



Department for
Business, Energy
& Industrial Strategy

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

**Chapter 2: Preliminary
considerations**

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2.1. Considerations before choosing to form a community interest company (CIC)

A community interest company (CIC) is a legal form for those considering creating a social enterprise.

Setting up a CIC is a big step, because once you are registered the only “ways out” are:

- dissolving the company and ceasing to exist altogether, or
- converting the CIC to a charity and subjecting the company to the more onerous regulatory regime of charity law.

This means that once a company is a CIC it cannot become an ordinary company.

So, it is important that before going any further you take professional advice where needed and consider the full list of considerations below.

2.1.1. What are you trying to achieve?

- You want to be a company with limited liability.
- You want to be a company because it is a familiar legal form with the flexibility to tailor it to your own organisational structure, membership and governance.
- You want to deliver real and tangible benefit to a community.
- You want it to be clear to your members, financial backers, customers and others that you work for the benefit of the community.
- You do not want to run a business just for private gain.
- You want to be sure that, if the organisation ceases to be a CIC. The remaining assets will be used for the community and not distributed to members.
- You do not want charitable status because it is not appropriate to your planned activities.
- You want transparency of operation so that anyone affected by the company’s activities can see, on the public record, an account of the benefit provided.

2.1.2. Major considerations

- What activity do you want to undertake and how will it benefit the community?
- What community will benefit (see Chapter 2.3)? If the community is too narrowly defined, the company will not be eligible to be a CIC.
- Who will be the owners, managers, directors, shareholders or guarantors?
- How will it be funded?
- How will the surpluses or profits be used?
- What do you want to happen to any remaining assets if the CIC is dissolved?
- Will being a company with limited liability with special features designed for social enterprise suit your needs?

2.1.3. Other major considerations

- Do you want to pay dividends to investors, and will the ability to pay dividends have a favourable or adverse effect on your funding or tax status? Do you understand the dividend cap limitations on the payment of dividends? If you do not want to pay dividends would a CIC limited by guarantee be the best option?
- Do you understand the continuing obligations of CICs such as filing of annual returns and accounts with a CIC annual report and will your organisation have the capacity to perform these (see Chapter 9)?
- If you are an existing unincorporated organisation, are the existing stakeholders, creditors, trustees etc in agreement with the change to a CIC?
- If you are (or want) to be a charity remember that the same organisation cannot be both a CIC and a charity (see Companies (Audit, Investigations and Community Enterprise) Act 2004 (“CAICE Act”) s.26(3)). CICs are more lightly regulated than charities and do not have the benefits of charitable status. Even if their activities are entirely charitable in nature. Charities will be able to establish CICs as subsidiaries that can pass assets and profits to their charity owners without asset lock restrictions.
- Being a CIC will not have any special tax status as such. CICs will generally be in the same position as any other organisation in obtaining any tax concessions otherwise available. For example, due to their type of activity or location. You should make sure you understand the tax consequences for your organisation before becoming a CIC. This is particularly so for organisations with wholly charitable purposes where the benefits of lighter CIC regulation may be outweighed by the tax benefits of being a charity. If in doubt seek professional advice.

- Being a CIC will not give you an automatic right to grants or other special funding although the nature of your activities or location may do so.
- Transparency is an important aspect of CICs. Stakeholders should get a clear idea of how a CIC has performed. A CIC must make an annual community interest company report detailing what it has done and how this has benefited the community; what directors' salaries and dividends have been paid; and to what extent it has involved its community in its activities. You will need to consider from the beginning, how you will involve the stakeholders in the project.
- If you think it is likely that you will want to offer shares to the public, you should set up as a CIC Public Limited Company. Although it is perfectly possible to "re-register" a private company as a public company at a later stage.

The decision whether the CIC legal form is suitable for your organisation must be for you to decide. If in doubt seek independent business advice.

2.2. Who can form a CIC?

In general, any organisation, or individual, that has formed or intends to form a company and is prepared to accept the special features and restrictions imposed on a CIC. For further information please see Chapter 4.

2.2.1. Restrictions on forming as a CIC

- A charity cannot keep its charitable status to be a CIC. In order to become a CIC, it would have to give up its charitable status.
- Companies that carry out activities which a reasonable person might consider only benefit the members of a particular body or the employees of a particular employer will not satisfy this test.
- Political parties and pressure groups, or companies owned or controlled by them, cannot become CICs ([section 35 of the CAICE Act](#) and [Part 2 of the CIC Regulations 2005](#)).
- A charitable company registered in Northern Ireland cannot apply for CIC status (See Chapter 2.4.2).

A CIC must be a company with limited liability. It can either be incorporated as a company or an existing company can be converted into a CIC (see Chapters 3 and 4). However, all CICs share certain special features and are subject to certain restrictions (these are dealt with throughout these notes but see particularly the overview in Chapter 1).

