



Technical factsheet: Charitable incorporated organisations

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INTRODUCTION

Types of charity structure

There are four main types of charity structure:

- charitable incorporated organisation (CIO)
- charitable company (limited by guarantee)
- unincorporated association
- trust.

Each will be appropriate for different types of charity, and at different stages of their life. Whatever structure is chosen, charities have to report to their country regulator. The primary regulators for charities are:

- England and Wales: the Charity Commission for England and Wales (CCEW)
- Scotland: the Office of the Scottish Charity Regulator (OSCR)
- Northern Ireland: the Charity Commission for Northern Ireland (CCNI).

Further guidance on what structure is suitable, and other topics covered in this factsheet, can be obtained from the relevant regulator's website.

Background to the charitable incorporated organisation (CIO)

Historically, in order to gain the protection of limited liability, many organisations chose to structure themselves as a limited company. This can be a slow and time-consuming process involving initial registration as a company with Companies House and as a charity with the Charity Commission. Charitable companies are answerable to two regulators – the Charity Commission and Companies House – and have to comply with company law, which, being designed primarily for commercial organisations, is not always well suited to charities. Therefore a new legal form designed specifically for charities, the CIO, was introduced (originally) in the Charities Act 2006.

The CIO structure aims to provide charities with some of the benefits of being a company, without the additional reporting and legal requirements to which charitable companies are subject. The CIO is an incorporated structure that can only be used by charities; it is not a

liable. The CIO has an equivalent in Scotland in the Scottish charitable incorporated organisation (SCIO), which has been available since 2011.

The new structure has been phased in gradually, and at the time of writing charitable companies can begin the process of conversion. The Charity Commission has issued the following timetable:

Date	Annual income
Now	Less than £12,500
Now	Between £12,500 and £25,000
1 May 2018	Between £25,000 and £100,000
1 June 2018	Between £100,000 and £250,000
1 July 2018	Between £250,000 and £500,000
1 August 2018	Greater than £500,000

There are two model constitutions for CIOs. The CCEW recommends organisations to set up an association CIO if they want the charity to be a corporate body and have a wider membership, including voting members other than the charity trustees. The alternative is to set up a foundation CIO if the charity's only members are the trustees and there is no wider membership.

REPORTING REQUIREMENTS

The main laws that relate to a charity's accounts and audit are:

- charities in England and Wales: the Charities Act 2011 (2011 Act (E&W)) and, with respect to the disclosure of fundraising, the Charities (Protection and Social Investment) Act 2016
- all charities registered in Scotland with OSCR: the Charities and Trustee Investment (Scotland) Act 2005 (2005 Act (Scotland))
- charities in Northern Ireland: the Charities Act (Northern Ireland) 2008 (2008 Act (NI))
- all charitable companies: the Companies Act 2006.

The reporting framework for charities is complex, but can be summarised as follows:

Gross income	Minimum accounts requirement	Minimum scrutiny requirements	Notes
£0 to £25,000	Receipts and payments accounts with a statement of assets and liabilities	Approval by trustees (Examination required in Scotland)	R & P not available for companies No filing requirement with CC unless a CIO
£25,000 to £250,000	Receipts and payments accounts with a statement of assets and liabilities	Independent examination (lay)	R & P not available for companies
£250,000 to £500,000	Accruals accounts – SORP with some exemptions	Independent examination (professional)	
More than £500,000	SORP applied in full	Independent examination (professional)	Audit threshold in Scotland and Northern Ireland
More than £1,000,000	SORP applied in full	Audit	Audit required under companies act at £10.2m turnover, £5.2m balance sheet, 50 employees

ADVANTAGES AND DISADVANTAGES

The CIO structure is not suitable for every charity. The Charity Commission suggests that the structure is most beneficial for small to medium-sized charities which employ staff or enter into contracts. While running a CIO should be simpler than establishing a charitable company, it is not quite as straightforward as running an unincorporated association or trust.

