



East Riding Voluntary Action Services (ERVAS) Limited

Community Accountancy Service

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Good Practice Guide:

18 – Charitable Incorporated Organisation (CIO)



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Introduction

This guide provides information about the new form of charity the Charitable Incorporated Organisation. It should be read alongside GPG17 – Charity Registration.

What is a Charitable Incorporated Organisation?

The Charitable Incorporated Organisation (CIO) is a new legal form for a charity, it was first referred to in the Charities Act 2006 but it has been a long road to implementation. The two sets of regulations which complete the legal framework for CIOs have now been agreed by Parliament and applications to register completely new organisations as CIO's were accepted at the Charity Commission from 10 December 2012. However the earliest that a CIO will be incorporated is the 2nd January 2013.

A CIO:

- ⊗ is an incorporated form of charity which is not a company
- ⊗ only has to register with the Charity Commission and not Companies House
- ⊗ is only created once it is registered by the Commission
- ⊗ can enter into contracts in its own right and its trustees will normally have limited or no liability for the debts of the CIO

The CIO was created in response to requests from charities for a new structure which could provide some of the benefits of being a company, but without some of the burdens.

Anticipated Registration Timetable

Registration available from	Organisation type
10 th December 2012	Brand new charities with anticipated annual income of over £5,000.
1 st March 2013	Existing unincorporated charities with annual income over £250,000 to set up a CIO and transfer assets into it
1 st May 2013	Existing unincorporated charities with incomes between £100,000 and £250,000 annual income to set up a CIO and transfer assets into it
1 st July 2013	Existing unincorporated charities with incomes between £25,000 and £100,000 annual income to set up a CIO and transfer assets into it
1 st October 2013	Existing unincorporated charities with incomes of between £5,000 and £25,000 annual income to set up a CIO and transfer assets into it

1 st January 2014	Existing unincorporated charities with annual incomes of less than £5,000 to set up a CIO and transfer assets into it, and for brand new charities with anticipated annual incomes of less than £5,000 to set up a CIO.
During 2014	Corporate conversions into CIOs (subject to Parliamentary approval of separate conversion regulations to be made during 2013). This may also need to be phased by income bracket.

What are the rules that govern CIOs?

The legal framework for the CIO is set out in the Charities Act 2011 and in two sets of regulations and an Order. These are:

- ⊗ the Charitable Incorporated Organisations (General) Regulations 2012 (General Regulations)
- ⊗ the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012 (Dissolution Regulations)
- ⊗ The Charity Tribunal (Amendment) Order 2012

The Charity Commission and the Office for Civil Society held a consultation at the end of 2008 to give the public the opportunity to comment on the proposed regulations.

What will CIOs have to do that is different from/additional to an unincorporated charity?

Many aspects of running a CIO will be the same as other forms of charity, but there are important differences and additional obligations on the trustees of a CIO:

- ⊗ All CIOs will have to register with the Commission, regardless of their income, even if they have an income of less than £5,000.
- ⊗ As all CIOs will have to register, a CIO cannot be an exempt charity.
- ⊗ A CIO does not come into existence until it is registered with the Charity Commission.
- ⊗ A CIO will have to have a registered principal office situated in either England or Wales.
- ⊗ All CIOs will have to submit an annual return and accounts to the Charity Commission, regardless of the income of the CIO.
- ⊗ CIOs will have to keep a register of members and a register of trustees - anyone can ask to see, or be provided with a copy of, the register of trustees.

- ⚙️ The constitution of a CIO must contain certain provisions – the Charity Commission has produced two model forms of constitution for use by a CIO, one for CIOs where the members are not necessarily trustees (the association model) and one for CIOs where the only members are the trustees (the foundation model).
- ⚙️ Amendments to a CIO's constitution will not be valid until they have been registered with the Charity Commission - certain amendments will need prior consent from the Charity Commission.
- ⚙️ Insolvency law applies to CIOs.

Changing structure

Unincorporated Association to CIO

Changing from an unincorporated association or charity to being incorporated is not as straightforward a process as may initially be supposed. This is because in law it has a new legal identity (as distinct from the original organisation) and so becomes a separate organisation; therefore the charity has to register as a new CIO and will be issued with a new charity number; it cannot just carry over the charity number that it held as an unincorporated charity.

It follows that, legally, when the new CIO has been set up and registered with the Charity Commission (ie when the new CIO legally exists), the assets and legal obligations of the original organisation have to be transferred to it, and usually the original organisation is dissolved; so there will be a period when the original organisation and the new CIO are running in parallel.

The original organisation will need to formally transfer all that it owns and owes (ie its assets and liabilities) to the new CIO. In order to transfer the assets and liabilities to the new CIO the original organisation needs powers to do so in its constitution. Most recent constitutions for unincorporated charities include a power to make payments and transfer assets to another organisation with the same or similar objects, and for dissolving the charity. If a charity does not have such a clause it should seek advice from the Charity Commission.

Ten Steps to Becoming Incorporated

Once you have decided to become a CIO, there are a number of tasks regarding the finances and accounts to undertake before registering as a CIO

- ⚙️ Check the constitution to clarify the procedures for transferring assets/liabilities and dissolving the original organisation. If there are no procedures, discuss the way forward with the Charity Commission.
- ⚙️ Apply for registration as a CIO.
- ⚙️ The new company passes a resolution that it will accept the assets and liabilities from the original organisation.

