

Charitable incorporated organisations

Latest Update

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Author(s)

Richard King - Tozers LLP

As long ago as 1996, the [Charity Law Association](#) advocated a corporate structure designed specifically for charities. The [Charities Act 2006](#), amending the [Charities Act 1993](#), introduced for the first time the "CIO" (Charitable Incorporated Organisation - the name says it all). The [Charities Act 2011](#) consolidated previous acts, and regulations passed in December 2012 made this long-awaited entity a reality. Scottish CIOs have existed since April 2011.

Except for the rare case of one established by Royal Charter, the 3 main methods of creating a charity prior to the introduction of CIOs were by a:

- a. trust deed (or will);
- b. members' constitution (association); or
- c. company limited by guarantee ("CLG").

The first two do not create a separate legal personality. So the individual trustees enter into contracts on the charity's behalf and are personally responsible for its debts and for any claims against it, with only limited rights of indemnity from the charity's funds (if any). Invoking the power (originally under the Charitable Trustees Incorporation Act 1872, now [s.251 Charities Act 2011](#)) of the [Charity Commission](#) ("Commission") to incorporate those trustees as a legal entity merely creates a body that can enter into contracts, be sued and hold property; it does not absolve the trustees from liability.

By contrast, a CLG is a legal entity and gives the trustees some useful (though not total) protection, but is subject to the dual regulation of [Companies House](#) and the Commission. And company law did not evolve with charities in mind.

From 3 January 2013 it became possible to register CIOs with the Commission, their sole regulator. So a charity now has a choice of 4 main forms. There are some clear advantages (and disadvantages) of adopting the CIO form.

Overview of Topic

1. **Status:** A CIO has a separate legal personality, giving it an almost permanent corporate status. Trustees of a CIO do not enter into contracts in their own name so generally they do not assume personal risk by signing for the charity. Whereas a CLG exists once the company is formed (registration with the Commission is merely incontrovertible proof of its charitable status), a CIO does not exist until it has been registered with the Commission. No exempt charity can be a CIO (exempt charities are certain types of charity that must comply with charity law but are exempted from the need to register with the Charity Commission because they are regulated by a "principal regulator" (i.e. another government agency or department)).
2. Members of a CIO are not liable for its debts unless the constitution provides for a guarantee - usually of a nominal sum of £1 or £10.

3. **Constitution:** This "must be in the form specified in regulations made by the Commission, or as near to that form as the circumstances admit." ([s.206\(5\) Charities Act 2011](#)). The regulations (the [Charities Act 2011 \(Charitable Incorporated Organisations\) \(Constitutions\) Regulations 2012](#)) provide for two model constitutions for a CIO:
 - a. *Foundation:* where the only voting members are the charity's trustees (akin to a trust deed)
 - b. *Association:* with a wider membership, so there are voting members other than the charity's trustees (akin to a members' constitution)
4. Having two fairly standard models makes it easier to create a new CIO without professional help, although some have found it difficult to follow the different options offered in each type. By contrast, [Companies House](#) does not provide a constitution tailored to a charitable CLG so legal advice would need to be sought - although models are available from the [Charity Law Association](#), the [Commission](#) and others.
5. The Commission strongly encourages charities to use these models, saying that this will ensure that the constitution will "meet the requirements of the law, comply with good practice and be practical and workable" and avoid delay in registration. But bespoke amendments can be agreed, and in certain cases it may be possible to settle with the Commission a model form for use by a particular type of charity (one such has been agreed for use in the somewhat unusual circumstance of a church charity which is "controlled" i.e. where church law requires trustees to follow the directions of a bishop or other superior).
6. **Membership:** In a Foundation CIO constitution, the members and trustees are identical, yet with different functions. It is disappointing that this requirement introduces unnecessary complications: the trustees, in their capacity as members, must make key decisions (amending, amalgamating, transferring or winding up the CIO) in general meetings rather than as trustees. The same distinction causes confusion in CLGs because many supporters or subscribers see themselves as "members" but have no constitutional role. Their involvement can be covered in bye-laws.
7. Most people aged 16 or over can be trustees unless they are disqualified (under [ss.178-180 Charities Act 2011](#)). There is no limit to the number of trustees, although the Commission suggests a minimum of 3 and a maximum of 12. The register of trustees can be inspected by the public on request.
8. In an Association CIO, anyone interested in furthering the CIO's purposes, and who commits to using his or her powers in good faith to do so, can be a member (subject to any provisions as to trustee approval).
9. Membership is open to individuals, corporate bodies and representatives of unincorporated organisations. CIOs can provide for different classes of member. This can include informal or associate members, but such members should not be legally counted as members or noted on the CIO's register.
10. **Voting:** There is no automatic right for members to vote by post or proxy or electronically, but specific provision can be made in the constitution. Informal or associate members do not have voting rights.

