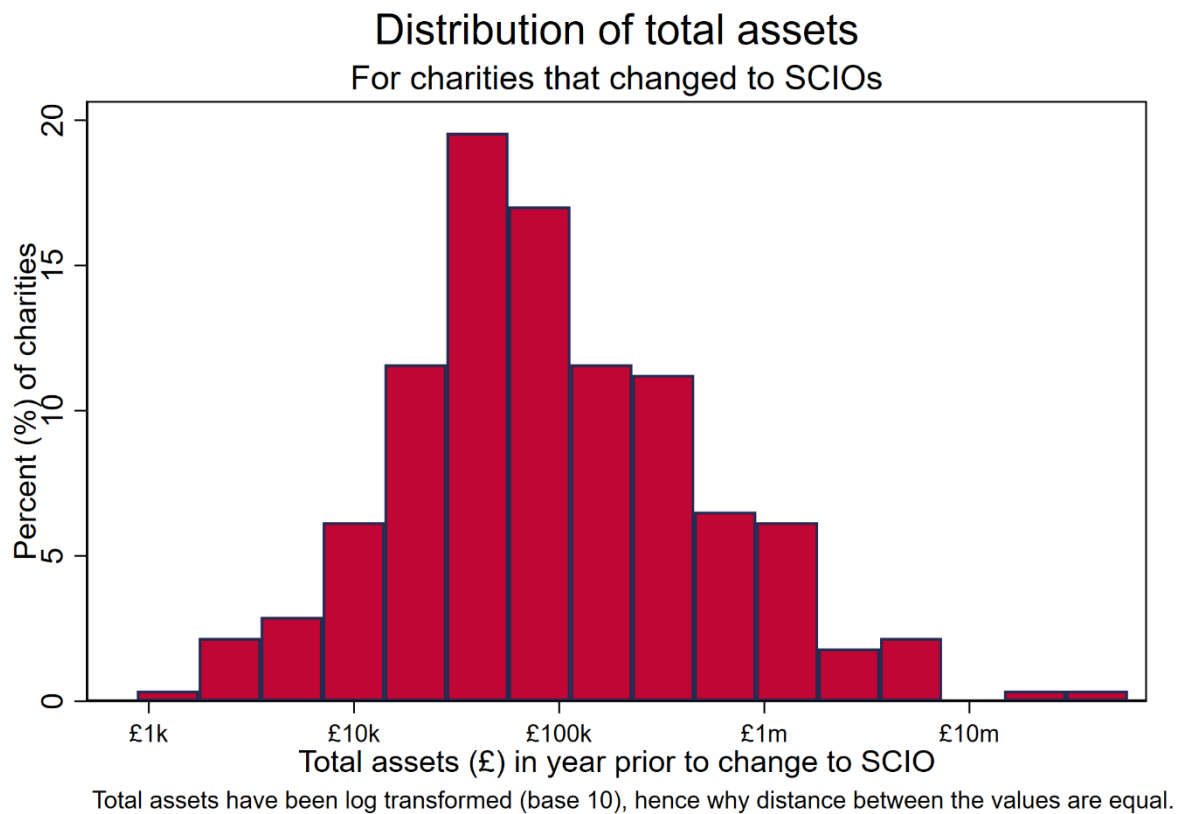
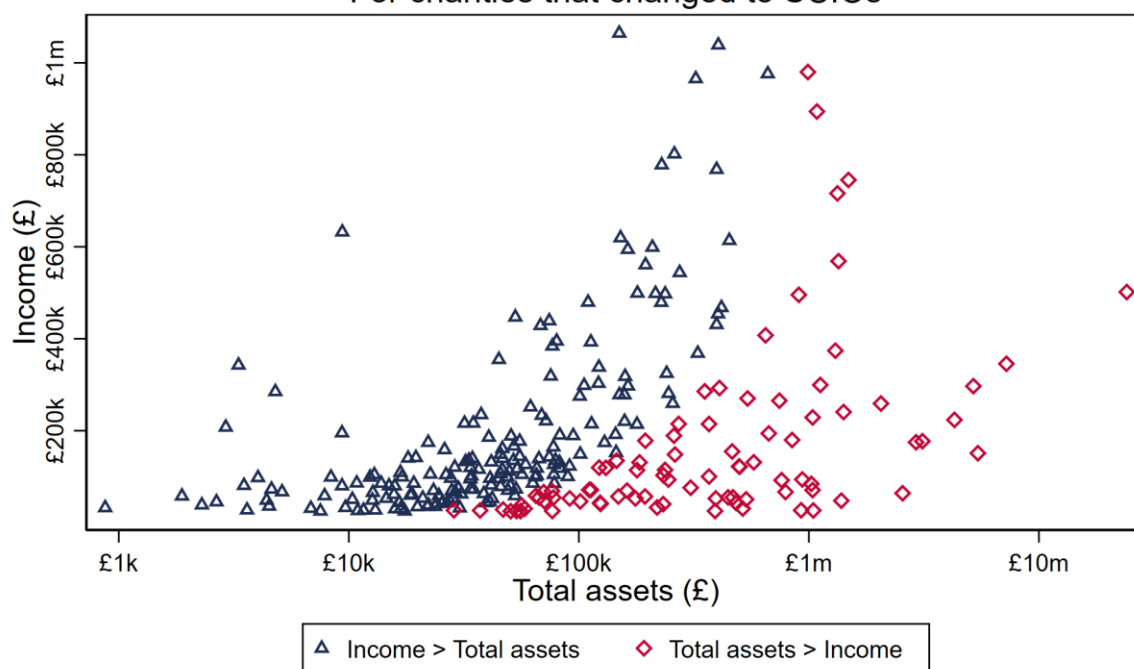


