



Department for  
Business, Energy  
& Industrial Strategy

Office of the Regulator of Community  
Interest Companies: Information and  
guidance notes

Chapter 11: The Regulator

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# 11.1. Approach to regulation

[The Companies \(Audit, Investigations and Community Enterprise\) Act 2004](#) (‘the CAICE Act’) established the Regulator as an independent statutory office-holder appointed by the Secretary of State. The Regulator’s appointment was subject to an open public recruitment process monitored by the Office of the Commissioner for Public Appointments. The Regulator’s powers and duties are set out in the CAICE Act and CIC Regulations 2005.

The CAICE Act requires the Regulator to discharge the Regulator’s functions in accordance with good regulatory practice.

The Regulator must, in particular, have regard to:

- the likely impact of the Regulator’s actions on those affected
- the results of consultation with stakeholders
- the efficient and economic use of her resources

The Government has indicated that it expects a “light touch” Regulator to encourage the development of the Community Interest Company (CIC) “brand” and provide guidance and assistance on matters relating to CICs.

Much of the Regulator’s time is spent considering the registration, or conversion, documents for new CICs referred to the Regulator, by the Registrar of Companies, to decide whether the companies concerned are eligible to become CICs. The Regulator’s decision will be based on examination of the community interest statement, the registration documents such as the application form, Articles of Association and the appropriate resolutions in the case of a conversion. It is for the Regulator to ensure that the purposes of the company and its constitution comply with the CAICE Act and the Regulations and in particular to decide whether, in the Regulator’s view, it satisfies the community interest test (see Chapters 4, 5 and 6).

The Regulator sees the Regulator’s task as facilitating the formation of CICs. The Regulator will not take a bureaucratic approach and will through the Regulator’s office try to resolve any problems informally by e-mail, letter or telephone and is prepared to consider additional material submitted by letter. Provision of material by e-mail or letter cannot be a substitute for the completion of the appropriate forms and documents as only these are placed on the public file. The Regulator and the Regulator’s staff are happy to discuss general questions prior to an application being made but cannot advise on specific points, or prejudge decisions.

A similar approach will be taken to all other matters upon which the Regulator has to decide, such as, approval of a change to the objects of a CIC, or disposal of assets.

As a matter of good administrative practice, and in order to comply with the Regulator’s statutory obligations, the Regulator will consult those who are about to

be subject to the Regulator's decisions before making them, except where it would be inappropriate to do so – for example, in some cases, such as where there is a need to act immediately to safeguard a CIC's assets, consultation might undermine the purpose for which action is to be taken.

In matters that are not specific to particular companies, such as possible changes to the dividend and interest caps, the Regulator will consult stakeholders before taking action.

The light touch approach to regulation does not envisage pro-active supervision of individual CICs by the Regulator.

All CICs are required to file an annual CIC Report with their accounts which will be placed on the public register at [Companies House](#).

The filing of this CIC Report will not automatically make the Regulator aware of any cause for concern about a CIC, members or any other interested parties may also wish to draw such matters to her attention at any time.

The Regulator will consider the CIC Report and any complaints and, where necessary, may make further enquiries and take appropriate action. It may, however, often be possible to resolve issues in discussion with the interested parties.

## 11.2. Advice and guidance

[The CAICE Act](#) provides that the Regulator may issue guidance and otherwise provide assistance on matters relating to CICs and if necessary can be required to do so by the Secretary of State.

The Regulator is expected to consult stakeholders on the Regulator's guidance before it is issued. This consultation is undertaken informally and it is not intended that formal consultation documents will be issued. If therefore you have any particular points on the material issued by the Regulator or suggestions for other material that the Regulator might usefully issue you should write to the Regulator's Office.

Guidance material will be made available through this web site generally and these information and guidance notes in particular.

In April 2005 the Regulator's Office issued a short leaflet "CIC—The Key Facts" which has been updated and revised.