- ⊗ The original organisation passes a resolution (according to the procedure in its constitution) to transfer its assets and liabilities at a particular date (this is ideally at the end of its financial year).
- ⊗ The original organisation passes a resolution to dissolve itself at that date (according to the procedure in its constitution).
- ⊗ Once the assets and liabilities have been transferred, all parties (see section 'Transfer of Assets, Liabilities and Responsibilities' below) are notified of the transfer of assets and liabilities and the date of transfer; any paperwork required is completed.
- ⊗ The accounts of the original organisation are prepared and if necessary audited/independently examined, to the date of winding up.
- ⊗ The original organisation notifies the Charity Commission (if relevant) of its dissolution, and files final accounts so that it can be de-registered.

Transfer of Assets, Liabilities and Responsibilities.

Before winding up, the original organisation must ensure that all assets, liabilities and responsibilities will be transferred to the new CIO or discharged. This may require a formal deed setting out the relationship of the two organisations and legal advice should be sought. Since the CIO is a new organisation this also has implications for its relationships with other parties and the following points need to be considered:

- ⊗ Property and investments need to be transferred by legal agreement from the original organisation to the new CIO. Moveable equipment can be transferred by delivery, but guarantees should be checked to ensure that they are not invalidated by this process.
- ⊗ Any staff of the original organisation should be consulted before any transfer to the new CIO. Their contracts of employment and rights will be transferred automatically under TUPE (Transfer of Undertakings Protection of Employment). They should be informed in writing of their new employer. There is no break in employment with regard to their rights.
- ⊗ Other contracts, for example a maintenance contract for a photo-copier, should have the consent of all parties before transfer to the new CIO.
- ⊗ Funding Arrangements should be discussed and agreed with the funders. Some grants may need to be formally transferred.
- ⊗ Gift Aid and Covenants can be transferred if the donors are notified, provided the new CIO is essentially the same as the old.

- ☼ Ensure you speak to your bank before incorporating to find out their requirements which will typically be that the bank accounts of the original organisation will be closed and new accounts will be opened in the full name of the new CIO, exactly as it is on the certificate of incorporation. (If a charitable company, with annual income over £10,000, does not have 'charity' or 'charitable' within its name, cheques must say 'registered charity')
- ☼ Insurance companies should be contacted and insurance policies should be formally transferred to the new CIO; there may be a need for two policies in effect until the original organisation is dissolved.
- ☼ The liabilities or debts of the original organisation should be indemnified (ie agreed to be taken on) by the new company. This is in order to avoid the members of the governing body of the original organisation being personally liable, as the original organisation will have no funds of its own once it has transferred all its assets to the new CIO.
- ☼ Membership cannot be automatically transferred, so members of the original organisation must apply for membership of the new CIO.
- ☼ Notification of incorporation should be made to suppliers providing utilities, telephone, rates etc, as these suppliers need to know that they are now dealing with an incorporated organisation.
- ☼ Policies and procedures of the original organisation should be formally adopted (or changed) by the new CIO; this decision should be minuted at the first meeting of the directors of the new company.

Company to CIO

The Charities Act 2011 contains provisions which enable an existing charitable company to convert to a CIO. However, the Office for Civil Society has to make further regulations to complete the legal framework to allow a charitable company to convert to a CIO. It is unlikely that existing charitable companies will be able to convert to a CIO using these provisions until 2014.

Although the regulations have not been made yet, the provisions in the Charities Act 2011 have implied that the process will be relatively straightforward.

The existing corporate body will simply be re-registered as a CIO with a new constitution. The conversion process will not affect the legal personality of the organisation or its business relationships.

What information will I be able to see about a CIO on the Commission's register?

As with any charity on the register, you will be able to see information about the work that the CIO does, details of income and expenditure and whether the accounts and annual return have been submitted on time.

In addition, the register entry of a CIO will also show:

- ⊗ whether the CIO was formed from one or more CIOs
- ⊗ whether the CIO converted from a charitable company
- ⊗ whether the CIO received the assets from an unincorporated charity

Benefits of registering as a CIO

The CIO structure has several benefits over unincorporated structures, such as:

- ⊗ the members and trustees are usually personally safeguarded from the financial liabilities the charity incurs, which is not normally the case for unincorporated charities.
- ⊗ the charity has a legal personality of its own, enabling it to conduct business in its own name, rather than the name of the trustees.

The CIO structure also has benefits over registering as a company with Companies House, such as:

- ⊗ Reporting requirements, charitable companies currently have to provide information to the Charity Commission and Companies House both of which have different deadlines for providing information. CIO's will only report to the Charity Commission.
- ⊗ Legislation, charitable companies currently have to comply with Charity Law and Company Law. CIO's will only have to comply with Charity Law.
- ⊗ Accounting Requirements, CIO's will be able to follow Charity requirements and therefore small charities with an income under £250,000 can produce annual accounts on the Receipts and Payments basis which is a simpler form. All companies have to prepare accounts on the accruals basis.

Where can I get further help?

- ☼ **Charity Commission** – for advice, information and publications etc.
For specific information on Charity registration see Charity Commission publication CC21

Contact Details:

Advice line: 0870 3330123.

Publications line: 01823 345427.

Website: www.charity-commission.gov.uk.

- ☼ **East Riding Voluntary Action Services**

Contact details shown below.

For further information please contact:



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