



Charitable Incorporated Organisations for church charities (March 2013)

A Joint Church Growth Trust, Stewardship and Partnership Briefing Paper

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Table of contents

1	Background	4
2	What is a CIO?	4
3	The advantages of a CIO	4
4	The disadvantages of CIOs	5
5	The Timetable for the registration of a CIO	5
6	How to register a CIO	6
7	Conversion of an existing non-company charity to a CIO	8
8	Conversion of a charitable company to a CIO	9
9	Conversion of an Industrial and Provident Society to a CIO	9
10	Registers of charity trustees and of members	9
11	Dissolution of a CIO	10
12	Transferring a CIO's undertaking to another CIO	10
13	Conclusion	11
	Appendix – Charities Act 2011 Sections 1-4	12
	Contact Details and Further Information:	14

1 Background

Up until now there have been four legal structures most commonly used for the formation of a charity, namely a Trust set out in a Trust Deed, an Unincorporated Association with a Constitution, a Company limited by guarantee with Articles of Association and an Industrial and Provident Society which has a set of Rules. The choice of which structure to use depends on various factors such as the need for simplicity, the expected financial size of the charity, the degree of need for limited legal liability of trustees, the need to own and hold property, the degree of need for a democratic process to make decisions and the need for a membership separate from the trusteeship. All these structures suited these needs to a greater or lesser extent, so for example the Trust has the attraction of simplicity whilst the Company limited by guarantee has the advantage of limited liability for trustees and members and the ability to hold property without the need for transfer when trustees change.

Now a new legal structure called a Charitable Incorporated Organisation (“CIO”) has been made available after a prolonged gestation period through consultation and legislation. The Charitable Incorporated Organisations (General) Regulations 2012 and the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012 under the Charities Act 2011 provide the basis for them in England and Wales. Since the 2nd January 2013 it has been possible for the Charity Commission to register CIOs.

This paper deals only with CIOs in England and Wales. CIOs in Scotland are dealt with under separate legislation which has been in force since April 2011. Their rules are slightly different from the rules in England and Wales.

2 What is a CIO?

The CIO is a new corporate structure designed specifically for charities and nothing else. Although corporate, it is not a company and it will not be registered at Companies House. It will be registered only with the Charity Commission (the “CC”). However it will, like a company, be a legal person in its own right, separate from the trustees and members who manage and make decisions about the CIO’s affairs. Like a company it can also have a membership separate from the trustees if that is appropriate in the circumstances.

3 The advantages of a CIO

The advantages of a CIO are not all exclusive to CIOs, but this is the first time they have all been gathered together as features of one particular structure. They are:-

- 3.1 The members and trustees are, in the absence of wrongdoing, safeguarded from personal liability for the debts and obligations of the CIO. This is not the case for trusts and unincorporated associations.
- 3.2 The CIO will hold property (e.g. its offices and premises, bank accounts and investments) in its own name, so that there is no need for these to be transferred into the names of continuing or new trustees when a trustee retires or a new trustee is appointed. This will save the trouble and expense (e.g. land registry fees and legal costs) incurred by trusts and unincorporated associations in transferring the assets on a change in trusteeship.

- 3.3 The only regulator for a CIO will be the CC, to which accounts and returns will have to be sent in the same way that accounts and returns are sent by other registered charities, but no accounts and returns will be sent to Companies House.
- 3.4 Where the annual income of the CIO is less than £250,000 the accounts may be prepared on a Receipts and Payments (“cash”) basis, whereas accounts for all charitable companies have to be prepared on an Accruals basis.
- 3.5 A CIO and its trustees will be required to observe the law relating to charities in the usual way, but they will not be required to observe company law as well in the way that charitable companies limited by guarantee are. There are a few exceptions to this in that some rules relating to CIOs are the same as those relating to companies (e.g. the offence of fraudulent trading), but on the whole the crossover from company law is very limited.
- 3.6 A CIO may enter into the same type of transactions as a natural person, such as entering into contracts, employing staff, incurring debts, owning property (including leases and tenancies), suing and being sued. The charity trustees do not have to enter into these transactions personally in the way that they do as trustees of a trust, and accordingly there may be advantages for the charity trustees of a CIO in relation, for example, to the employment of staff.