The Regulator and the Regulator's team have participated in numerous conferences and seminars on CIC or social enterprise related topics and are willing to consider suggestions to attend other events where they may be able to advance the public knowledge of CICs.

The Regulator and the Regulator's team are also available to discuss matters relating to CICs generally with interested individuals or organisations. However, they are not able to give advice about specific CICs or to prejudge decisions about CICs in advance of the submission of formal applications.

[Under the CAICE Act](#) the Regulator may charge fees for any service provided, other than those provided under a legal obligation or which the Regulator considers to be guidance of general interest. It is not the Regulator's current intention to charge any fees other than those dealt with in Chapter 4.

The provision of guidance material or other advice by the Regulator or the Regulator's office should not be seen as a substitute for professional advice on specific cases.

## 11.3 Investigations

[The CAICE Act](#) provides the Regulator with powers of investigation similar to the powers given to the Secretary of State under the Companies Act, which are used by Companies Investigation Unit (CIU) at the Department for Business, Energy & Industrial Strategy (BEIS).

The Regulator is also able to appoint auditors (at the Regulator's expense) to examine and report to the Regulator on the accounts of a CIC.

It is expected that these powers will only be used on rare occasions as a step to obtain necessary evidence to enable the Regulator to decide whether enforcement powers should be used.

These powers enable the Regulator to investigate the affairs of the company in relation to its CIC status; they do not replace the Companies Act powers. Where the Regulator considers that wider issues are raised, the case may be referred to CIU.

If you have a complaint about the conduct of a CIC which goes wider than regulation, and involves, for example, circumstances suggesting fraud, misconduct or dishonesty you should consider discussing the complaint with or writing to:

Companies registered in England, Wales or Scotland	Companies registered in Northern Ireland Insolvency Service
<p>Intelligence Hub Investigations and Enforcement Services Insolvency Service 3rd Floor Cannon House 18 Priory Queensway Birmingham B4 6FD</p> <p>Telephone: 0300 678 0015 Email: <a href="mailto:Intelligence.live@insolvency.gsi.gov.uk">Intelligence.live@insolvency.gsi.gov.uk</a> Website: <a href="https://www.gov.uk/government/collections/insolvency-service-investigations-and-enforcement-what-we-do-our-outcomes-and-complaints">https://www.gov.uk/government/collections/insolvency-service-investigations-and-enforcement-what-we-do-our-outcomes-and-complaints</a></p>	<p>Fermanagh House Ormeau Avenue Belfast BT2 6NJ</p> <p>Telephone: 028 902 51441 Email: <a href="mailto:mailto:insolvency@detini.gov.uk">mailto:insolvency@detini.gov.uk</a> Website: <a href="http://www.detini.gov.uk/deti-insolvency-index.htm">http://www.detini.gov.uk/deti-insolvency-index.htm</a></p>

It would, however, be of assistance if you also copy any written complaint to the Regulator's office. There are arrangements between CIU and the Regulator's Office to avoid unnecessary duplication of investigations.

The investigation provisions are set out in detail in section [42 and Schedule 7 of the CAICE Act](#) to which you should refer. The following is a brief summary:

The Regulator may carry out an investigation personally, appoint a member of the Regulator's staff to do so or appoint a third party, such as an accountant or lawyer.

The investigator may require the company or any other person to produce such documents (in whatever form) or provide such information as they may specify. Failure to comply with a requirement may be treated as Contempt of Court and provision of false information is a criminal offence. There are some qualifications to protect liens, and in relation to legal professional privilege and banking confidentiality.

The documents and information so obtained may be used in evidence in civil proceedings brought by the Regulator (or others) including proceedings against those producing the documents and providing information. They may also be disclosed to prosecuting authorities for consideration of possible criminal offences but there are restrictions on the extent that information may be used in criminal proceedings against the person providing it.



