

This annex provides an introduction to governance structures available for managing community benefits.

1. Community Company

A company can be limited by guarantee or by shares. This means that the trustees or directors of the company are protected in terms of their personal liability for the organisation's actions and debts, as long as their conduct is in line with directors' duties under company law. Either the shareholders hold the liability (in return for a share of the profits), or the amount guaranteed (typically £1 each) by the Directors and any other category of members defines their maximum liability.

The most appropriate form will be a company limited by guarantee, as this provides for a clear not-for-private-profit structure (there are no shareholders who own the company) and also lends itself to more open forms of governance including various membership categories. In addition, a company limited by guarantee may take charitable status (see below), but a company limited by shares cannot.

Advantages of the company form are:

- Protection for the individuals involved in running it, through limitation of personal liability (where duties under the Companies Act 2006 are adhered to)
- A useful legal 'wrapper' or identity for the community benefits package and all its business
- Ability to enter into contracts, e.g. with suppliers or staff if required
- Regulated legal form provides comfort for the community, renewable energy business(s), suppliers and other key stakeholders
- Can take charitable status.

Bear in mind that the company structure may be used to hold and govern more than one funding stream that is – or becomes – available to the community(ies). The company should therefore not be structured according to the need and wishes of one particular renewable energy business; it should be flexible enough to enable community funds from different donors to be governed and disbursed through it. For example, no donor should dictate the overall purposes (or objects) of the company, nor prescribe what, or who, it can or cannot fund.

Where any renewable energy business has specific requirements in relation to how their funds are used (or accounted for or reported on), this should be set out in the Agreement that your community enters into with the donor. Indeed, it may be that the company will be the community body that enters into such agreements on behalf of your community (see module *Securing Community Benefits* for more information on Community Benefits Agreements). If

a donor begins to have doubts about how their community benefits package is managed, this is best dealt with through that agreement, rather than through the donor having any rights to take control of the company or have any veto over how it operates (and which would make it difficult for other donors to use the company). For example, they may withhold the next tranche of funding until certain things are rectified to their satisfaction.

There is also a reasonable case to be made that fund donors themselves should not be permitted to be company Directors, as this may jeopardise the independence and community-led nature of the organisation.

It is recommended that a two-tier membership structure is adopted, whereby residents and/or community groups and organisations within the Area of Benefit can join as Members. Members then have the right to: attend the annual general meeting (and any other general meeting); elect those who will serve as company Directors, and; take decisions in relation to changes to the constitution itself or the winding up of the company. The Directors are generally responsible for controlling and supervising the activities of the company, including for monitoring its financial position. They are accountable to the Members, notably through general meetings. This puts the community in the driving seat in terms of the company's governance.

The main disadvantage with the company form is the administrative and reporting work involved. The amount will depend on fund size, complexity of distribution arrangements, level of annual activity, and membership categories. It includes statutory requirements, for example to prepare and file an annual report and accounts, notifications of director changes, Persons with Significant Control, etc. to Companies House, as well as compliance with the General Data Protection Regulations (GDPR) and so on. In addition, holding an annual general meeting and, depending on membership categories, keeping membership records, serving the members with updates, notifications, etc. However, this work could be contracted to a third party administrator to carry out on the company's behalf.

Further information can be found at [Companies House](#). A [model set of memorandum and articles](#) (the "constitution" of a limited company) is provided by SCVO.

2. Scottish Charitable Incorporated Organisation (SCIO)

This legal structure combines the limited liability of a company with charitable status. While there are some unique features to it, in many ways the SCIO was set up to avoid the duplication in regulation and reporting effort where a company limited by guarantee also wishes to take charitable status. SCIOs are regulated by and report to OSCR alone. As a charitable body, all its activities must be charitable in nature and it has an 'asset lock' (see box 1) built in. SCIOs are commonly used to hold and disburse community benefits.

More information on SCIOs is available from [SCVO](#) and [OSCR](#).

