

# CIO - Charitable Incorporated Organisations

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A charitable incorporated organisation (CIO) is a corporate body (like a company) with a constitution that is registered with and regulated by the Charity Commission. The CIO is a legal form for charities which was available to use at the end of 2012.

## A CIO

- is an incorporated form of charity that 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 Charity 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 legal form that could provide some of the benefits of being a company, but without some of the burdens. The CIO was first introduced in the Charities Act 2006.

The legal framework for CIOs is set out in the Charities Act 2011 and additional CIO-specific regulations in 2012.

## What are the advantages of CIOs?

The advantages of a CIO are:

- ✓ a **separate legal personality** to the trustees so it can in its own right enter into contracts, rent or own property, take legal action and be sued

- ✓ **limited liability** for the trustees and members of the organisation. This may make it easier for charities to recruit and keep trustees
- ✓ **single registration and regulation** with one regulator, the Charity Commission (a charitable company has dual registration and regulation with the Charity Commission and Companies House)
- ✓ **annual returns, accounts and reports** only need to be sent to one regulator, the Charity Commission

These advantages are in addition to the advantages of being a charity. You can read more about these in the Newcastle CVS information sheet *Registering as a charity*.

## What are the limitations of CIOs?

The limitations of a CIO are:

- ✓ **it will take longer to set up a CIO** - the Charity Commission has said it will take around 40 working days to respond to an applicant if model charitable objects are used; if the model constitutions are used; and if the Charity Commission has no questions about the charitable activities or public benefit of the applicant. This means if the CIO is a new organisation, it will take longer to start running the

charity. This is in comparison to only a few days to set up a company via Companies House. The two stage process to set up a charitable company means a charity can start work much earlier. This will be less of a problem for unincorporated charities changing to a CIO because it can be planned for

- ✓ a CIO may **find it difficult to borrow money** using property as security (mortgages) because there will be no register of charges on charitable assets (unlike for a company assets)
- ✓ a CIO **must submit annual returns and accounts** to the Charity Commission regardless of income (non-CIO charities only have to submit returns if income is more than £10,000)

These limitations are in addition to the limitations of being a charity. You can read more about these in the Newcastle CVS information sheet *Registering as a charity*.

### What will CIOs have to do?

When setting up and running a CIO, you will have to do some different things or have extra obligations to other types of charities:

- ✓ all CIOs must register with the Charity Commission, even if the charity has an income of less than £5,000
- ✓ a CIO only exists once it has been registered with the Charity Commission
- ✓ all CIOs must submit an annual return and accounts to the Charity Commission (non-CIO charities only have to submit returns if their income is more than £10,000)
- ✓ all CIOs must keep a register of members and a register of trustees - anyone can ask to see, or be given a copy of, the register of Trustees

- ✓ the constitution of a CIO must contain certain provisions, and the Charity Commission has produced two model constitutions to use
- ✓ changes to a CIO's constitution will only be valid when they have been registered with the Charity Commission. And some changes will need prior consent from the Charity Commission
- ✓ a CIO must have a principal office in England and/or Wales, which will be published on the register of charities. This is similar to the registered office all companies must have
- ✓ a CIO must also have a service address, used for correspondence. The service address can be the same as the principal address
- ✓ CIOs cannot be an exempt charity
- ✓ insolvency law applies to CIOs

A CIO's entry on the register of charities will show some extra information to other types of charities. It will show if the CIO:

- ✓ was formed from one or more CIOs
- ✓ converted from a charitable company
- ✓ received assets from an unincorporated charity

### Is the CIO right for your charity?

The CIO joins the other options for setting up a charity, these are:

- ✓ **unincorporated - unincorporated association or charitable trust** with no protection from liabilities and debts for trustees and not able to sign contracts, hold assets and buildings, and employ people in the organisation's name
- ✓ **incorporated - charitable company**

**(company limited by guarantee registered as a charity) and CIO** with protection, in most cases, from liabilities and debts for trustees and able to sign contracts, hold assets and buildings, and employ people in the organisation's name (rather than in the names of the trustees)

A CIO may be right for your new or existing charity if you want the benefits of incorporation but do not want to be a charitable company. It may be right for charities that want to own land in its own name; control substantial funds or assets; hold contracts; employ staff; or run charitable activities with financial risks.