11. Members can vote to remove the trustees if the constitution allows this, but the power to do so should only be exercised if it will benefit the CIO and is done with due process.
12. **Reporting Requirements:** Unlike a CLG, a CIO does not need to register with or send returns to Companies House. But, unlike trusts, all CIOs must file with the Commission their annual accounts, trustees' reports and returns, regardless of their level of income. A CIO with a gross income of less than £250,000 may produce receipts and payments accounts but one grossing over £250,000 must prepare more complex accruals accounts. At present, the Commission charges no fees for filing reports or accounts.
13. As for all registered charities, the register will show a CIO's income and expenditure, and will note whether or not the required reports have been filed on time. It will also state whether the CIO was formed from one or more CIOs, whether it was converted from a CLG and whether it received any assets from an unincorporated charity.
14. **Disclosures:** A CIO must show its status, number and registered office on all business correspondence and documents including website and email footers. Cheques, receipts and invoices etc. are also affected. If (unusually) the CIO has a seal, it must clearly show the full name (and the constitution must provide for how it is to be used). The rules for executing documents are broadly the same as for other charitable CLGs.
15. Unlike Companies House, the Commission does not keep a register of charges. So a lender cannot know what loans the CIO has taken out unless they are secured on land. Some lenders and funders may be wary of CIOs, given their unfamiliarity and their limited transparency compared to CLGs. This could cause delays in arranging borrowing.
16. **Suitability:** The Commission suggests that the CIO is most suitable for small to medium-sized organisations which employ staff, hold property and/or enter into contracts. If the charity is likely to want to take out loans, a CLG may be a better option. The above concerns may render CIO status unsuitable for larger charities.
17. **Registration/Conversion:** Any new charity can register as a CIO. The trustees settle the constitution and sign a declaration confirming their eligibility, their acceptance of responsibilities and the lack of any private benefit either to themselves or anyone connected with them (and where applicable their policies on working with vulnerable people) (Form CC5c). They can then apply to the [Commission online](#).
18. Existing unincorporated charities can also convert to a CIO, using the same process. Any assets must be transferred, and the unincorporated charity will be dissolved after a short interval. The CIO will have a new number and must update its literature.
19. In time, charitable CLGs and Industrial and Provident Societies may be able to convert to CIOs but the required regulations are not expected before 2015. A Community Interest Company (CIC - which by definition is not a charity) is also not yet able to convert to a CIO, but a CIO can set up a CIC as a subsidiary, provided that the CIC is not funded out of the CIO's assets.

20. **Amending the constitution:** The constitution may include certain clauses that are "entrenched" i.e. there are pre-conditions for their amendment, such as a special majority or consent from some other body or person - unless the amendment is ordered by a court, the Commission or by a resolution of all the members. The model constitutions do not provide for entrenchment as standard but this can be added.
21. Once incorporated, a CIO can amend its constitution ([Charities Act 2011 s.224](#)), by either a 75% majority of votes at a general meeting or a unanimous written resolution. Commission consent is required for changes to the objects clause, voluntary winding up or dissolution clause and any clause conferring a benefit on a trustee or member of the CIO. The Commission must be notified of any change within 15 working days of the resolution.
22. **Dissolution:** The members can dissolve a CIO by making a dissolution resolution at a general meeting held on not less than 14 days' notice, if a 75% majority of members agree to it - or without a vote provided that no members at the meeting oppose the resolution. The trustees must declare on dissolution that all debts and liabilities of the CIO have been settled or otherwise provided for in full, and a statement must be made as to how the property and rights vested in the trust will be applied following dissolution. The distribution of rights and assets must follow the CIO's constitution.
23. Following the application to the Charity Commission for dissolution (details of how to apply can be found on the [Charity Commission website](#)), a copy of the resolution agreeing to the dissolution of the CIO must be provided to each member, employee and trustee within 7 days. The Charity Commission will publish a notice stating that they have received the application, and the CIO will be dissolved and removed from the register after three months.

24. **Summary of Advantages and Disadvantages:**

25. **Pro's:** CIOs:

- a. are designed specifically for charities;
- b. have one of two ready-made constitutions to follow;
- c. have a single regulator;
- d. do not have to comply with company law;
- e. protect the trustees from most liabilities (other than breaches of trust and strict liability offences, against which no structure gives protection);
- f. protect members from liability except for any nominal amount specified.

26. **Con's:** CIOs:

- a. don't exist until registered;
- b. must (largely) adopt one of the two prescribed constitutions;

- c. have 'members', even if those are only the trustees;
 - d. can be confused by this and by the options offered in the model constitutions;
 - e. may be unfamiliar to funders;
 - f. will not be attractive to existing charitable CLGs;
 - g. must register with, and report to, the Commission regardless of size;
 - h. must comply with additional disclosure requirements;
 - i. cannot be exempt charities.
27. Some charities that converted to a CIO early on found that there were costs to conversion that they had not allowed for. One decided that to alter all of their literature and fundraising material was too much work and that to change the number would be confusing for their loyal donors. Another found that transferring assets was "a bit more complicated" than they had thought, and that some funders were less than helpful when it came to transferring to the CIO mid-way through a period of funding.
28. **Take-up:** But the CIO has proved to be a very useful and popular vehicle for those trustees of new or existing charities who are concerned to protect themselves from personal liability. As of the end of May 2014, 1860 charities had registered as CIOs, which indicates a healthy uptake of more than 100 per month since CIOs began.

Key Acts

Charities Act 2011

Key Subordinate Legislation

The Charitable Incorporated Organisations (General) Regulations 2012

The Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012

The Charity (Tribunal) Amendment Order 2012

The Charitable Incorporated Organisations (Consequential Amendments) Order 2012

The Charities Act 2011 (Charitable Incorporated Organisations) (Constitutions) Regulations 2012 (made by the Charity Commission)

Key Cases

None

Key Texts

None

Further Reading

None