3. Community Council

Community Councils were established as a result of the Local Government (Scotland) Act 1973, and local authorities in Scotland provide model constitutions for Community Councils

in their areas. They have limited statutory rights and powers, and are essentially voluntary bodies established within a statutory framework. However, some consider them to be statutory bodies, as they are not entirely independent.

Nonetheless, the existence of a community council is not mandatory and is dependent on sufficient members of the local community coming forward to form one. As a result, most communities, but not all, have one.

The key roles of Community Councils are:

- To represent the views of the community to the local authority and other public bodies operating in their area
- To act to further the interests of their communities
- To be consulted on planning applications within their area (The Town & Country Planning (General Development Procedure) (Scotland) Amendment Order 1996)
- To consider exercising their powers to object to the granting, renewal or transfer of liquor licences. (The Licensing (Scotland) Act 1976)

Community councillors are elected representatives and accountable under a standard set of rules (within the local authority scheme for community councils) and a code of conduct.

More information on community councils in Scotland is available from the national umbrella body [Community Councils](#).

As the most local level of statutory representation, community councils are a critical stakeholder in the development of community benefit packages and will normally be the first port of call for a developer's engagement in a community. Nonetheless, it is a good idea to guard against the perception that any fund is 'owned and operated' solely by the community council (or any other single community body), however representative it claims to be. While they can of course contribute to discussions around fund strategy and decisions on spend, the community council should facilitate wider involvement in such discussions and not automatically assume itself to be the appropriate body for holding and governing a fund.

One way of ensuring that funding decisions are inclusive of other perspectives is for the community council (or whichever local body is chosen) to set up a sub-group or even a separate Panel (see Section 6 below) which has representation from other key local groups or interests. This forum can have its own operating procedures or terms of reference, however if it is a sub-group of another body such as community council then it will be answerable to that body.

A community council may already disburse some small amounts of funding, for example from the local authority, and so may have some relevant experience and systems in place. Again, however, rather than simply adapting these for the new community benefits by default, it is worth exploring how well they are working, including how they are perceived locally.

Generally speaking, we would recommend against community councils holding substantial amounts of funding for the following reasons:

- As they are not incorporated, community councils are subject to the same considerations around members' personal liability as unincorporated voluntary

associations (see Section 4 below). They are therefore not an appropriate structure for holding and distributing large amounts of funding.

- Model constitutions for community councils generally include a dissolution clause stating that should the community council be wound up its assets will transfer to the local authority. This puts the community funds at risk of being lost to the community, even though sometimes the clause stipulates that the funds will then be held in trust for any future community council or a similar organisation.
- As they are not entirely independent (being established under a local authority scheme), community councils can't be charities so they aren't suitable vehicles for the governance of funds where charitable status is desirable or required.

4. Unincorporated (Voluntary) Association

An unincorporated (voluntary) association is an organisation set up through an agreement between a group of people who come together for some common not-for-profit purpose that is likely social, educational, recreational or cultural. It is a simple form of legal structure but should have a constitution or written set of rules. Unincorporated associations are not subject to some legislation, such as that covering safeguarding and data protection.

In some communities where a community council has not been formed for whatever reason, an unincorporated association may instead play a representative role, taking on some of the (non-statutory) roles that a community council would.

Like community councils, unincorporated associations do not have a separate legal identity and therefore do not provide members and office bearers with any limitation on liability for the actions of the organisation. This means that individual management committee members (or community councillors) are personally liable for any debts and contractual obligations in relation to the management of the community benefits package, employment of staff, and so on. Appropriate insurance cover of course mitigates this but the underlying risk remains the same.

For this reason, unincorporated associations are generally regarded as a suitable structure for overseeing and distributing community benefit funds only where these are relatively small scale. Similar to community councils, the suitability of an existing association for this purpose will also depend on how active the group is, whether it has the skills and range of perspectives required to carry out the role effectively, and whether it is transparent in its work and well regarded locally.