Figure 2.3. Distribution of income and total assets in year prior to changing legal form to SCIO

Distribution of income and total assets

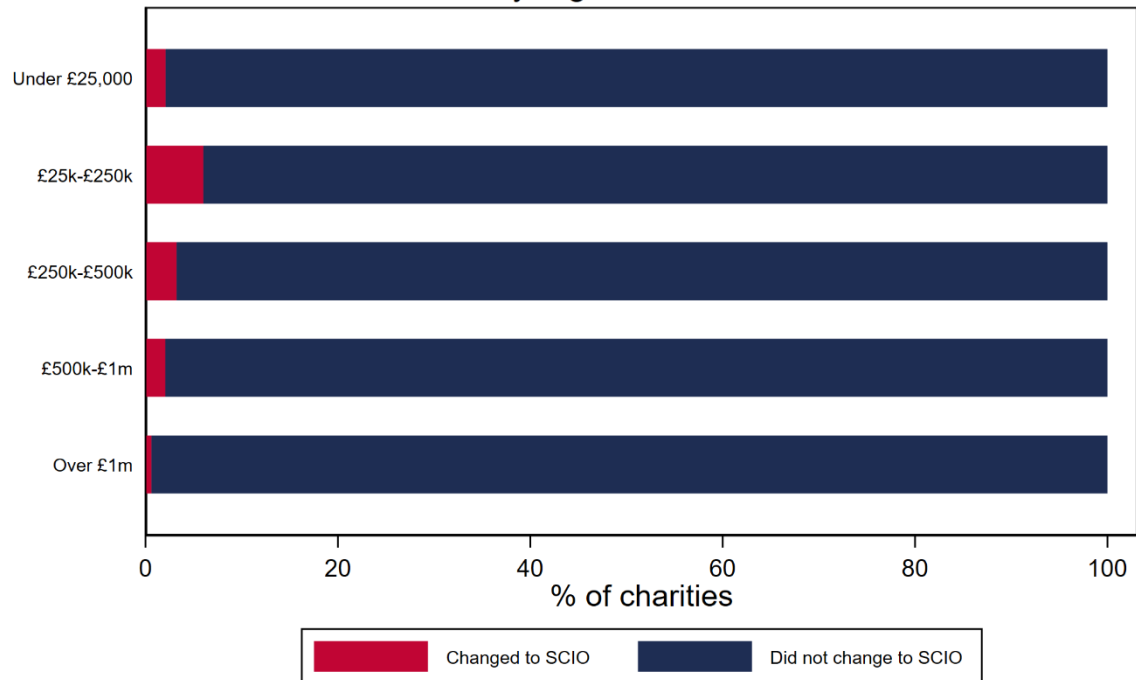
For charities that changed to SCIOs



Observations refer to charities with valid information for both income and total assets (n=255). Charities above the 99th percentile of income are excluded from the graph.

2.1.2 The preceding section demonstrated how, for the group of charities that changed legal form to a SCIO the most common previous legal form was unincorporated association, while the majority of organisations had less than £100,000 in annual gross income and £70,000 in net assets. We can also approach this analysis from a different perspective: what proportions of each legal form converted to SCIOs? The highest rate of change was experienced by unincorporated associations, with 4% of these organisations now SCIOs, followed by companies and trusts (both 3%). Finally, we can also look at the rate of change to SCIO by income bands. In this instance, 6% of charities with an average income between £25,000 and £250,000 changed legal form to a SCIO, the highest figure observed – see figure 2.4 below.

Change to SCIO by organisation size



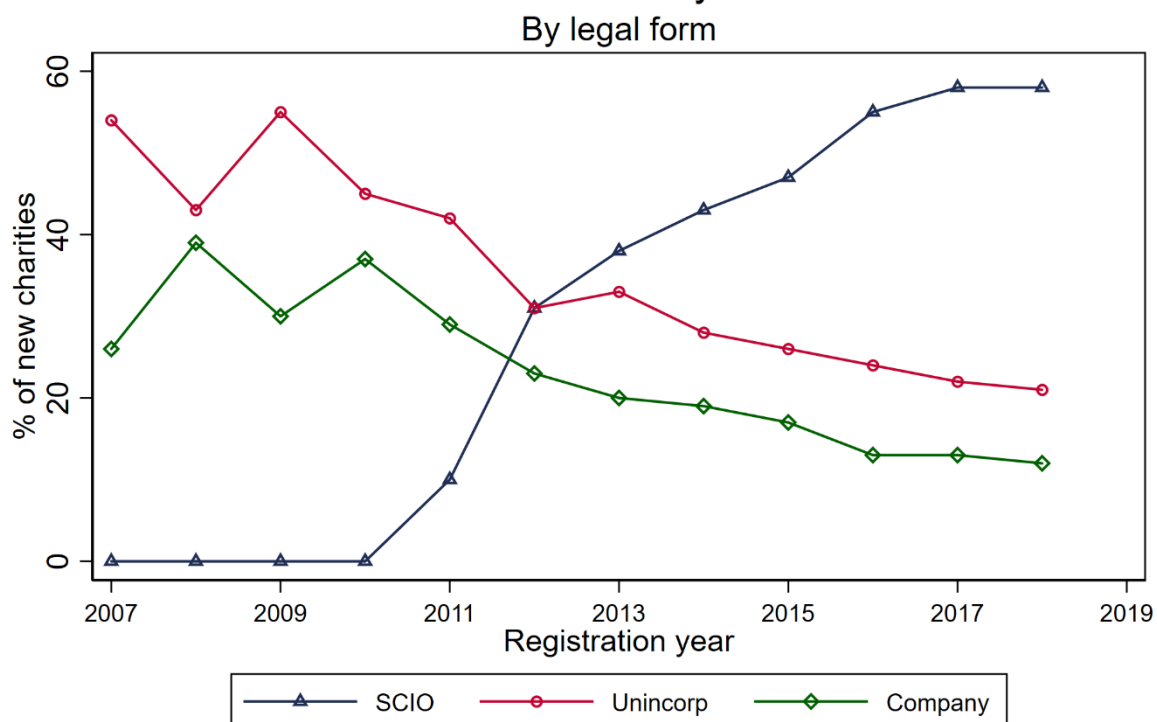
Source: OSCR Scottish Charity Register (as of 18/12/2018); n=28,846.