## 11.4. Enforcement

### 11.4.1. Basis of enforcement

As explained in Chapter 11.1 the light touch regulatory regime does not envisage a proactive supervision of CICs by the Regulator. The Regulator will, however, take account of all information and complaints received in respect of CICs, their activities and management, and where necessary seek further information. The Regulator will attempt where possible to resolve any problems informally with the CIC concerned but if this is not possible the Regulator will resort to the appropriate enforcement action.

[The CAICE Act](#) provides the Regulator with wide enforcement powers outlined below but constrains the use of these powers to the extent necessary to maintain confidence in CICs.

The powers will not therefore be used lightly and in general it is expected that the members and directors of a CIC will ensure that the CIC conducts its affairs honestly and in accordance with the law and its own constitution. It is likely that in most cases, any enforcement action will be preceded by a formal investigation of some kind (see Chapter 11.3).

It should be emphasised that the Regulator has no role as a referee to resolve differences between factions within a CIC; this is something they must resolve among themselves (if necessary, by recourse to legal proceedings or other formal means of dispute resolution). The Regulator's main concern is to ensure that the CIC continues to serve the community it was set up to benefit and that it is not operating in breach of the asset lock.

### 11.4.2. The enforcement powers

#### 11.4.2.1. To bring civil proceedings in the name of a Community Interest Company (CIC)

The Regulator can bring proceedings in the name of the company where its members, or directors, have failed to do so; for example where the company may have a claim for breach of duty against the directors.

#### 11.4.2.2. To Appoint or Remove directors

When a "default condition" has arisen (see [Chapter 11.4.2.8](#) below) the Regulator can order the dismissal and appointment of directors. This is intended to ensure that the board of the company has the expertise to remedy the default.

#### 11.4.2.3. To appoint a manager of a CIC

When a “default condition” has arisen (see [Chapter 11.4.2.8](#) below) the Regulator has the power to appoint a manager to take control of specified aspects of the company’s affairs that are giving cause for concern.

#### **11.4.2.4. To vest (in trust) the property of a CIC**

When a “default condition” has arisen (see [Chapter 11.4.2.8](#) below), the Regulator has the power to vest in trust the property of the CIC. This is intended to provide a means of protecting the assets of a CIC if they are seen to be at risk. The Regulator has to appoint one of the Regulator’s staff as Official Property Holder who, under the direction of the Regulator, will deal with the property on behalf of the company.

#### **11.4.2.5. To order the transfer of shares/to extinguish an interest in a company limited by guarantee**

If it appears to the Regulator that the company is an “excluded company” (that is a company which is considered a political organisation under the CIC Regulations), the Regulator may, in certain circumstances, order the transfer of shares (where the company is a company limited by shares), or the transfer of an interest (where the company is a company limited by guarantee) to specified persons.

#### **11.4.2.6. To present a petition to the Court for the winding up of a CIC**

The Regulator may present a petition to the Court who may wind up the company if it is of the opinion that it is just and equitable to so do. The Regulator would present such a petition if the Regulator formed the view that it was in the public interest for the company to be wound up i.e. its activities brought to an end and the assets distributed according to law

#### **11.4.2.7. To apply to the Court for the CIC to be restored to the Register**

If a company is dissolved or struck off its assets become “bona vacantia” and pass to the Crown or the Duchies of Lancaster or Cornwall. By applying to the Court to get a CIC which has been dissolved or struck off to be restored to the Register the Regulator will be able to safeguard the assets for the benefit of the community.

#### **11.4.2.8. The Default Condition**

The default condition arises where:

- (a) there has been misconduct, or mismanagement, in the administration of the company;
- (b) there is a need to protect the company’s property, or to secure the proper application of the property;
- (c) the company is not satisfying the community interest test; or
- (d) if the company has community interest objects, the company is not carrying on any activities in pursuit of those objects.

The above notes give very brief descriptions of complex subjects and for a full understanding you will probably need to seek professional advice.