Newcastle CVS can help you decide on the right option for your charity through our CIO support service.

### Setting up a CIO

The process for setting up a CIO is similar to setting up other types of charities – adopt a governing document (a constitution in this case) and register it as a charity with the Charity Commission. There is more detail below about the process for different scenarios for example setting up a new CIO or converting an existing charity to a CIO.

The Charity Commission has provided CIO model constitutions, with guidance, to use. There are two versions:

- ✓ **CIO association** – for CIOs with members ie trustees and a wider membership with voting rights who will make decisions and appoint some or all of the trustees
- ✓ **CIO foundation** – for CIOs with no members ie the trustees are the only voting members, like a charitable trust. This means the trustees make all the decisions, appoint new charity trustees and there may be no limit on how long charity trustees may serve

The Charity Commission CIO constitutions include the provisions that must be included by law. We don't know of any other models to use. It is likely that a specialist charity lawyer will be able to draft a CIO constitution but it will be expensive.

### Setting up a new CIO

The process for brand new CIOs is:

1. choose and complete a constitution suitable for a CIO, choosing the type of CIO – association or foundation – that is right for your charity. The Charity Commission has provided CIO model constitutions to use
2. apply online to register the CIO, using the Charity Commission's application form

Newcastle CVS can help you with both these steps through our Specialist Services. All sized organisations can now become a CIO, including those with an income of less than £5,000.

### Changing an existing unincorporated association and charitable trust to a CIO

The process is similar to the current process of changing to a charitable company:

1. register a new CIO with the Charity Commission, choosing the type of CIO – association or foundation – that is right for your charity
2. transfer assets and undertakings of the unincorporated association or charitable trust to the CIO and settle any liabilities
3. close down the unincorporated association or charitable trust
4. remove the unincorporated association or charitable trust from the register of charities

Newcastle CVS can help you change your charity to a CIO through our Specialist Services.

The new CIO will be a new legal entity with a new charity number. You will need to tell banks, funders, suppliers and others about the transfer and you will need to move any existing contracts from the unincorporated association or charitable trust to the new CIO.

You must also check your current constitution or trust deed to make sure there are no restrictions on changing your legal structure. If there are, you may need to get approval from the Charity Commission or change your constitution or trust deed first.

There are similar issues for unincorporated charities changing to CIOs than when changing to a charitable company for example around permanent endowments and pensions:

- ✓ **permanent endowment** – the regulations allow charities with permanent endowments (usually land or investments) to transfer to a CIO using a vesting declaration. If your charity has a permanent endowment, you will need to get legal advice
- ✓ **pensions** – talk to your pension provider about your plans. If you use a defined benefit scheme, changing to a CIO may trigger certain pension liabilities so work with your pension provider before starting the process. It is likely you will need to take professional advice

### Changing an existing charitable company, CIC or IPS to a CIO

It is not currently possible for a charitable company, community interest company or charitable industrial and provident societies to convert to a CIO. The Office of Civil Society

needs to make extra regulations to provide the legal framework to allow this to happen.

It is expected that the conversion process will be 'relatively straightforward' and a charitable company will 'simply re-register as a CIO with a new constitution'. This is because it will be converting from one incorporated structure to another. Time will tell if the conversion process will really be 'relatively straightforward'.

### Changing an existing exempt charity to a CIO

An exempt charity cannot set up or change to a CIO because the Charities Act 2011 specifically prevents exempt charities from being CIOs. If this applies to your charity, you will need to get more information from the Charity Commission and legal advice.

### Support to set up a CIO

**Newcastle CVS:**

**[www.cvsnewcastle.org.uk](http://www.cvsnewcastle.org.uk) or  
[information@cvsnewcastle.org.uk](mailto:information@cvsnewcastle.org.uk)**

We discuss legal structure options with all proposed organisation including those thinking about being a CIO.

Newcastle CVS, through its Specialist Services can support groups and organisations to set up a CIO. You can contact us using the information on the last page.



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