A general point to make clear under this topic is that, although trustees of a CIO are not personally liable for the debts and obligations of the CIO, they are still liable personally if they act in breach of trust or act illegally or outside the powers of the CIO. They have the same personal liability for such matters as they do with any other charity structure, whether incorporated or not.

4 The disadvantages of CIOs

There are some minor disadvantages of CIOs over existing structures, which include:

- 4.1 There is likely to be an initial public awareness gap.
- 4.2 All CIOs will have to file accounts and reports, whereas very small unincorporated charities (under £25,000 income) do not.
- 4.3 An unincorporated charity is simpler and easier to set up and operate (although this is thought to be a marginal issue).

5 The Timetable for the registration of a CIO

In view of expected demand the CC will not accept all applications for CIOs to be registered immediately. There will be a phased introductory period whereby brand new charities and the larger unincorporated charities will be accepted first according to the following timetable:-

Timetable Date	Which charities can apply?
From 10 th December 2012	Brand new charities with anticipated annual income of over £5000
From 1 st March 2013	Unincorporated existing charities with annual income over £250,000

From 1 st May 2013	Unincorporated existing charities with an annual income between £100,000 and £250,000
From 1 st July 2013	Unincorporated existing charities with an annual income between £25,000 and £100,000
From 1 st October 2013	Unincorporated existing charities with an annual income between £5,000 and £25,000
From 1 st January 2014	Unincorporated existing charities with incomes of less than £5,000 and brand new charities with annual income of less than £5,000
During 2014	Corporate conversions of companies and industrial and provident societies into CIOs will be possible – regulations for this have to be made and so the timing is uncertain.

6 How to register a CIO

The basic process of registration of a CIO at the CC is similar to the process for registration of any other charity, in that it will be necessary to lodge online an application form, a trustee declaration, proof of income and the signed governing document. It is in relation to the governing document that we have something new and different. To facilitate registration, and because it is unclear at present whether it is mandatory to follow the model constitutions provided by the CC or not, it would be prudent to follow one of the two model constitutions published by the CC and which are available to be downloaded with guidance notes on the CC website (see below for links). Both models are similar to the articles of association of a charitable company, but rather more simply written and shorter.

One of the model constitutions is called the Foundation Model, which provides for the trustees and members to be the same people. The other model constitution is called the Association Model, which provides for the trustees to be different or partly different from the members. Churches forming a CIO will need to choose which model they wish to adopt. If the trustees will have some direct accountability to a separate membership (as in the case of some types of church), the Association Model would be appropriate. If they wish the trustees to be more or less autonomous (as in so-called 'leader-led' churches), the Foundation Model would be appropriate. There will sometimes be situations where the balance of authority is somewhere in between so care will have to be taken in choosing between the two models. There is a provision in the two model constitutions for associate membership and byelaws. Both of these facilities i.e. associate membership and the incorporation of bye laws, could be adopted to make appropriate provision for the balance of authority within a particular church structure.

The form of each model constitution can be varied "as the circumstances allow", to use the CC's phrase and this will allow for qualifications as to trusteeship and membership to be laid down by churches, but it is not at present clear how much variation of the model will actually be permitted. No doubt we will learn more by experience and by dialogue with the CC.

The model constitutions contain provisions for the following:-

- The name of the CIO.

- Whether the principal office is in England or Wales.
- The objects for which the CIO is formed which must comply with the range of charitable purposes shown in Sections 2 to 4 of the Charities Act 2011 (see appendix for details).
- The powers of the CIO such as borrowing, owning property, employing staff and investing funds. These are examples but the CIO has power in any event “to do anything which is calculated to further its objects or is conducive to doing so”. More specifically stated purposes are more for emphasis and confirmation than essential, and the more specific they are the greater the possibility that they may prove to be constraining in practice. One important point about the powers of a CIO, which at one stage in their development was in doubt, is that they will have power to grant mortgages over their land and buildings to secure borrowings.
- Indemnity insurance for the trustees.
- Remuneration for trustees and “connected persons” (e.g. family members), subject to limitations and conditions (those using the models will have to choose between the three options offered in the model, according to what would be appropriate in their circumstances).
- Management of conflicts of interests of trustees.
- Liability of members to contribute to CIO funds – usually this is limited to a nominal amount such as £10, but could be nil.
- The functions and duties of trustees, the eligibility of trustees, the minimum and maximum number of trustees and their term of office, the retirement and removal of trustees. The names of the first trustees must be shown. The CC strongly recommend at least three trustees who are not connected by family relationships.
- The trustees' decision-making process by meeting or written resolution.
- Membership and informal or non-voting membership.
- Meetings of members and their decision-making process.
- Signing of Documents.
- Use of electronic communications between the CIO and its trustees and members. The constitution must say if the CIO is to use electronic communication or a website as the means of communicating with trustees and/or members.
- The keeping of registers for trustees and members.
- The keeping of minutes to record decisions by trustees and members.
- The making of rules and byelaws.