2.2 For the group of new charities formed in a given year, are SCIOs different than other forms in terms of their organisational characteristics? If there are differences, are these stable over time?

SCIOs account for a greater proportion of new charities over time: in 2011 this legal form was selected by 10% of newly registered charities, increasing to 58% in 2018 (see Figure 2.5).

Figure 2.5. Trends in adoption of various legal forms over time

Trends in new charity formations



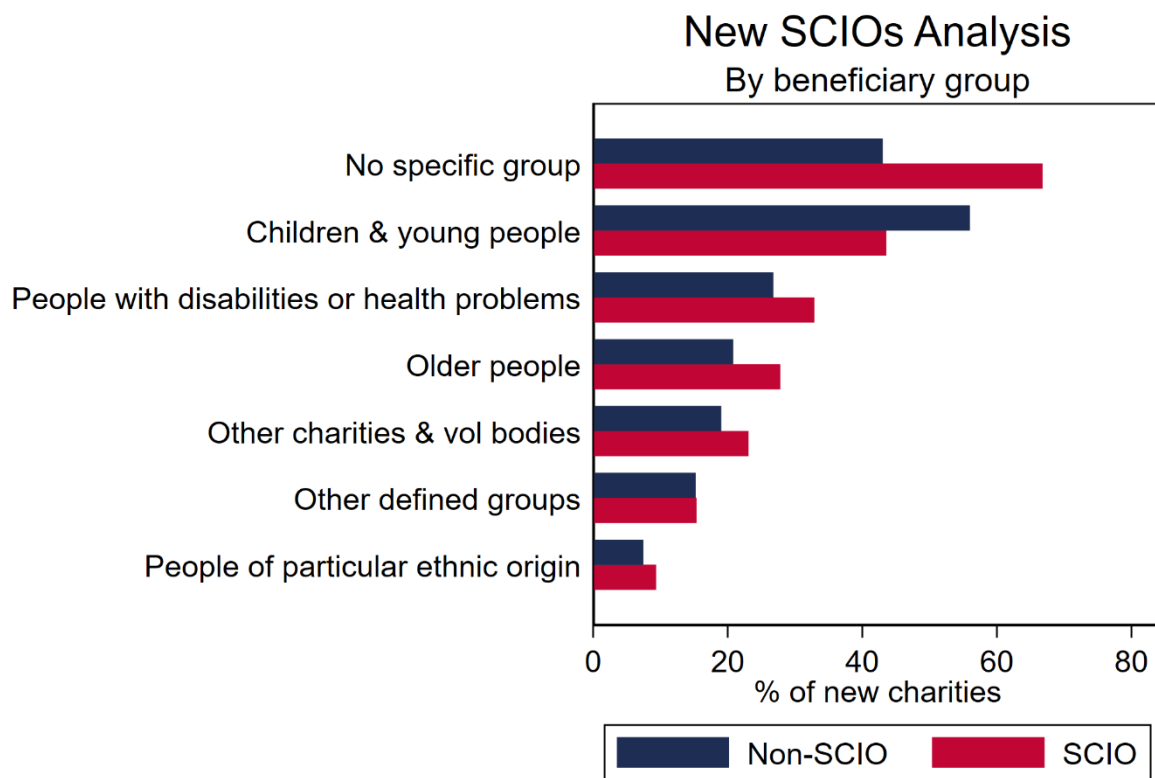
There are statistically significant organisational differences between new SCIOs and other legal forms across the entire period (2011-2018). SCIOs are more likely to focus on older people, people with disabilities or no specific group, and less likely to serve younger people as a beneficiary group (Figure 2.6).⁷ These differences are fairly constant over time. There are similar but smaller differences when we differentiate SCIOs and non-SCIOs by types of charitable activity: SCIOs are more likely to carry out activities themselves, while being less likely to disburse grants (Figure 2.7). Again, these patterns are stable over time. Finally, there are a number of small differences between SCIOs and non-SCIOs in terms of the charitable purposes they pursue: SCIOs are more likely to focus on the provision of recreational facilities and promoting public participation in sport, and less likely to focus on citizenship or education (Figure 2.8).

In summary, there is fairly robust evidence that new SCIOs are materially different than new non-SCIOs in terms of beneficiary groups served, charitable purposes pursued and charitable activities conducted. These differences are likely driven by

⁷ Note that this analysis excludes existing charities that changed their legal form to become SCIOs.

