



# Guide to the Model CIO

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## 1. Introduction

This guide is produced to help independent evangelical churches use the Model Charitable Incorporated Organisation (CIO), which has been produced by Partnership, Church Growth Trust and the Western Counties and South Wales Evangelization Trust and has been accepted by the Charity Commission when used by churches. This should also help churches/assemblies with the process of registering the new CIO.

The model is based on the Foundational Model, where the trustees are the only members. It is designed for elder-led churches, rather than congregational-model churches.

## 2. What is a Charitable Incorporated Organisation?

Previously churches and Christian charities have been restricted to a number of charity structures that they can use, with the most common being an Unincorporated Association, a Trust and a Company Limited by Guarantee. The Charitable Incorporated Organisation (CIO) was introduced as a new legal structure by the Charities Act 2006 (now included within the Charities Act 2011). CIOs came into being in England and Wales in 2012. It is specifically and expressly designed as a charity structure. Like a company it has a legal identity of its own. Unlike a company it is not registered with Companies House. It is registered only with, and indeed comes into existence by registration with, the Charity Commission. It is a suitable structure for small to medium sized charities and can be used for large charities as well, but may not be the most suitable form of structure for a large charity.

## 3. Advantages of CIOs

There are a number of advantages of CIOs compared with other legal structures including:

### 3.1 Limited liability

There are two types of liability which charities or their trustees may incur; the first being debts and liabilities to third parties (in the same way as any other organisation) and the second being a breach of trust. With the first type, where the charity has debts and obligations to third parties (e.g. when they enter into a building contract or take on a mortgage, loan or employ people), a charity formed as a Trust (or an Unincorporated Association) does not have a legal identity of its own, so these liabilities fall upon the trustees personally. On the other hand, if the charity has the structure of a Company Limited by Guarantee or a CIO it is the Company or the CIO itself which has such liabilities and the individual trustees do not have that personal liability (except in limited circumstances such as for certain health and safety issues). Trustees will also be personally liable if they enter into personal guarantees for their charity's contracts. This protection from personal liability for trustees and shifting it to the charity itself is clearly a great advantage for companies and CIOs.

### 3.2 Holding property and investment

Both a company and a CIO hold property in their own name; therefore, there is no need to keep changing the names on the title when trustees retire or die or when new

trustees are appointed. This is not the case with Trusts and Unincorporated Associations which often lose track of trustees and so cannot deal with property when it is necessary. This potential problem is in addition to the possible problem of having insufficient active trustees to form a quorum for meetings and decision making. If the title to property is not kept up to date this can cause serious delay when for example the trustees wish to sell or mortgage the property. Charities which are companies or CIOs will not suffer with this problem. The Land Registry cannot register the appointment of new trustees without a transfer being signed by all those (whether they are currently trustees or not) on the register of the title, but with Companies and CIOs holding property these formalities and their related expense are not required on a change of trustee.

### **3.3 Companies law compliance**

A Company Limited by Guarantee must comply with all of Company Law and must send in an annual return and accounts to Companies House, but a CIO does not have to do any of these things as it is only registered with the Charity Commission and is not subject to Company Law (except in very limited circumstances with regard to wrongful trading). A CIO does have to comply with Charity Law as does a Company Limited by Guarantee. However, a CIO will be required to provide an annual return and accounts (subject to having income above £25,000 per annum) to the Charity Commission.

### **3.4 Accounting rules**

Where the annual income of a CIO or Trust is less than £250,000 per annum 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. Where the annual income of charitable trusts or CIOs is less than £250,000 per annum they will be able to make use of a simpler basis of accounts under the Statement of Recommended Practice for Charity Accounting.

### **3.5 Simplicity**

Trusts are simpler to set up and operate than either Companies or CIOs and consequently are a little less expensive to form and operate. CIOs will be a little less expensive to operate than Companies, because they do not have to comply with Company requirements for filing documentation and accounts with Companies House. Penalties are levied for late filing of documents with the Companies House, but this is not so at present for CIOs or Trusts when filing accounts or Annual Returns with the Charity Commission. Indeed, there are currently no filing fees at the Charity Commission.

## **4. Forming and registering CIOs**

Normally charities are unable to register as a charity with the Charity Commission unless their income is more than £5,000 per year. If they wish to obtain tax advantages (e.g. Gift Aid) they will need to register with the Charity Commission when their annual income is over

£5,000. In the case of a CIO it has to be registered with the Charity Commission in order to be formed, so it must be registered even if its income is less than £5,000 per year.

All applications for registration with the Charity Commission have to be made online on the Charity Commission's website. This registration process is complicated and there are a number of common problems, including:

#### **4.1 Not knowing the questions in advance**

Unfortunately, it is not possible to see the questions and information required prior to starting the registration process and often the process can be slowed up by trustees having to find information after they have started the application process.

#### **4.2 Information required**

The Charity Commission require various pieces of information to be provided as part of the application. Trustees do not know what information until they start to complete the online application forms.

#### **4.3 Bank account**

The Charity Commission appears to require the charity to have a bank account before registering, but it is difficult to open a bank account in the name of the CIO when it does not yet legally exist.