If an existing organisation, which is not a limited company, wishes to convert to a CIC it will have to become a company first. In many cases a more practical course may be to form a new CIC to which the existing organisation can transfer its assets and liabilities.

Some organisations may find it impractical (for example, because of the financial implications of losing charitable status if they are charities), or legally impossible to become a CIC (for example, because they are political campaigning organisations). These are important issues and will almost certainly require detailed professional advice.

2.3. Defining “community” in CIC

The essential feature of a CIC is that its activities are carried on for the benefit of the community. So, it is important before creating a CIC, that you have a clear picture of the community you intend to serve.

A community for CIC purposes can embrace either the population as a whole or a definable sector or group of people either in the UK or elsewhere. The CIC legislation states that any group of individuals may constitute a community if they share a common characteristic which distinguishes them from other members of the community and a reasonable person might consider that they constitute a section of the community.

However, a company which benefits a group which may be clearly defined, but which a reasonable person might not consider to be a genuine section of the community (e.g. “my family”, “my friends”, or “regular drinkers of ABC beer”), is unlikely to be eligible to be a CIC.

So, it is expected that the community will usually be wider than just the members of the CIC. For example, the community of a CIC formed to run a community bus service would include the whole of the population of the area served not just those residents who had invested in the company.

In most cases the community should be easy to define such as:

- The residents of Oldtown
- People with learning difficulties
- The elderly
- The young unemployed
- Small scale produce growers in Africa
- The XYZ charity
- Sufferers from ABC disease
- People wishing to learn to...
- Youth of Oldtown needing sports facilities

- Redundant car workers

In other cases, the purpose of the CIC will in itself suggest a benefit to the whole community such as:

- Research into environmental pollution
- Preservation of wetlands
- Provision of advice services
- Preservation of language/culture
- Encouragement of sport
- Establishing a museum
- Hire of equipment for short term needs
- Support for community projects

In further examples the community may be the beneficiary of surpluses or profits of trading activities which may not themselves be specifically community benefit activities. Such CICs could have purposes described in terms such as:

Trading to create a surplus to assist...

Contracting to provide services and using surpluses from this for the benefit of...

This type of activity where the community benefit may be either from the activity itself or the profits of the activity (or both) are areas where the CIC format could be particularly suitable. CICs could for example act as the procurement arm for a group of schools or care centres who in turn could benefit by participation in dividends as shareholders or donations from profits if they were themselves asset locked bodies.

You should note that a company can only be eligible to become a CIC if it satisfies the community interest test. A company will not be eligible if any of its activities benefit only the members of a particular body or the employees of a particular employer, without bringing any benefits (directly or indirectly) to a wider community.

If the community which your proposed CIC is primarily intended to serve is made up of members of a particular body or employees of a particular employer, you will need to think carefully about this and consider what wider community benefits the proposed CIC can be said to deliver (see Chapter 4).

2.4 Charities converting to CIC status or vice versa

2.4.1. Conversion of a charity to a CIC in GB

The CIC legislation does not allow an organisation to be both a CIC and a charity. However, it is possible for a CIC to have wholly charitable purposes, but it will not be entitled to charitable status.

An incorporated charitable company registered in England, Wales or Scotland may convert to a CIC with the consent of the appropriate Charity Commissioners. However, it will lose its charitable status including tax advantages (See Chapter 4 for more detail and [CAICE Act s.39](#)).

2.4.2. Conversion of a charity in Northern Ireland to a CIC

Whereas the CIC legislation provides for an incorporated charitable company registered in England, Wales or Scotland to convert to a CIC, it does not allow such conversion of a Northern Ireland charity. This is because when the CIC legislation was drafted, Northern Ireland did not at the time have a body equivalent to the Charity Commission. It is expected that CIC Regulations will be introduced at a later date to amend the CIC legislation to allow Northern Irish charities to convert to CICs. But there are no plans for such legislation to date.

2.4.3. CIC converting to a charity

A CIC may convert to a charity registered in England, Wales, Scotland or Northern Ireland in which case it would cease to be a CIC. It would then be fully subject to the charity regulatory regime (see Chapter 10 for more detail).

CICs wishing to convert to a charity need to be aware that company law does not allow a company limited by shares to convert to a company limited by guarantee or vice versa. A CIC limited by shares therefore cannot convert to a charitable company limited by guarantee.

2.4.4. A CIC may have wholly charitable purposes

On the other hand, a CIC may have wholly charitable purposes and be entitled to charitable status in theory, but may not want to exchange its CIC status for charity status and be subject to the regulatory requirements associated with being a charity regulated by the Charity Commission, or to be subject to the charity jurisdiction of the High Court.

2.4.5. A CIC may pass its assets and profits to a charity

A CIC may pass its assets and profits to a charity as they are both asset-locked bodies (See Chapter 6). You may also nominate a charity to receive the CIC's surplus assets if it did dissolve (See Chapter 10).