In addition, if a representative unincorporated association (or your community council) is considering a role in fund distribution, check its constitution to make sure it gives them the powers to receive and distribute large sums of money.

More information on unincorporated (voluntary) associations, their advantages and disadvantages, and a model constitution is available through the [Scottish Council for Voluntary Organisations](#).

5. Specialist Third Party Support Organisation

In some instances, the community may not want to take on the work and risks involved in holding the community benefits package and carrying out related governance duties, but wishes to retain a role in making decisions on the projects or causes to which funds are directed. If this is the case, it may wish to enlist the support of a third party, such as an experienced trust or foundation that provides specialist services. In other cases, it may be the renewable energy business who insists that the community benefits are held, governed, and likely administered, by such an organisation.

In this model, the community fund is protected under the third party's wider governance umbrella, but a locally-appointed Panel advises on fund strategy and spend decisions (see Section 6 below for more on Advisory Panels).

The key to making this model work is the agreement, or agreements, covering the relationships between those involved. For example, it may be that the third party is contracted by a relevant community body or by the renewable energy business. Whatever the case, the agreement or contract should set out clearly the responsibilities of the third party, terms of their payment, circumstances under which either party may terminate the agreement, and so on. Crucially, the agreement should enshrine the role of any Advisory Panel, ensuring the third party is responsible for convening, supporting, and responding to input from that group.

The upside of this model is that it may require less voluntary effort from members of the community than say a community company structure will. Moreover, depending on which organisation takes on this role, a professional, supportive and informed third party can provide comfort for the wider community as well as the renewable energy business that the community benefit package is being well managed and that some independence is being brought to bear. It can also help to develop the capacity of the Panel to manage community benefits themselves in the future.

Note that where the funds themselves are to be held by the third party, and where the third party is a registered charity, they will become the responsibility of that body in legal terms. The third party will, technically, be delegating decision making to the Panel. Nonetheless, where the correct agreements are put in place this model can in fact provide a safeguard over the funds for the wider community – as the agreements can stipulate that the funds cannot be used for anything other than the benefit of the community in question nor for anything other than the agreed fund purposes. This would be the case even were the Panel to dissolve or go into abeyance.

6. Advisory Panel

An Advisory Panel is a group of people given the mandate to advise or recommend decisions on funding proposals, and often on fund strategy too. Panel members will usually live or work in the Area of Benefit, bringing local knowledge, perspectives and 'ownership' over those decisions. Panel members may be appointed by named local organisations with a specific remit (such as the Community Council, Village Association or Development Trust), or from the wider community, or a mixture of both.

A Panel is a useful arrangement to put in place when the organisation that holds and governs the community benefits is either:

- A local organisation such as a community company that is pursuing its own projects and for which it may seek support from the community benefits package (and therefore where there are considerations around separation of duties)
- An independent third party with specialist expertise in fund management, grant-making etc. which requires a mechanism to ensure sufficient local input to and ownership over funding decisions, or
- The renewable energy business, who wishes to retain control of aspects of community benefits package governance and administration but again requires a mechanism to ensure sufficient local input to and ownership over funding decisions.

The Panel will normally be convened and supported by the organisation that holds and governs the community benefits package. That organisation will usually be responsible for providing the Panel with an induction into their role, organising Panel meetings, providing papers for these, and so on.

The Panel itself is not a formally constituted body but should operate according to a set of rules and procedures equivalent to a governing document and comparable in levels of accountability and transparency. This document is often called a Terms of Reference. Amongst other things this details the role and remit of the Panel, its composition, and procedures for recruitment, meetings, and so on. A sample [Panel Terms of Reference](#) is available to download as part of this toolkit, along with further useful sample documents relating to Panels.

As the Panel structure is not in itself a legal entity, it does not entail the same level of regulation - and therefore reporting and administration effort – as a Company does, for example.