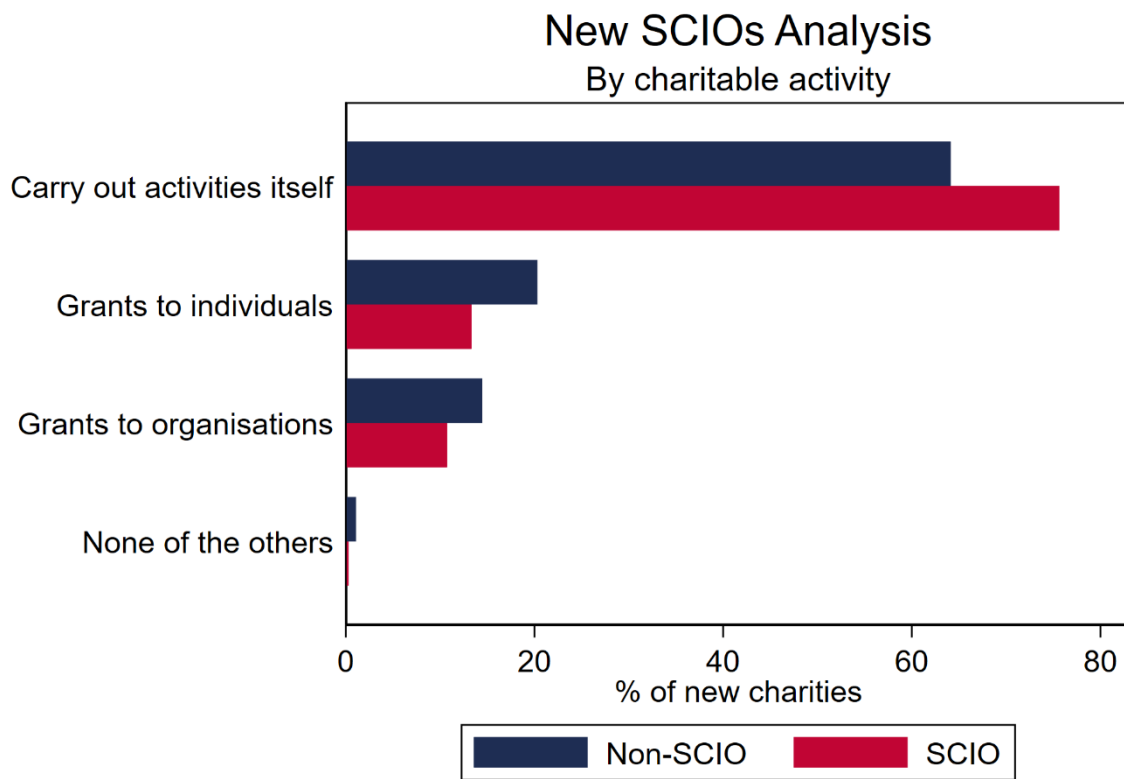
particular types of organisations that prefer to register as unincorporated associations. For example, a cursory glance at the data reveals that new girlguiding or scouting organisations almost always register as unincorporated associations and never as SCIOs. This is confirmed when we restrict our comparison to SCIOs and non-SCIOs (excluding unincorporated associations). For example, SCIOs are still much more likely to serve older people, but the difference in likelihood for other beneficiary groups is reduced or non-existent.

Figure 2.6. Percentage of new charities serving each beneficiary group, by SCIO status



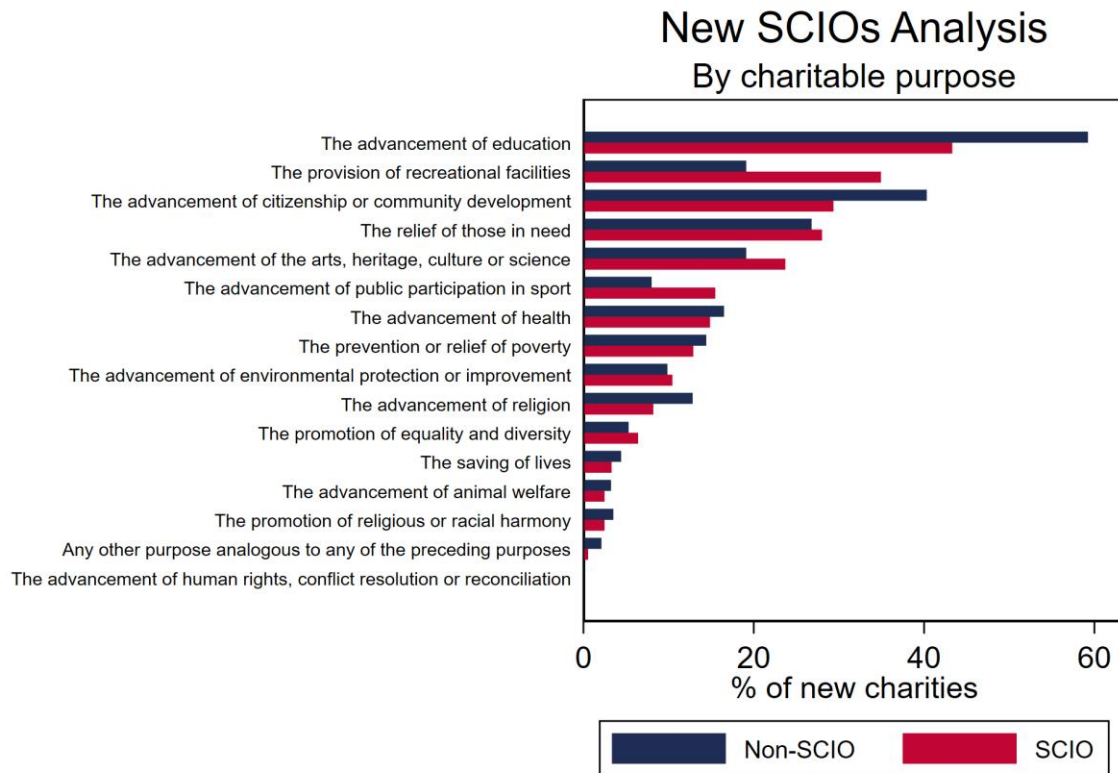
Source: OSCR Scottish Charity Register (as of 18/12/2018); n=10741.