- Amendment of the constitution by at least a 75% majority of the members voting at a general meeting, although the prior written consent of the CC is required for certain major amendments such as an alteration of the objects of the CIO.
- Voluntary winding up or dissolution and, as in the case of amendment of the constitution, there must be at least a 75% majority vote of members to commence voluntary winding up of the CIO.

The model constitutions provide a basic format but this will no doubt need amendment for an individual church charity, to incorporate important matters such as a doctrinal statement and perhaps certain practices such as Baptism and the Lord's Supper. It is expected that it will be possible to add these requirements.

At the present time there is no fee payable to the CC on application to register a CIO.

7 Conversion of an existing non-company charity to a CIO

There is no statutory provision for the conversion of an existing unincorporated charity, such as a church charity which is now a trust, to a CIO. Thus, if a church is currently run as a charitable trust and wishes to become a CIO it will have to take the following steps:

- Establish a new CIO and register it with the CC.
- Transfer the assets and undertakings of the trust - to the CIO and settle any liabilities or, if the liability is a mortgage loan and cannot be settled, then arrangements will have to be made with the lender to allow the transfer of the mortgaged property to the CIO and for the CIO to mortgage it again to the lender.
- Dissolve the trust in accordance with its provisions.
- If the unincorporated charity is likely to be a future recipient of a legacy or legacies, or if it is likely to continue to receive gifts made to it after the assets etc. have been transferred to the CIO, the CIO should register the transfer on the Charity Commission Register of Mergers. By doing this, any legacies received by the former charity will be able to be paid to the new CIO, rather than legally failing. Registration is via an online application form on the Charity Commission website.
- Apply to the CC to have the trust taken off the register of charities.
- The CIO will need to make sure that new arrangements are made with the church's bankers and suppliers and that employees are formally notified of the transfer in accordance with employment legislation.
- If the unincorporated charity is eligible to participate in the Gift Aid Small Donations Scheme (which allows a Gift Aid style top up payment in respect of small cash donations), the new CIO can apply to HMRC to have the 'old' charity's compliance record 'transferred' to it, enabling it to be eligible for the Scheme immediately. The application must be made within the stipulated time limit which, in general terms, will be no more than 90 days after the CIO begins to carry on the activities of the old charity.

8 Conversion of a charitable company to a CIO

The Charities Act 2011 allows for the conversion of an existing charitable company (usually a company limited by guarantee) to a CIO. Under the procedure the legal entity will remain in being, but will change its status from a charitable company registered at Companies House to a CIO simply registered with the CC. However, no statutory regulations have yet been made for this process. It is hoped that the process will be available in 2014 when the government has made the necessary regulations. It is likely that some church charities, which are companies limited by guarantee, will wish to avail themselves of this facility when it is available. The arguments for doing so are to avoid the double regulation entailed in being a company as well as a registered charity, as the key advantages of substance outlined in section 3 above are already enjoyed by being a company limited by guarantee. The administrative effort required to make the conversion might not produce great gain, therefore.

Many churches have buildings which are what is known in charity law as permanent endowment. This means that the buildings cannot be sold or, if they can be sold, the proceeds have to be used for the acquisition or construction of new buildings to be used for the same purpose as the old buildings. Buildings subject to this type of restriction are held on special trusts. For example, the church buildings may be held by trustees on separate trusts which require the buildings to be used for religious worship in a particular place by a specified group of people and the power of sale is conditional on the proceeds being used to purchase a new site for a church building to be used for the same purposes and not otherwise. In these circumstances the permanent endowment buildings can, subject to any requirements for a minimum number or qualifications of trustees in the trust deed, be transferred to the CIO as corporate trustee of the permanent endowment buildings.

