

**Charitable
Incorporated
Organisations: a new
form of charity
structure**

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1 Introduction and implementation timetable

- 1.1 The Charities Act 2006 introduced the concept of a brand new form of charity entity, the Charity Incorporated Organisation, or CIO. The Act received Royal Assent at the end of 2006 but, being a major new piece of charity legislation, its provisions have been implemented in stages.
- 1.2 At the time of writing (June 2009), provisions relating to the introduction of the CIO remain to be implemented. In part, this is because a public consultation on the draft regulations held towards the end of 2008 led to strong feedback, suggesting that too much company law was being imported around the CIO structure. The Office of the Third Sector is, therefore, in the process of re-writing the regulations with the intention that the CIO become available as a charity structure in Spring 2010.
- 1.3 Because of this re-write, this Briefing Paper only deals with the high level aspects of the CIO. If necessary, the Paper will be revised and updated once the shape of the draft regulations is sufficiently certain.

2 Description of the CIO

- 2.1 At present, the main forms of charitable body are either an unincorporated trust or a company limited by guarantee exclusively established for charitable purposes.
- 2.2 Both existing structures have limitations. The trustees of an unincorporated trust may feel exposed to liabilities, being jointly and severally liable for the actions of the charity. But the structure itself is relatively simple. On the other hand, a company limited by guarantee offers more protection and is sometimes perceived more favourably by funders, banks and even the public. But, the trustees have to comply with charity law and company law and are responsible to more than one regulator as a result. Further, preparing statutory accounts to comply with two accounting regimes at the same time can be something of a nightmare.

2.3 Overview

The features of a CIO can be summarised as follows:

- It will be a legal body (i.e. it will have 'legal personality' in its own right rather like a company);
- as such, it will be able to sue and be sued in its own name;
- it can have members and trustees, who do not need to be the same body of persons;
- it will have limited liability, offering protection to its trustees / directors;
- it will be registered only with the Charity Commission who will be its **sole** regulator;
- significantly, it will prepare accounts according to charity accounting regulations, with no reference to company law accounting requirements.

3 Constituting Documents

- 3.1 Each CIO will have to have a Constitution, broadly in a standard form but with some limited flexibility. The Office of the Third Sector produced two draft model constitutions

(although please note that these are likely to be changed as a result of the Consultation feedback).

3.2 Association Model

This Constitution is designed for charities that have a separate membership as well as a trustee body. A copy of the current draft Constitution can be viewed by visiting:

www.cabinetoffice.gov.uk/media/cabinetoffice/third_sector/assets/CIO_annex_e.pdf

3.3 Foundation Model

This model is where the only members are the trustees. A copy of the current draft Constitution can be viewed by visiting:

www.cabinetoffice.gov.uk/media/cabinetoffice/third_sector/assets/CIO_annex_d.pdf

4 Conversion of existing charity structures

4.1 There will be no compulsory conversion of existing structures. Charities can continue to exist as they are today.

4.2 One of the key questions then that charity trustees ask in relation to the forthcoming CIO is should their charity become one and if so, what is the process? The CIO is not necessarily the best option for all charities. Before going through the mechanics of conversion, we have, therefore, summarised the advantages and disadvantages over existing main charity structures.

Summary of advantages and disadvantages of the CIO

4.3 Advantages over a charitable company:

- It has a single point of registration.
- The (sole) regulator is a social rather than commercial regulator. In particular, the Charity Commission adopt a helpful, supportive approach to charities within their jurisdiction, whereas Companies House, whose primary remit is the regulation of commercial companies, adopt a far stricter approach. So, for example, a company filing its accounts one day late will be fined £150 rising to £1,500 if over 6 months late. Annual returns are subject to an annual filing fee. Neither applies to the equivalent filings with the Charity Commission. Because the sole regulator will be the Charity Commission:
 - The CIO will have less onerous accounting and reporting requirements;
 - only one annual return rather than two will need to be submitted;
 - there is a single point for filing of accounts and returns which is likely to be free of any filing fee;
 - EC Company Law Directives will no longer be relevant.
- The constitutional documents are likely to be simpler in form and more flexible.
- CIO's will have a more straightforward merger and reconstruction environment.
- The CIO is the first corporate structure specifically designed for charities.

4.4 Advantages over a charitable trust:

- The CIO is specifically designed for charities, although this is not so much of an issue for unincorporated charities.

- Legal protection for members and trustees can be achieved without the complexities of the current incorporated charity structure (a company limited by guarantee).
- The CIO will be able to hold property in its own name and, therefore, there will not be so many legal and administrative issues arising from changes of trustees.
- Constitutional documents may potentially be simpler in form and more flexible.

4.5 Disadvantages of the CIO over existing structures:

- There is likely to be an initial public awareness gap.
- Potentially there will be a requirement for more publicly available information when compared to an unincorporated charity. However, this is one of the areas that the responses to the Public Consultation took issue with, and is likely to be changed as a result.

4.6 Disadvantages of a CIO over an unincorporated charity:

- All CIO's will have to file accounts and reports, whereas very small unincorporated charities (under £25,000 income) do not.
- An unincorporated charity is simpler and easier to set up and operate (although this is thought to be a marginal issue)

The 'conversion' process

4.7 The legal means by which an existing charity can 'become' a CIO depends on the existing charity structure.

4.8 Unincorporated charities

Existing unincorporated charities will not be able to simply convert to a CIO. Instead, the existing charity will have to transfer their net assets and operations into a newly formed (or previously existing) CIO. This will mean the transferring charity entering into an Asset Transfer Agreement with attendant legal implications. The successor charity will be a new legal entity meaning:

- a new charity registration number;
- a new bank account;
- all of the administrative implications and communications with supporters, banks, funders, suppliers etc. that flow from this;
- the 'old' charity would become dormant or would be wound up and application made to the Charity Commission for removal from the Register of Charities.

4.9 Incorporated charities

In contrast, a charitable company (or charitable society under the Industrial and Provident Societies Act 1965) will be able to go through a **conversion** process. It will effectively just gain a new legal status, having undertaken the required steps to de-register as a company with Companies House and to re-register as a CIO with the Charity Commission. The forthcoming Regulations will specify the precise steps to be taken in this process.

As such, the charity will retain the existing legal entity and its existing charity registration number.

5 Practical matters

5.1 Newly formed charities and previously 'excepted' churches

Given the delay in the introduction of the CIO as an alternative charity structure and given that, in contrast to unincorporated charities, the conversion of charitable companies limited by guarantee to CIO's is expected to be a fairly simple process, new charities that consider incorporation to be the right route (for example, because of commercial risk, holding of property, etc.), should not feel that they need to wait for CIO's to be introduced. In these circumstances, the choice should be to form a company limited by guarantee now, rather than to form an unincorporated charity in the interim using a deed of trust.

This point is also of relevance to previously 'excepted' church charities that are now required to register with the Charity Commission for the first time (for which see our separate Briefing Paper 'Excepted charities and churches - Registration with the Charity Commission').

5.2 Charity mergers

Where charities agree to merge, a mixture of unincorporated and incorporated merger partners may bring additional complexities to the merger process.