

Frequently Asked Questions (FAQs)

Updated April 2023

1. Why have a SE Code?

The aim of the code is to set a benchmark – that establishes clear blue water, between SE and, particularly, organisations operating for private profit. This centres on the unequivocal affirmation of the defining characteristic – that SE's don't distribute dividends to private owners, shareholders or investors. Many people prefer to establish enterprises that include private profit – while delivering a whole range of social benefits. All these hybrid models (mission-led; profit-for-purpose; B Corps etc) are a valuable complement within a constantly evolving landscape, and are part of, what many refer to as, the 'broad church' - but they are distinct from social enterprises. The Code has been recognised as the benchmark for identifying social enterprises in Scotland in each of the four SE Censuses since 2015.

2. Is the SE Code a Quality Mark or a Kite Mark?

The SE Code does not set out to infer a level of quality or that an organisation meets a certain standard in its work. It aims to reflect the values, ethos and behaviours that guide how a social enterprise operates as an organisation and the manner in which it seeks to bring mutual benefit to society.

In 2002, when the UK Govt published its 'official definition' of SE, no-one could have foreseen its growth in popularity and profile or in the variety of governing structures that would emerge. But this growth, through the creation of new ethical 'for profit' companies or hybrid models (see above), has resulted in a confusion as to what a SE actually is.

To avoid this confusion, the SE Code identifies values and behaviours by which SEs recognise each other. A mandatory set of rules runs the risk of inviting dispute and division. It is hoped that by making the SE Code explicitly 'voluntary', this can provide the basis for a self-regulating community.

3. How did the SE Code come about?

The SE Code was initially formed in 2012 by a number of individuals and organisations active in supporting the development of SE in Scotland. Earlier engagement with the SE Mark in England had resulted in a difference in interpretation as to what constitutes a social enterprise. The founding SE Code Steering Group was made up of representatives of national intermediaries as well as from national social enterprises.

The Steering Group seeks to meet 2/3 times per year – which includes reviewing the SE Code and to consider any necessary amendments or additions to the Steering Group. After the initial criteria was agreed in 2012, it was amended both in 2015 and again in 2018. The most recent amendments took place in March/April 2023. These include refreshing the number on the Steering Group to

include a minimum of 8 and a maximum of 12 – and seeking to better reflect the wider demographics in both society and the sector in relation to age/race/gender etc. In addition, Steering Group members will be made up of frontline social enterprises and local and/or national SE representative organisations – with frontline SEs to hold the majority of places.

The Group is not formally constituted and has no plans to become so.

4. **Can a Community Interest Company (CIC) sign up for the Code?**

CICs take two forms – a) Limited by guarantee and b) Limited by shares. In Scotland, there are currently around 1100 CICs (SE Census 2021). Of these, 70% are limited by guarantee, with 30% being limited by shares). With the SE Census 2021 identifying around 6,500 SEs in Scotland, CICs represent approximately 17% of the total number of SEs (CICs Ltd by guarantee being circa 12%; and with CICs by shares 5%).

CICs (Ltd by guarantee) have a statutory **asset lock*** and are eligible to subscribe to the Code as long as they also can demonstrate a minimum of three (unrelated) Directors – to ensure that they are constituted and managed in an accountable and transparent way with regard to the community they serve. CICs (Ltd by shares) also have a statutory asset lock. However, CICs (Ltd by shares) fall into two categories – those where the shareholders are charities; and those whose shareholders include individuals or private companies. A CIC limited by shares is able to distribute some of its profits (up to 35%) to its shareholders and unless those shareholders are asset locked, then they would not be eligible for membership. Any CIC (Ltd by shares) wishing to subscribe to the SE Code should offer clear evidence of their charitable ownership as well as a minimum of three non-related directors (see FAQ No.6).

**An asset lock is a clause in a constitution that ensure that the assets of a company or organisation can never be cashed in by private individuals or companies for their own gain.*

5. **Can Community Benefit Societies, Co-operatives and other shareholding community enterprises sign up for the Code?**

Community Benefit Societies, Co-operatives and other community enterprises with shares, can sign up to the Code, so long as: they have an asset lock and the only profits that are distributed are those that are used to repay the reasonable costs of capital (including capital provided by individuals in the form of shares, bonds or loans), and any remaining profit once the cost of capital is repaid should be reinvested and not distributed as private profit dividends to shareholders or members.

The asset lock is an essential governance clause in all Community Benefit Societies engaging in community bonds or community shares. In essence the asset lock removes the scope for members/shareholders to privately benefit

from the dissolution of a Society and ensures that the assets can only be used for public or community benefit.

6. What do we mean by being ‘constituted in an accountable and transparent way?’

The ethos of SEs in Scotland and the UK and the social economy in Europe has been heavily influenced by principles inherited from the Co-operative and Mutual movements - of common ownership and democratic governance. This democratic process ensures a level of accountability to workers, members, stakeholders, or the community which they serve. Social enterprises should be able to show that they incorporate their communities of benefit and other stakeholders in their governance.

Many co-operatives, credit unions, and community share companies currently operate in an open and democratic way and should be able to readily demonstrate meeting this criterion.

They also can demonstrate a minimum of three (unrelated) Directors – to ensure that they are constituted and managed in an accountable and transparent way with regard to the community they serve.

7. Can an Arm’s Length External Organisations (ALEOs) be a social enterprise?

An ALEO is an Arm’s Length External Organisation – a body which is formally separate from a local authority but subject to its control and influence. OSCR will consider an application from a ALEOs to register as a charity if it can demonstrate its charitable purposes and undertake activities in furtherance of these purposes. ALEOs, however, are not SEs as they remain subject to the control and influence of a local authority.

8. How can I sign up for the SE Code?

To sign up to the SE Code, please email Jennifer Robertson, Co-Chair, SE Code Steering Group at jennifer.robertson@gsen.org.uk.

Depending on your existing legal structure, you may be asked to provide further evidence of your constitution/membership etc.

9. How can I download and display the SE Code Logo?

If you are a subscriber or supporter, and wish to display the SE Code Logo on your website, please email Jennifer Robertson, Co-Chair, SE Code Steering Group at jennifer.robertson@gsen.org.uk.