The Charity Commission cites the following advantages of CIOs:

- *Single registration*: a CIO only needs to register with the Charity Commission (or OSCR in the case of SCIO), which currently is free of charge. It does not have to register with Companies House, which charges a fee.
- *Less onerous requirements for preparing accounts*: small CIOs can prepare receipts and payments accounts, unlike small companies.
- *One annual return*: charitable companies have to prepare an annual return under company law and (normally) a separate return under charity law.
- *Reduced filing requirements*: CIOs only have to send accounts, reports and returns to the Charity Commission/OSCR. Charitable companies have to send accounts to both the Charity Commission/OSCR and Companies House.
- *lower costs for charities*: no Companies House filing fees.
- *greater protection for trustees*: the members and trustees will not usually be personally liable for the charity's debts.
- *legal personality*: 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.
- *Simpler constitutional form*: CIOs have to use one of the two model constitutions produced by the Charity Commission. These are the 'association model', where the members are not necessarily trustees, and the 'the foundation model', where the only members are the trustees. These constitutions include fewer fixed governance provisions than is the case with companies.
- *more straightforward arrangements for merger and reconstruction*: the Charities Act 2011 contains a number of provisions designed to facilitate merger and reconstruction, which are not available to charitable companies.

We note the following disadvantages of using the CIO structure:

- All CIOs have to register with the Charity Commission, regardless of their income, even if they have an income of less than £5,000.
- As all CIOs have to register, a CIO cannot be an exempt charity.
- A CIO does not come into existence until the Charity Commission has registered it.
- A CIO has to have a registered principal office situated in either England or Wales.
- All CIOs have to submit an annual return and accounts to the Charity Commission, regardless of the income of the CIO.
- A CIO cannot give a (floating) charge on its assets to help raise borrowing.
- CIOs need to register amendments to their constitutions with the commission before they are implemented, and will require prior consent for some amendments.
- Members do not have a statutory right to require a general meeting to be called, demand a poll (a counted vote), vote by proxy and remove trustees. If these members' rights are to exist, they must be included in the constitution (these are included in the association model constitution).
- Corporate insolvency law applies to CIOs just as it does to limited companies.

CONVERTING TO THE CIO STRUCTURE

If an existing charity wishes to convert to a CIO structure, it needs to choose the CIO model constitution that best matches the original charity.

The CCEW recommends that the **association model** is suitable where the original unincorporated charity:

- has a constitution as its governing document
- has a wider membership that votes on important decisions, such as electing trustees or committee members.

The **foundation model** is appropriate if the original charity:

- is governed by a trust deed, will, scheme or conveyance
- is run solely by its trustees
- does not have a voting membership.

There is no conversion process set out in the Charities Act 2011, or the General Regulations, for unincorporated associations or charitable trusts that wish to adopt a CIO structure. This is because the CIO is a new entity, and the old charity will simply transfer its undertaking to the new one, for no consideration. The process is similar to the one used by unincorporated charities to move to a company limited by guarantee structure, ie they must:

- register the new CIO with the Charity Commission
- transfer the assets and undertakings of the unincorporated charity to the CIO and settle any liabilities
- dissolve the unincorporated charity in accordance with the provisions contained in its governing document
- apply to the Charity Commission to have the unincorporated charity removed from the register of charities.

In contrast, the Charities Act 2011 contains provisions to enable existing incorporated charities to convert to a CIO, and the Charity Commission has now issued the following guidance on the topic:

You must apply for conversion using the online application form [\[bit.ly/cio-apply\]](https://bit.ly/cio-apply) and need to include the following information with your application:

- 1. For the company, a copy of its resolution confirming the decision to convert to a CIO. The resolution must be either a special resolution passed at a meeting or a unanimous written resolution signed by or on behalf of all the members of the company who would be entitled to vote on a special resolution*
- 2. For the proposed CIO, a copy of the proposed constitution – use one of our model constitutions for CIOs [\[bit.ly/cc-model-cons\]](https://bit.ly/cc-model-cons) to avoid delay and reduce the chance of your application being refused. There are two models, use the Association model*

if the CIO will have a membership other than the trustees or use the Foundation model if the trustees are to be the only members.