Figure 2.7. Percentage of new charities carrying out each charitable activity, by SCIO status



Source: OSCR Scottish Charity Register (as of 18/12/2018); n=10741.

Figure 2.8. Percentage of new charities pursuing each charitable purpose, by SCIO status



Source: OSCR Scottish Charity Register (as of 18/12/2018); n=10741.

3. How do important organisational and regulatory events, such as dissolution, public complaints and other compliance issues, occur in SCIOs compared to other legal forms?

3.1 Dissolution

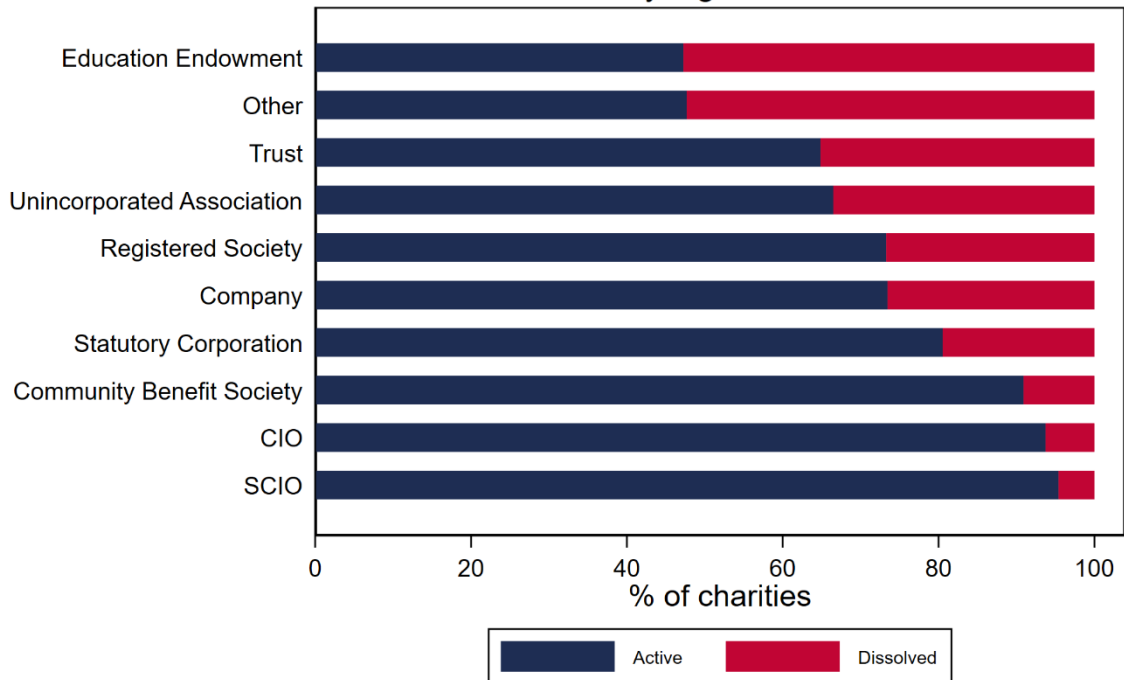
At first glance it appears that SCIOs have a much lower rate of dissolution compared with all other forms of charity: only 179 out of 3,903 SCIOs (5%) are listed as 'Removed' on the Scottish Charity Register, compared to 10,152 out of 30,852 charities (33%); the rate is even lower for new SCIOs i.e. those that did not change legal form (2%).⁸ However, this would be a misleading comparison because SCIOs have spent much less time at risk of dissolution than other charities. Therefore we test the robustness of this finding by restricting our comparisons to certain types of charities:

3.1.1 Differences between legal forms: SCIOs have the lowest rate of dissolution, followed by CIOs and Community Benefit Societies (see figure 3.1, ordered from highest to lowest rate of dissolution).

Figure 3.1. Dissolution rate of charities, by legal form

⁸ 202 SCIOs have had their application for solvent dissolution approved, while only 179 of these have had their status on the Scottish Charity Register set to 'Removed' – we assume the difference is accounted for by the records on the Register needing to be updated for those 23 charities.