9 Conversion of an Industrial and Provident Society to a CIO

Industrial and Provident Societies are at present exempt from regulation by the CC and so they cannot use the conversion process to become a CIO. There are apparently plans for them to cease to be exempt and enable them to convert to a CIO but this is likely to be some way off.

10 Registers of charity trustees and of members

Every CIO must keep a register of trustees which must show:

- The name of the trustee.
- The service address for the trustee (i.e. the address for correspondence).
- The date on which the person became a charity trustee.
- The date on which the trustee ceased to be a trustee (when relevant).

Anyone can inspect or ask for a copy of all or part of the register on payment of a reasonable fee to cover the costs of providing the information; although a trustee or member does not have to pay a fee.

A register of members must also be kept which must show:

- The name of the member.
- The service address of the member.
- The date on which the person became a member.
- If the CIO has more than one class of member a statement as to which class the member belongs to.
- If relevant, the date on which the person ceased to be a member.

Members and trustees can inspect or request a copy of the register of members free of charge.

11 Dissolution of a CIO

It is discouraging to think of the termination of a CIO before it has begun, but there is a procedure whereby a CIO can take itself off the register of CIOs held by the CC. The conditions are:

- all debts and liabilities of the CIO must have been settled or provided for.
- a dissolution resolution is passed by a general meeting of the members by at least a 75% majority of those voting. Alternatively, the members could agree in some other way to dissolve the CIO, for example, by a written resolution signed by all of them. Any decision to dissolve that is not made by resolution at a general meeting has to be unanimous.
- the trustees must make a declaration (a) that any debts and other liabilities of the CIO have been settled or provided for and (b) setting out the way in which surplus property has been or will be distributed to another charity or charitable purpose.
- the trustees must within seven days of applying to the CC for dissolution give a copy of the resolution to every member and employee and every charity trustee who was not a party to the application for dissolution.
- unless there is a representation objecting to the dissolution which is accepted by the CC as a good reason to block the dissolution, the CC will remove the CIO from the register of CIOs after three months.

12 Transferring a CIO's undertaking to another CIO

Again it may seem premature to be thinking about transferring a CIO's assets and undertaking to another CIO, but for completeness it is worth describing the provision which allows a CIO to transfer its operation to another CIO. To do this, the following steps are required:

- A meeting of members is called at which a 75% majority resolve that the CIO's operation is transferred to another CIO or in some other way (e.g. by written resolution all the members agree unanimously to transfer the CIO's operation to another CIO).

- The CIO sends to the CC a copy of the members' resolution agreeing to the transfer and a copy of the resolution by the transferee CIO agreeing to the transfer to it.
- The CC can direct the transferor CIO to give public notice of the proposed transfer and the transferor CIO must take account of any representations made within 28 days.
- The CC must then within six months decide whether they confirm or refuse the transfer. The six months is counted from the date they receive the resolutions or the date of commencement of the 28 day public notice period and the CC can extend this six month period by another six month period or less if necessary.
- The CC must refuse to confirm the resolution if there is serious risk that the transferee CIO would be unable to properly carry out the purposes of the transferor CIO. They may also refuse to confirm the resolution if certain provisions in the constitution of the transferee CIO are not the same or substantially the same as in the transferor CIO. These are the purposes of the CIO, the application of property on dissolution and benefits to trustees, members and connected persons (e.g. family members).

The property, rights and liabilities of the transferor CIO are immediately transferred to the transferee CIO when the CC confirm the resolution and the transferor CIO is automatically dissolved.

13 Conclusion

CIOs are likely to be popular in general in the formation of charities but it remains to be seen just how flexible the CC will be in accepting additions to or amendments of their model constitutions to adapt them to the requirements of churches.

Appendix – Charities Act 2011 Sections 1-4

Section 1 Meaning of “charity”

- (1) For the purposes of the law of England and Wales, “charity” means an institution which:
 - (a) is established for charitable purposes only, and
 - (b) falls to be subject to the control of the High Court in the exercise of its jurisdiction with respect to charities.