7. Charitable Status

Charitable status is like a ‘badge of credibility’ that tells the public and those your organisation wishes to work with (such as renewable energy businesses) something important about your organisation’s purpose and how its work is regulated. It provides a degree of assurance that the organisation is focussed on delivering public benefit rather than private gain. It is not a legal structure in itself, but can be applied to various legal structures (see section 3).

There are also financial advantages should the organisation receiving and holding the funds be a registered charity, including relief or exemption from some taxes, such as corporate gains tax and tax on interest on sums held on account. **For this reason, most organisations set up to govern community benefits have charitable status.**

Common concerns associated with charitable status are:

- Limitations on the type of things your organisation can do or fund; if the entity that receives and holds the community benefit fund on behalf of the community is a registered charity, the money becomes charitable in nature and can only be used to

support activities that are charitable in nature, as defined by the [The Charities and Trustee Investment \(Scotland\) Act 2005](#)

- Additional legal responsibilities including compliance with statutory duties for charity Trustees and annual reporting to [The Office of the Scottish Charity Regulator](#) (OSCR) on your organisation's activities.

Charitable status - and therefore ability to call your organisation a charity - can only be gained by successful registration with OSCR. To be eligible, the organisation's core objectives ('purposes') must be regarded as charitable, and its activities as providing public benefit. It must also have some form of 'asset lock' (see Box 1). You can find out more about charitable status, including definitions of 'charitable purposes', how to register as a charity and the key considerations involved from [OSCR](#) and the [Scottish Council for Voluntary Organisations](#).

OSCR is also responsible for ensuring that registered charities continue to comply with aspects of the legislation that regulates charities in Scotland. Charities must submit an annual return and accounts to OSCR every year and seek its permission to make certain changes to the organisation. You can find out more about the practical and legal implications of running a charity [here](#).

When identifying appropriate decision making arrangements for the community benefits (and when developing the fund strategy) it is essential to establish whether the community benefits package is to be charitable in nature. Some owners of renewable energy projects make their community benefit payments as charitable donations. This means that they may receive tax relief on the donations. If this is the case, then the community benefits must only be used for charitable purposes. Whether or not this is the case, it is a good idea to consider whether the organisation that governs the community benefits should be registered as a charity, weighing up the associated advantages and disadvantages carefully and in light of the particular circumstances of your organisation, local needs and aspirations, and the terms of the Agreement held with the renewable energy business.

If the community benefits are to be charitable, those involved in making funding decisions will need to develop a good understanding of what is and isn't a charitable under Scottish charity law, and ensure funds are only disbursed for activities that are in line with that. This doesn't mean the community benefits can only support registered charities, but it does mean that the people involved in governing the community benefits are responsible for ensuring funds are used charitably.

Box 1: What is an asset lock?

An asset lock is text inserted within the organisation's constitution or governing document, which prevents the organisation's assets from being used for personal gain. Where community benefits are concerned, the asset lock should state clearly that the resources available to the organisation should only be used for the public benefit of the community or communities for which they are intended, in line with the stated purposes of the organisation (as set out elsewhere in the governing document, and which should not be contrary to the purposes agreed with the donor of the community benefits). In addition, it should state that if the organisation is wound up, the assets must be transferred to a similar type of organisation (with a similar asset lock) and for similar purposes. This may be a named organisation.

Further, the governing document should prescribe that those involved in governing the organisation (i.e. directors, trustees or management committee members) cannot be remunerated for carrying out their governance duties; however, they may receive reasonable out-of-pocket expenses relating to things like travel to meetings. They may also be contracted by the organisation to provide other services (e.g. specific legal or financial advice, hire of a venue they own), where provision of those services is not part of their stated governance role, the organisation genuinely requires the service, and the rates charged are within the market norm. Such an arrangement should usually be the subject of a written agreement, entered into by the Board or Management Committee.

An asset lock is a standard feature of some organisational structures, for example a SCIO (see section 2 above) or other forms of registered charity. Sample asset lock wording is contained in some of the template governing documents referred to in this module.

If the community is using a third party to hold and administer community benefits, check that it has the appropriate asset lock.

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