Organisational Dissolution By legal form

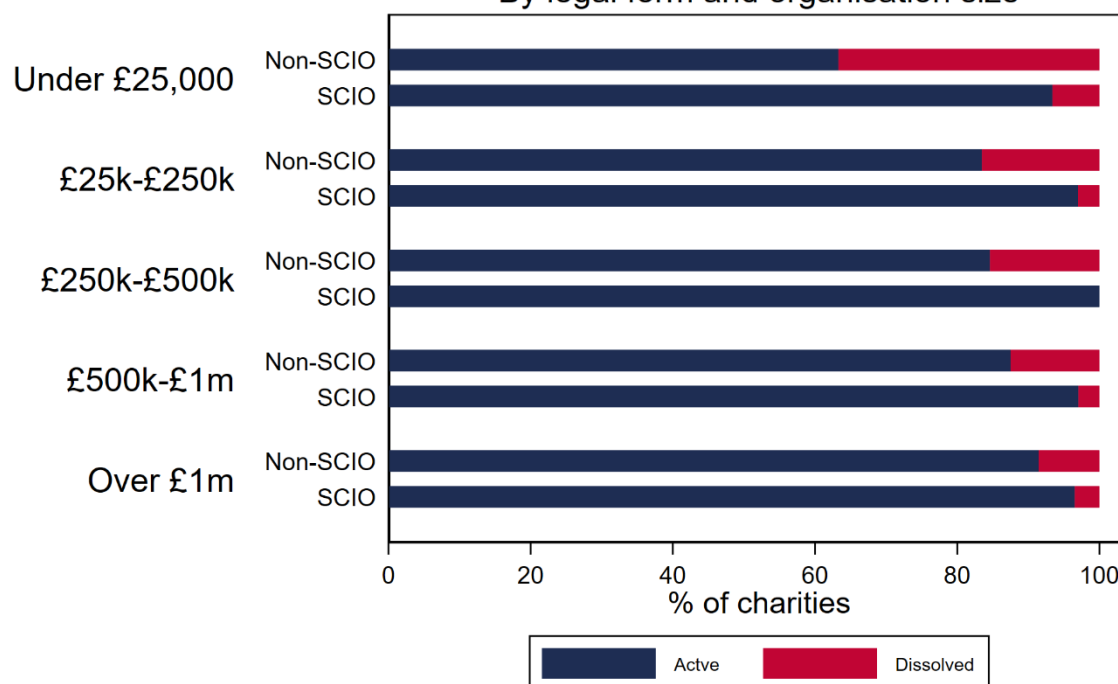


Source: OSCR Scottish Charity Register (as of 18/12/2018); n=34,755.

3.1.2 Differences between legal forms, by organisation size: We can analyse the dissolution rate for different types of SCIO by employing information on organisation size – see figure 3.2. Within each income band SCIOs have a lower rate of dissolution than non-SCIOs, however the differences decrease as organisation size increases.

Figure 3.2. Dissolution rate of charities, by organisation size and legal form

Organisational Dissolution By legal form and organisation size



Source: OSCR Scottish Charity Register (as of 18/12/2018); n= ...

Unsurprisingly the highest rate of dissolution for SCIOs – whether new or those that changed legal form – is observed for charities with average income under £25,000.

3.1.3 Differences between new charities: For organisations registered since 2011, the difference in the rate of dissolution between SCIOs (5%) and non-SCIOs (11%) reduces.⁹ Figure 3.3 presents the dissolution rates for new charities disaggregated by legal form. A logistic regression model confirms the descriptive patterns presented here: controlling for a charity’s age, size, whether it has been subject to an investigation, and whether it has defaulted on an annual return, the odds of dissolution are 63% lower for SCIOs than non-SCIOs.¹⁰ We need to add a caveat about causality: there is not sufficient evidence to say that the SCIO legal form determines a charity’s chance of survival, only that it is less risky from the Regulator’s perspective (in terms of rates of dissolution). What is likely at play is

⁹ Charities that changed legal form to a SCIO are also included in this analysis as they are technically a new organisation and as such their registration year is the same as the year they changed legal form.

¹⁰ Keep in mind that the underlying chance of dissolution is low no matter a charity’s legal form i.e. SCIOs dissolve at a rate of 5%, non-SCIOs at a rate of 11%.

what is known as a ‘selection effect’, that is, a charity’s chance of survival at the outset is linked to the selection of an appropriate legal form.

Figure 3.3. Dissolution rate of new charities, by legal form



3.1.4 Differences between SCIOs: The rate of dissolution is higher for charities that changed legal form to SCIO (10%) than those that were newly formed (2%), though once again this is probably an implication arising from the former being at risk of dissolution for a longer period of time.

3.1.5 There are a number of plausible reasons why SCIOs experience the lowest rate of dissolution: it is a more stable, sustainable form of charity; organisations attracted to this form have a higher baseline chance of survival; the dissolution process is more difficult to execute by both the SCIO and the regulator (e.g. OSCR cannot remove inactive SCIOs from the Register in the same manner as for other charities); and the SCIO legal form is a recent innovation and thus these organisations may be at an earlier stage in their lifecycle than other forms. Finally, dissolution can also be conceptualised as a positive outcome i.e. the charity has achieved its stated mission. We explore one of these possibilities in more detail:

SCIOs may be more difficult to dissolve. Combining data on dissolutions and consents, we observe no difference between SCIOs and other charities in terms of the chances of their application for dissolution being successful (95% vs 94%).¹¹ However, there is evidence that applications for dissolution by SCIOs are more difficult to process for OSCR: examining successful dissolutions, a typical SCIO application takes 36 days to process, compared to 7 days for a non-SCIO.

Finally, we also analysed whether SCIOs were more likely to default (i.e. fail to submit their annual return on time) prior to dissolution. Around 9% of charities in general default in advance of their removal from the Register; this figure is 18% for SCIOs. This holds for new SCIOs and those that changed from another legal form, and when we compare SCIOs just to unincorporated associations. However, if we compare SCIOs just to other charities that have applied to wind up or to be removed from Scottish Charity Register under sections 16 or 18, then there is no difference (18% vs 17%). In summary, defaulting rates are higher for charities that apply for wind-up, whether SCIO or not.

3.2 Investigation

As of 18/12/2018, OSCR held 3,389 compliance and investigation (hereafter known as 'investigations') records for 2,408 charities.¹² Of charities that were investigated, companies were most likely to be so (42%), followed by unincorporated associations (31%), trusts and SCIOs (both 11%). There is little association between the number of times a charity has been investigated and its legal form. Similarly, there is little-to-no correlation between a charity's legal form and the outcome of an investigation (e.g. no action taken, advice given, regulatory action). There are no significant differences in the sources of complaints against SCIOs and non-SCIOs: both are most likely to be reported to OSCR by a member of the public. Similarly, the type of concern lodged with OSCR does not show a strong or meaningful association with whether a charity is a SCIO or not.