## 11.5. Accountability of the Regulator

The independence of the Regulator is fundamental to the system but to ensure transparency the Regulator is required to present an annual report on the exercise of the Regulator's functions to the Secretary of State who will lay the report before Parliament. A copy of the report will then be placed on this website.

The Secretary of State may also direct the Regulator to prepare financial accounts. These will be examined and reported upon by the National Audit Office and included in the report.

The period of the Regulator's report and accounts is the 12 months beginning with the 1 April. The first report therefore covers the period 1 April 2005 to 31 March 2006.

The Regulator must also supply the Secretary of State with such other reports and information relating to the Regulator's exercise of the Regulator's functions as the Secretary of State may require.

Parliamentary Questions relating to the activities of the Regulator should be addressed to the Secretary of State. The Permanent Secretary of the Department for Business, Energy and Industrial Strategy (BEIS) is the accounting officer for the Regulator's expenditure and income.

The Parliamentary and Health Service Ombudsman can consider and investigate complaints of alleged maladministration about the Regulator and the Regulator's Office. Such complaints can only be considered if they are submitted to the Ombudsman by the complainant's Member of Parliament.

# 11.6. Appealing against the Regulator's decisions

## 11.6.1. Introduction

The legislation relating to CICs provides for a process of statutory appeals against certain types of decision, which the Regulator may take. This chapter sets out information about the statutory appeals process. The legislation does not restrict any other legal remedies, which may be available in such circumstances, but these are beyond the scope of this guidance.

This chapter is divided into three parts:

- the appeals framework,
- the decisions which can be appealed, and
- the appeals process.

## 11.6.2. The appeals framework

### 11.6.2.1. Introduction to the legislation

The appeals framework is set out in the [CAICE Act](#) and the CIC Regulations.

[Section 28 of the CAICE Act](#) provides for the appointment of the Appeal Officer for CICs (“the Appeal Officer”) and describes the Appeal Officer’s jurisdiction. Part 11 of the CIC Regulations 2005 sets out the procedural framework for appeals to the Appeal Officer.

The Appeal Officer is a statutory office holder appointed by the Secretary of State for the Department for Business, Innovation and Skills.. The Appeal Officer is independent both from the Government and from the Regulator.

Appeals may be brought on the grounds that in making a decision the Regulator has made a material error of law or fact. Where an appeal is made to the Appeal Officer, the Appeal Officer must dismiss it, allow it, or remit the case to the Regulator for reconsideration in accordance with any rulings of law or findings of fact which the Appeal Officer has made.

### 11.6.2.2. Which decisions can be appealed?

The Appeal Officer only has jurisdiction in relation to those decisions in respect of which legislation specifically states that there is a right of appeal to the Appeal Officer. The Table below sets out an exhaustive list of the types of decision against which an appeal can currently be made to the Appeal Officer. All the decisions listed below are decisions, which may or must be taken by the Regulator.

Type of decision	Who may appeal?	Source
		CAICE Act
Decision that a company is not eligible to be formed as a CIC	Any subscriber to the company's memorandum	Act, s. 36B(3)
Decision that a company is not eligible to become a CIC	The company	Act, s. 38(5)
Order appointing a director of a CIC (but not an order removing a director of a CIC, which is appealable by the director concerned to the High Court / Court of Session)	The company	Act, s. 45(13)
Order appointing a manager in respect of a CIC's property and affairs	The company	Act, s. 47(14)
Various orders relating to property held by, on trust for, or on behalf of a CIC	The company and any person to whom the order is directed	Act, s. 48(13)
Orders restricting the transactions which a CIC can enter into / the nature or amount of payments it can make	The company	Act, s. 48(14)
Order transferring specified shares in a CIC to specified persons	The company and any person from whom shares are transferred	Act, s. 49(5)
Order extinguishing specified members' interests in a CIC or appointing new members in place of such members	The company and any person whose interest is extinguished	Act, s. 49(6)
Decision that a company is not eligible to cease being a CIC (prior to becoming a charity / Scottish charity)	The company	Act, s. 55A(4)
Decision not to approve change to statement of CIC's objects in its articles	The company	CIC Regs 2005, reg 15(8)
Directions relating to distribution of CIC's assets on a solvent winding up	Any member or director of the company	CIC Regs 2005, reg 23(11).