3. *The resolution adopting the proposed constitution of the CIO*
4. *A declaration that the trustees of the CIO are [eligible to serve as trustees](#)*
5. *If the proposed constitution has any “entrenchment” provisions (restrictions on amendments which go beyond what the law requires), a statement specifying this and identifying the relevant provisions*

When your application has been submitted we will check:

- *the CIO will meet the legal requirements for charitable status and registration*
- *the name of the CIO can't be confused with that of another charity and is not misleading or offensive*
- *your company and each of its trustees have filed all of the documents and information which they are required to file with Companies House and with the Commission*
- *there aren't any disqualified trustees*
- *there aren't any legal proceedings against the charitable company by Companies House*
- *your company is not in the process of being dissolved or in liquidation or administrative receivership*
- *having checked with Companies House, and in some cases with other individuals or organisations, there is no reason to think that registering the conversion would be inappropriate*

If these checks are satisfactory we will ask Companies House to remove the company from the register of companies. We will complete the registration of the CIO when the company has been removed from the register of companies.

Accounting implications of becoming a CIO

For an unincorporated charity the old entity will prepare some form of cessation accounts that cannot be on a going-concern basis. The new charity should be able to apply merger accounting, assuming the criteria are met.

This is different when it comes to companies converting to CIOs. Unlike the situation where a new charity comes into being, following the process above means that the legal

person has a continuous existence. This means that the conversion process itself will not affect the accounts, except that Companies Act requirements will not apply to the annual report, accounts or audit report.

There are very minor differences between the accounts of a company and a CIO. In summary, a CIO's statement of assets and liabilities must include a note of any guarantee given by the CIO and details of debts subject to a charge on CIO's assets, and no separate income and expenditure statement is required if there are endowment movements on the face of the statement of financial activities.

Scottish charitable incorporated organisation

The SCIO structure has been available to Scottish charities since 2011 and is almost identical to the version operating in England and Wales. Note that in Scotland a company converting to become a SCIO can keep the same charity registration number; this is not possible in England and Wales.

ACCA LEGAL NOTICE

This technical factsheet is for guidance purposes only. It is not a substitute for obtaining specific legal advice. While every care has been taken with the preparation of the technical factsheet, neither ACCA nor its employees accept any responsibility for any loss occasioned by reliance on the contents.

APPENDIX: CHECKLIST

When you apply to register the new charity		Tick
Answer all questions fully	The commission can't accept incomplete applications because it needs to be satisfied that your new organisation is a charity and eligible to register. You'll also need to confirm that your trustees understand their role and responsibilities – read ' How to register your charity (CC21b) '.	<input type="checkbox"/>
Say that the new charity is replacing an existing one	Make sure you complete the relevant section in the application form – you'll be asked for your original charity's number.	<input type="checkbox"/>
Explain any changes to your charity's purposes	Tell the commission about any changes to your objects and your reasons for making them – there's a section for this in the form.	<input type="checkbox"/>
Give details of any assets that will transfer and how	Explain which assets will transfer, the powers you have to do this and any approvals you've had to get. This is particularly important for permanent endowment - an asset with conditions on how it can be used.	<input type="checkbox"/>
Upload all necessary documents as PDF files	You need to provide your new charity's agreed governing document, a signed and scanned copy of your trustee declaration , proof of income (for CIOs, explain how it will be funded) and any other supporting documents.	<input type="checkbox"/>

When you plan the restructure at a trustee meeting		Tick
Choose the right structure	Discuss the types of charity structure set out in ' Charity types: how to choose a structure (CC22a) ' and choose the right structure for your charity.	<input type="checkbox"/>
Agree your charity's purposes	Discuss your charity's purposes (the objects clause in its governing document) and update them if necessary in line with the guidance ' How to write charitable purposes '.	<input type="checkbox"/>
Decide how any assets will transfer	Check that your governing document allows you to transfer your existing charity's assets to a new one – these rules are likely to be in its dissolution clause. If it doesn't, you may need the commission or another body to approve the transfer.	<input type="checkbox"/>
Make sure your charity is up-to-date with admin and filing	Make sure your most recent annual return and accounts have been submitted to the commission (if applicable). Resolve any outstanding issues raised at trustee meetings or with the commission.	<input type="checkbox"/>
Decide if you need to take advice	Take professional advice if you need it to plan your restructure, or consult your umbrella body if you have one.	<input type="checkbox"/>

After your new charity is registered		Tick
Transfer any assets and liabilities	Agree to transfer the original charity's assets and liabilities to the new charity, as planned.	<input type="checkbox"/>
Close the original charity	Close the original charity in line with the rules set out in its governing document. Remove the charity from the register of charities .	<input type="checkbox"/>