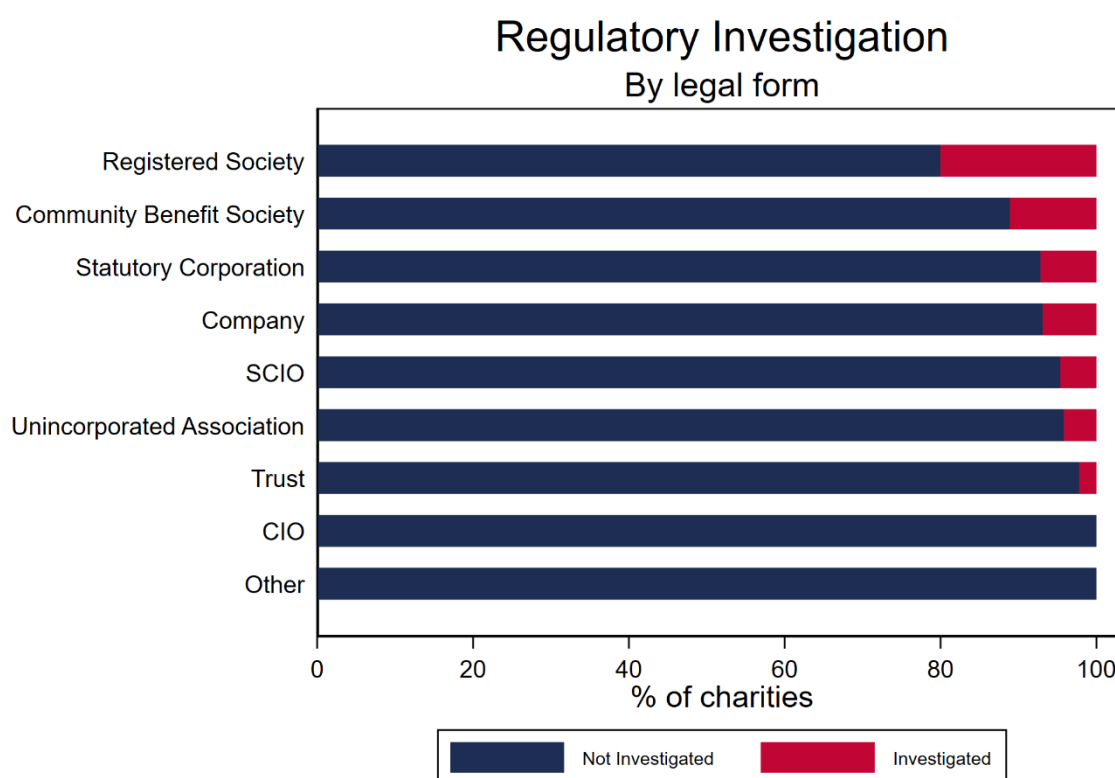
We can obtain a more accurate sense of the likelihood by looking at the investigation rates for each type of legal form contained in the Scottish Charity Register and

¹¹ We compared SCIOs with organisations that have applied to wind up or to be removed from the Scottish Charity Register under sections 16 or 18 of The Act.

¹² These figures cover the period 2006-2018 and exclude observations listed in the 'Not Appropriate' data set.

restricting our sample to charities founded since 2011 – see figure 3.4.¹³ The results show some minor, insignificant variations in the investigation rate by legal form: of legal forms with a minimum number of charities founded since 2011, companies are still most likely to experience this outcome (7%), followed by SCIOs (5%) and unincorporated associations (4%).¹⁴ Once again there is no association between the number of times a charity has been investigated and its legal form.

Figure 3.4. Investigation rate, by legal form



Source: OSCR Scottish Charity Register (as of 18/12/2018); n= 6,478.

3.3 Consents

As of 18/12/2018, OSCR held 5,949 consents records for 4,915 charities. Of charities that sought consent from OSCR, unincorporated associations were most likely to do so (36%), followed by companies (27%), trusts (18%) and SCIOs (13%).

¹³ Focusing on newer charities goes some way towards controlling for the exposure to the risk of being investigated i.e. charities active since before 2011 have had more opportunities to be complained about and/or commit wrongdoing.

¹⁴ The three legal forms with the highest rate of investigation – registered societies, community benefit societies and statutory corporations – all have fewer than 15 observations, therefore the sample sizes are too small to make meaningful comparisons with other types of charity.

As expected there are significant differences between SCIOs and non-SCIOs in terms of the type of consent requested: SCIOs are much more likely to have requested a change to legal form (60% vs 2%) or name (17% vs 13%). However, there is no variation in the rate of requests to amend the charity's constitution between SCIOs (19%) and non-SCIOs (20%). For these three types of consents – change to legal form, name and constitution – we observe no difference in the approval rate of these requests for SCIOs and non-SCIOs (both 93%); neither is there a difference in the average number of consents requested with OSCR.

4. Are charity trustees of SCIOs aware of their obligations?

4.1 Defaulting

As of 18/12/2018, OSCR held 4,428 default records for 3,672 charities. A charity is deemed to be in default if it has failed to file its annual return in a timely manner – usually once 11.5 months have passed since the end of the organisation’s financial year. Of charities that defaulted, unincorporated associations were most likely to do so (59%), followed by trusts (13%), companies and SCIOs (both 12%). There is no association between the number of times a charity has defaulted and its legal form. There is a moderate correlation between legal form and the priority assigned to the case file: 69% of cases relating to SCIOs are marked as high priority, compared to 27% of cases referring to non-SCIOs.