### 11.6.2.3. The Appeals Process

The process to be followed in appeals to the Appeal Officer is set out in Part 11 of the CIC Regulations, the contents of which are summarised below. It should be noted that, subject to the CIC Regulations, the Appeal Officer is given fairly wide discretion as to the details of procedure to be followed in each case.

### 11.6.2.4. Time limit for beginning the appeal process

Appeals to the Appeal Officer are begun by sending a notice of appeal to the Regulator.

The notice of appeal must generally be sent so that it is received within two months of the date upon which the appellant was given reasons for the disputed order or decision.

However, if the appeal relates to a direction on the distribution of residual assets in the winding up of a CIC under regulation 23 of the CIC Regulations 2005, the notice of appeal must be received within three weeks of the date on which notice of the disputed direction was given.

Any appeal, which is not made within the relevant deadline, will be dismissed unless the Appeal Officer is satisfied that there are exceptional circumstances to justify its being made late.

### 11.6.2.5. Notices of Appeal

The notice of appeal must:

- state the name and address of the appellant;
- state an address for service in the United Kingdom;
- specify as precisely as the appellant is able the date, or dates, on which the appellant was given reasons by the Regulator for the disputed order or decision, or include a statement that no such reasons were given;
- contain a statement of the grounds for the appeal;
- contain details of the disputed order, decision, or direction;
- contain a succinct presentation of the arguments supporting each of the grounds of appeal;
- contain a schedule listing all the documents annexed to the notice of appeal; and
- be signed and dated by the appellant, or on its behalf by a duly authorised officer, or legal representative.

There is no standard form for appeals.

A copy of the disputed order or decision must be annexed to the notice of appeal, together with a copy of any reasons, which the Regulator has given for the disputed order or decision. As far as practicable, appellants should also annex to their notice of appeal a copy of every document on which they are relying.

#### **11.6.2.6. Role of the Regulator**

The Regulator will send an acknowledgement of the receipt of the notice of appeal to the appellant and must send the notice of appeal, endorsed with the date of receipt, to the Appeal Officer.

Where it is an appeal against the Regulator's direction on the distribution of residual assets in the winding up of a CIC, the Regulator must forward with the notice of appeal a statement of the date upon which notice of the disputed direction, or decision, was given to the CIC; or a statement that no such notice was given.

The Regulator may make a written response to the notice of appeal. If the Regulator does so, the response must be received by the Appeal Officer within two weeks of the date on which the Regulator received the notice of appeal, unless the Appeal Officer allows a longer time..

#### **11.6.2.7. Procedure before the Appeal Officer**

The Appeal Officer may allow the appellant or the Regulator further opportunities to make written or oral representations and may specify when and how such representations are to be made.

The Appeal Officer may follow such practice and procedure as the Appeal Officer thinks fit, having regard to the just, expeditious and economical conduct of appeals. In determining appeals, the Appeal Officer must have regard to all matters that appear to the Appeal Officer to be relevant.

The Appeal Officer may at any stage dismiss appeals, which the Appeal Officer considers unfounded, which do not comply with the requirements of the Regulations as regards notices of appeal, or if the Appeal Officer considers that the appellant is not entitled to bring the appeal.

Appeals may also be discontinued by being dismissed at the request of the appellant.

The Appeal Officer must give reasons for any decision to dismiss an appeal, allow an appeal or remit a case to the Regulator. Such reasons must be given to the appellant and the Regulator, and the Appeal Officer must make such arrangements for their publication, as the Appeal Officer considers appropriate (CIC Regulations 2005 reg 42).



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