- (2) The definition of “charity” in subsection (1) does not apply for the purposes of an enactment if a different definition of that term applies for those purposes by virtue of that or any other enactment.

Section 2 Meaning of “charitable purpose”

- (1) For the purposes of the law of England and Wales, a charitable purpose is a purpose which:
 - (a) falls within section 3(1), and
 - (b) is for the public benefit (see section 4).

- (2) Any reference in any enactment or document (in whatever terms):
 - (a) to charitable purposes, or
 - (b) to institutions having purposes that are charitable under the law relating to charities in England and Wales,is to be read in accordance with subsection (1).

- (3) Subsection (2) does not apply where the context otherwise requires.

- (4) This section is subject to section 11 (which makes special provision for Chapter 2 of this Part onwards).

Section 3 Descriptions of purposes

- (1) A purpose falls within this subsection if it falls within any of the following descriptions of purposes:
 - (a) the prevention or relief of poverty;
 - (b) the advancement of education;
 - (c) the advancement of religion;
 - (d) the advancement of health or the saving of lives;
 - (e) the advancement of citizenship or community development;
 - (f) the advancement of the arts, culture, heritage or science;
 - (g) the advancement of amateur sport;
 - (h) the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;
 - (i) the advancement of environmental protection or improvement;
 - (j) the relief of those in need because of youth, age, ill-health, disability, financial hardship or other disadvantage;
 - (k) the advancement of animal welfare;
 - (l) the promotion of the efficiency of the armed forces of the Crown or of the efficiency of the police, fire and rescue services or ambulance services;
 - (m) any other purposes:
 - (i) that are not within paragraphs (a) to (l) but are recognised as charitable purposes by virtue of section 5 (recreational and similar trusts, etc.) or under the old law,

(ii) that may reasonably be regarded as analogous to, or within the spirit of, any purposes falling within any of paragraphs (a) to (l) or sub-paragraph (i), or
(iii) that may reasonably be regarded as analogous to, or within the spirit of, any purposes which have been recognised, under the law relating to charities in England and Wales, as falling within sub-paragraph (ii) or this sub-paragraph.

(2) In subsection (1):

(a) in paragraph (c), “religion” includes—

- (i) a religion which involves belief in more than one god, and
- (ii) a religion which does not involve belief in a god,

(b) in paragraph (d), “the advancement of health” includes the prevention or relief of sickness, disease or human suffering,

(c) paragraph (e) includes:

- (i) rural or urban regeneration, and
- (ii) the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities,

(d) in paragraph (g), “sport” means sports or games which promote health by involving physical or mental skill or exertion,

(e) paragraph (j) includes relief given by the provision of accommodation or care to the persons mentioned in that paragraph, and

(f) in paragraph (l), “fire and rescue services” means services provided by fire and rescue authorities under Part 2 of the Fire and Rescue Services Act 2004.

(3) Where any of the terms used in any of paragraphs (a) to (l) of subsection (1), or in subsection (2), has a particular meaning under the law relating to charities in England and Wales, the term is to be taken as having the same meaning where it appears in that provision.

(4) In subsection (1)(m)(i), “the old law” means the law relating to charities in England and Wales as in force immediately before 1 April 2008.

Section 4 The public benefit requirement

(1) In this Act “the public benefit requirement” means the requirement in section 2(1)(b) that a purpose falling within section 3(1) must be for the public benefit if it is to be a charitable purpose.

(2) In determining whether the public benefit requirement is satisfied in relation to any purpose falling within section 3(1), it is not to be presumed that a purpose of a particular description is for the public benefit.

(3) In this Chapter any reference to the public benefit is a reference to the public benefit as that term is understood for the purposes of the law relating to charities in England and Wales.

(4) Subsection (3) is subject to subsection (2).

Contact Details and Further Information:

Model Charity Commission CIO Documents and Guidance

Foundation Model:

<http://www.charity-commission.gov.uk/Library/guidance/CIO-FoundationModelConstitution.pdf>

Association Model:

<http://www.charity-commission.gov.uk/Library/guidance/CIO-AssociationModelConstitution.pdf>

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