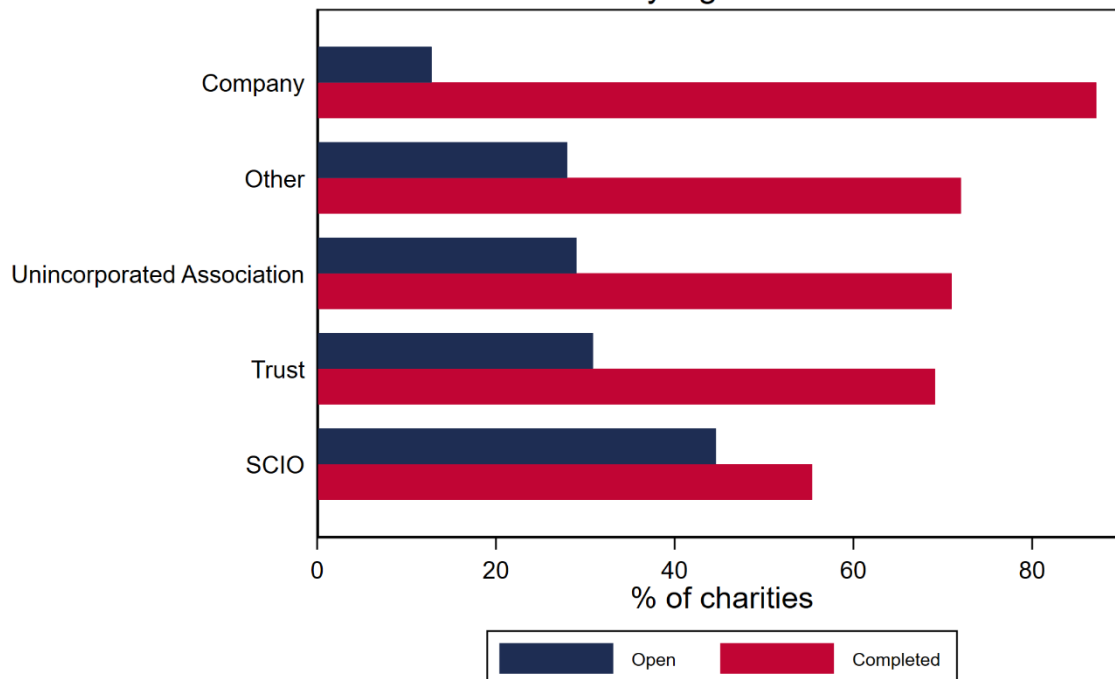
We can obtain a more accurate sense of the likelihood of defaulting by restricting our sample to charities founded since 2011.¹⁵ The results show some minor variations in the defaulting rate by legal form: unincorporated associations are still most likely to experience this outcome (17%), followed by organisations classed as ‘other’ (14%), trusts and SCIOs (both 11%). If we categorise our sample into two groups – SCIOs and non-SCIOs –, we observe no significant differences in the defaulting rate (11% vs 13%).

Finally, there is evidence that defaulting cases for SCIOs are less likely to be marked as complete (i.e. no longer in default) than other charities – see figure 4.1 below. It is unclear why this is the case but a plausible reason may be that there are not enough trustees still serving to submit the annual return.

Figure 4.1. Defaulting status, by legal form

¹⁵ Focusing on newer charities (or those that changed legal form since this date) goes some way towards controlling for the exposure to the risk of defaulting i.e. charities around since before 2011 have been required to submit more annual returns and thus have had more opportunities to default.

Defaulting Charities By legal form



Source: OSCR Scottish Charity Register (as of 18/12/2018); n= 4,365.

4.2 Number of trustees

SCIOs must have a minimum of three trustees in order to comply with charity law. Examining annual return information on the number of trustees reported by a charity, the proportion of SCIOs with fewer than the legally required minimum number of trustees is 3%. In terms of differences compared to other charities, SCIOs typically have 6 trustees, while non-SCIOs typically have 4; this difference of 2 is statistically significant, strongly suggesting that SCIOs have larger boards than non-SCIOs, on average.

4.3 Governing behaviour

The new governance questions added to the annual return form (which applies to annual returns submitted since April 2016) provide interesting information on trustee obligations and self-reported behaviours. For example, 97% of SCIOs and non-SCIOs reported that they operated with the required minimum number of trustees.¹⁶ A higher percentage of SCIOs (76%) compared to non-SCIOs (69%) indicated they

¹⁶ We have this information for 10,276 charities submitting 23,885 annual returns for financial years ending between 2015 and 2018.

reviewed their charity's governing document in the last 12 months, however the differences are small-to-non-existent across other categories of this variable (e.g. a similar percentage of SCIOs and non-SCIOs last reviewed their governing document between 1 and 3 years ago (22%), or have never reviewed it (1%)). When asked whether a trustee or person connected to a trustee received private benefit, SCIOs were more likely to respond "No" compared to non-SCIOs (82% vs 70%); in instances where private benefit occurred, the typical amount was lower in SCIOs than non-SCIOs (£3,678 vs £5,356). Finally, there are no differences between SCIOs and non-SCIOs in terms of whether they reported receiving at least 20% of their income from one or more of their trustees.

Acknowledgments

Braw Data Ltd would like to thank all members of OSCR who assisted with this research, especially: Louise Meikleham for providing the original research brief and access to the data, as well as commenting on multiple drafts of this report; Martin Tyson, Anne Storrie and Steve Kent for sharing their considerable technical knowledge of the subject matter; and Jude Turbyne for bringing her customary levels of support and energy to the project.

Any remaining errors or inconsistencies are the responsibility of the authors, and questions/comments can be addressed to diarmuid@brawdata.com.

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