

The Charitable Incorporated Organisation (CIO)



BRIEFING PAPER

The Charities Act 2006 introduced a new legal form for charities, the **Charitable Incorporated Organisation** or CIO. This is an alternative to the **company limited by guarantee** which is presently the most common structure for incorporated charities. After years of delay, the Charity Commission started registering CIOs in January 2013.

A charitable company is subject to dual registration and regulation, having to report to both Companies House and the Charity Commission. The CIO will be registered and regulated exclusively by the Charity Commission. The CIO will provide full corporate status and limited liability, just like a limited company.

However, before everyone rushes to convert to a CIO, there are two things to consider:

- 1) A CIO and a charitable company are not identical, and the charitable company will continue to have advantages in some circumstances (discussed below).
- 2) The Commission has produced a timetable for CIO registrations, and an organisation will not be able to apply for CIO status until its “window” is opened. This is their published timetable:

Applications **for brand new charities with incomes of over £5,000** have been able to apply for registration since December 2012. The subsequent stages are set out below:

- **From late March 2013** - window opens for existing unincorporated charities (to set up a CIO and transfer assets into it) with incomes of over £250,000
- **From May 2013** - window opens for existing unincorporated charities with incomes between £100,000 and £250,000
- **From July 2013** - window opens for existing unincorporated charities with incomes between £25,000 and £100,000
- **From October 2013** - window opens for existing unincorporated charities with incomes between £5,000 and £25,000
- **From January 2014** - window opens for existing unincorporated charities with incomes less than £5,000 and for brand new charities with anticipated annual incomes of less than £5,000

Note this timetable **does not include the conversion of existing companies into CIOs**. Such conversions are not expected to be possible until 2014; and again there may be multiple “windows” set by income bracket. This applies to charitable companies, community interest companies, and other companies limited by guarantee.

The Commission has produced two model constitutions for CIOs:

- the **foundation** model for charities whose only voting members will be the charity trustees; and
- the **association** model for charities that will have a wider membership, including voting members other than the trustees.

The registered name of a CIO may but need not include the words “charitable incorporated organisation” or the contraction “CIO”.

Background

The idea for the Charitable Incorporated Organisation didn't come from the Charity Law Review (which led to the 2006 Charities Act), but from the Company Law Review that was going on at the same time. It was recognised that there is a fundamental legal problem with the charitable company (i.e. an organisation that has dual registration both as a company and as a charity). The directors of a company have a primary responsibility to their members (who would be the shareholders in a commercial company). The trustees of a charity have a primary responsibility to their donors – not to their members. The directors of a charitable company are of course both company directors and charity trustees, so there is potential here for conflict between their two duties. For example: let's imagine that someone leaves a fine old country estate to a charity, to be open to the public. The terms of the bequest include a condition that a wild boar must be slaughtered and roasted in the grounds every New Year's Day, with local villagers invited to the feast, as the donor's family had done for centuries. But the charity's membership gradually becomes dominated by animal-lovers and vegetarians who pass a resolution banning boar-slaughtering on the charity's property. What do the trustees do? They cannot comply with both the terms of the bequest (donor's wishes) and the will of the members. Legally, it's an almost impossible situation. It is intended that the CIO will resolve this potential dilemma (as a CIO will be a charity but not a company).

A single regulator

A practical advantage of the CIO is that it will avoid dual reporting requirements. A charitable company has to make returns to both Companies House and the Charity Commission; a CIO will only report to the Commission. This will reduce paperwork. A common problem occurs where a charitable company has made an amendment to its articles and filed this amendment either with Companies House or the Commission, but not both. This creates a dangerous legal situation, as only one of the versions of the article will be lawful (it depends on circumstances which one this will be). If the group is working to the unlawful one, or sending it to funders etc, they can get into a terrible mess. The CIO will eliminate this common problem.

Speed of registration

When we register a charitable company, it is a two-stage process. First the company is registered at Companies House, which need only take a few days; then the company is registered with the Charity Commission. The organisation acquires its legal existence when registered by Companies House, so it can start acquiring property, signing contracts, employing staff etc. The CIO won't exist at all until it is registered by the Charity Commission. Registering as a charity commonly involves a degree of correspondence and negotiation which can drag on for months. So the charitable company is preferable if speed of incorporation is an issue.

Speed of amendment

Similarly, if a charitable company amends its articles of association (= constitution), these amendments take effect immediately (or in the case of an alteration to the objects, when this change has been registered by Companies House, which usually takes about a week). Though the company must inform the Charity Commission, who may take several weeks to update the Register of Charities, the amendment is legal before this occurs. Amendments to a CIO's constitution won't be effective until registered by the much slower Charity Commission which might cause problems in some cases (e.g. if funding is dependent on a change to the constitution).

Small charities

Currently no organisation with an income of less than £5,000 p.a. may register with the Charity Commission and thus obtain a charity registration number, which sometimes hampers fundraising. From 2014, organisations whose income falls below this threshold will be able to register as CIOs. (Note that smaller charities can at present secure recognition for their legal status as charities via HMRC, though this doesn't always have quite the same status as 'registered' charity.)

Security for borrowing

Social enterprise lenders often take a "fixed and floating charge" over the assets of companies to which they lend. These charges are filed with Companies House, and available to the public, so that the borrower can't use the same assets to secure another loan from a different lender. There will be no such register of charges for CIOs and this may be an issue for some lenders.

Register of members

A company must make its register of members available for inspection by the public, which is an issue for some charitable companies. A CIO will not have to.

Right to remove trustees

The members of any company, charitable or not, have a statutory right to remove any director by a simple majority vote at a general meeting, regardless of anything in the articles or otherwise. (Directors of a charitable company are both 'company directors' and 'charity trustees'.) Members of a CIO will only have this right if it is enshrined in the constitution.

Image/reputation

There may be little legal basis for it, but already there are signs of a growing class distinction, with the charitable company being seen as more sophisticated and "grown up", while the CIO is viewed as a somewhat inferior and less serious option.

Other

Some other more minor differences are:

- A company must allow members to vote via a proxy at a general meeting; a CIO can choose to permit proxy voting, or not.
- A company must convene a general meeting if 5% of the members demand it. A CIO can include this rule in its constitution if it wishes, but it doesn't have to.
- A company can amend its articles by written resolution if 75% of the members indicate their approval. A CIO will need 100% of its members to approve a written resolution, which could well prove problematic.

Note: Though it was not originally envisaged that a CIO would be able to convert to a charitable company, this option now looks to be more likely.

Credit: I am grateful to [Sandy Adirondack](#) for drawing my attention to some of the above comparative issues.

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