#### **4.4 Provision or use of a building**

There seems to be an assumption that the church will have use of a church property for its activities. If the church does not have use of a specific building this may cause complications with the application.

#### **4.5 Charging for services**

If the church charges for some of its services (e.g. asking for a contribution towards the cost of providing lunches or making a charge for a toddlers group) the trustees will be asked to justify the charge and comment on whether it is affordable for the poor.

#### **4.6 Supporting overseas work**

Often churches are supporting missionaries or have established links with overseas churches. Care needs to be taken when mentioning these matters, as the Charity Commission will ask for evidence of how the church will monitor, verify and account for the work and any gifts made to the work.

#### **4.7 Beliefs and practices**

It is helpful to have statements of belief (and practices) included in the CIO or to be able to refer to them. If these are fairly standard Evangelical beliefs and practices this should be made clear (e.g. referring to the Evangelical Alliance's basis of faith). Some suggested doctrines and practices are included in the pack.

## **4.8 Payment of trustees**

Trustees are generally not allowed to be paid for being trustees. However, there are situations where a trustee (or a close relative of a trustee) may be paid as an employee or self-employed contractor (providing services) for the charity. This is considered to be a benefit and will need to be specifically permitted by the CIO and explained in the application.

For these reasons it is recommended that the application is carried out by an organisation that is used to this work and will be able to inform the charity trustees of the information required before registration takes place and will help trustees through the process (see Section 9 below).

## **5. Property Trusts**

With many independent churches the church property is held under a separate property Trust. In some cases this Trust will include the operation and management of the church congregation/assembly and a new charity will not be required. Where the property Trust does not include the assembly, the Model CIO can be used for forming and registering the church/assembly as a separate charity. As the property Trust will often set out requirements for any occupying church/assembly to operate under certain doctrines and practices, it is helpful (and in many cases necessary) to incorporate these in the CIO. The Schedule to the Model CIO has a standard Statement of Beliefs and Practices, which can be used or amended to suit trustees' requirements.

In some cases it may be possible to transfer the property from the property Trust to the new CIO, so that all the assembly's assets are held under the same charity. Even where this is not allowed or desirable, it may be possible to appoint the CIO as the corporate trustee of the property Trust. Advice should be sought on this before taking any action.

## **6. Public benefit**

A charity must have charitable objects/purposes that must be for the public benefit, of which there are two elements. There must be a benefit and it must be to the public. The benefit must be identifiable and capable of being proved by evidence where necessary. It must not be based on personal views. Often benefit is so obvious that no proof is required, as in emergency relief or medical help. The advancement of religion is in itself considered to be charitable, but when seeking to register a church charity details need to be provided of specific benefits to the community provided by the church.

The benefit must provide benefit to the public in general or to a sufficient section of the public. The public in general means that all of the public can benefit from the purpose and it is not limited to people with a particular need or who have to satisfy some criteria. So if worship services or teaching are open to the public, especially if without charge, the benefit is provided to the public in general and satisfies the public benefit requirement.

The Model CIO sets out a standard and simple object for the charity. It is recommended that a single broad object is stated, as the Charity Commission will require evidence of how each object will be fulfilled.

## 7. Exclusive or Open/Christian Brethren

There has recently been a case where the Charity Commission have questioned the public benefit of Exclusive Brethren Trusts and, for Open/Christian Brethren assemblies or those with Brethren roots, this can sometimes cause difficulties when trying to register. It is important therefore to make it clear to the Charity Commission that there is a distinction between the Exclusive Brethren and the Open/Christian Brethren. The paper produced by Partnership and Church Growth Trust “The Brethren movement – a briefing note (January 2013)” is available on Church Growth Trust’s website and can be submitted as part of the registration process. The Charity Commission also recommend that assemblies indicate in the “Special Circumstances” section of the registration application form that they are Open or Christian Brethren churches/assemblies, in order for the Charity Commission to see the distinction.

## 8. Assets (and liabilities) from the existing charity

Often the CIO is being set up to provide a governing document for an existing charity, which has never had charity structure formalised. However, it is may be considered that the old unincorporated charity and the new CIO are two separate charities and therefore the assets (and liabilities) of the old charity will need to be transferred to the new CIO. This is a separate legal transaction and another reason for involving solicitors.

## 9. Explanatory notes and colouring on model

The Model CIO pack includes a paper showing the Model CIO with explanatory notes in the margin. This will help trustees to understand the relevance of the different sections/clauses of the Model and will also help them make a decision when there are options to choose from. The Model CIO is in a Word format, so that this can be amended. The Model has been based on the Charity Commission Foundational Model. It therefore shows all the changes from the Charity Commission model in red and the options for additional changes in mauve. It may be useful to include in your application a copy with the changes to show the Charity Commission what these are. An example set of evangelical doctrines and practices are included in the model.

## 10. Help with registration

General advice on the Model CIO can be obtained from Partnership, Church Growth Trust or the Western Counties and South Wales Evangelization Trust (contact details are shown above). As the online registration process is complicated, it is recommended that organisations with experience of charity registration should be used. Special rates have been negotiated with a number of organisations as follows:

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