2.4.6. Some points to consider

If you are considering converting from a charity to a CIC, or vice versa, you should consider carefully the advantages of doing so. Some of the points you will need to consider include:

- Tax implications
- The attitude of funding bodies
- The flexibility of the respective regulatory regimes
- Management and employment structures
- Whether the community interest test for CICs is more appropriate to your purposes than the public benefit test applied to charities
- Whether the ability of CICs to pay directors and (in some cases) dividends would help you to attract the right management and investment
- The fact that at the point of conversion into a CIC, the CIC will have a duty to register a charitable trust to manage the charitable company's property (other than property representing subscribed capital, in the case of a company limited by shares). This means that the charitable property before conversion cannot be transferred to the CIC. It must be held by a charitable trust. The trust is subject to regulatory action under section 18 Charities Act 1993 in just the same way as any other charity would be.

2.5. Charities considering setting up a CIC subsidiary company

A charity may set up a CIC subsidiary company. This, for example, enables a CIC to run a charity shop and pass some or all of the profits to the charity that owns it.

If you are a charity and are considering setting up a CIC subsidiary company, you should consider the following:

- The financial structures of the charity and the subsidiary trading company ought to be kept separate.

- The separate identities of the charity and the subsidiary trading company should be made clear in all publicity material and, in dealings with suppliers.
- The names of the charity and the subsidiary trading company should be distinguished from each other to prevent confusion between the activities of the two organisations.
- The charity must not settle the debts of the subsidiary trading company.
- The charity should not feel any moral obligation to fund the subsidiary trading company.
- Any financial support the charity can give to the subsidiary trading company including non-cash commitments (eg staff, office space and equipment) should be carefully assessed.
- The charity buying stock and donating it to the subsidiary trading company should be avoided.
- Plan for the subsidiary trading company to be financially viable as soon as possible. Normally, this will be within its first 5 years of operation.
- The need to obtain the Charity Commission's authority to any proposal for a lease of property by a charity to a subsidiary trading company.
- To ensure that investment in a subsidiary trading company is a qualifying investment for tax purposes.
- To ensure that at least one person who is a trustee of the charity is not a director of the trading company, and at least one person who is a director of the trading company is not a trustee of the charity. Those without dual interests can be expected to give suitable advice in a conflict of interest situation. This should reduce the risk of transactions between the charity and the company being challenged, or questioned.
- A charity trustee cannot be paid for his services as a director, or employee, of the subsidiary trading company (or, of course, as an employee or trustee of the charity) unless the governing document of the charity specifically provides for this.

These are all very serious factors, which you should consider carefully with your professional advisers before you decide to set a CIC subsidiary company.

The CIC Regulator and the Charity Commission are aware that there may be advantages in organisations comprising part CICs and part charities and wish to avoid their respective regulatory responsibilities being seen as an impairment to such organisations. They are, therefore, working closely together to minimise any such difficulties.

You can find out further information about charities with trading subsidiaries on the [Charities Commission website](#).

2.6. Registered Societies

Registered Societies are registered under the Registered Societies Act 2014. They can take one of two forms:

- a co-operative society, or
- a community benefit society.

However, Community Benefit Societies are very similar to CICs. Particularly when they impose on themselves a statutory asset lock of the kind provided for in the

[Community Benefit Societies \(Restriction on Use of Assets\) Regulations 2006](#), made under the

[Co-operatives and Community Benefit Societies Act 2014](#).

2.6.1. Registered Society considering converting to a CIC

If a Registered Society wishes to consider becoming a CIC, please see Chapter 4.

2.6.2. CIC converting to a Community Benefit Society

If a CIC wishes to convert to a Community Benefit Society, please see chapter 10.

2.6.3. Useful websites:

- [Financial Conduct Authority](#) regulates Registered Societies.
- [Co-operatives UK](#) the central membership organisation for co-operative enterprise throughout the UK.

2.7. Excluded companies and political activities

Excluded companies are companies (or prospective companies) that the CIC legislation states are not eligible to be formed as or converted to CICs.

The types of company that are classed as excluded companies are:

- A political party
- A political campaigning organisation

- A subsidiary of a political party or political campaigning organisation.

In addition, CIC legislation also provide that for the purposes of the community interest test a wide range of political activities are to be regarded as not being carried on for the benefit of the community. There is a considerable amount of overlap between the definitions of excluded companies and the description of these activities. Companies involved in these activities are not eligible to become CICs and any CIC involved in such activities could cease to satisfy the community interest test and be subject to enforcement action by the Regulator.

The activities listed in the CIC legislation are:

- The promotion of (or opposition to) changes in any law applicable in the UK or elsewhere
- The promotion of (or opposition to) changes in the policy of a governmental or public authority in relation to any matter
- Activities which provide or affect financial or other support to a political party or campaigning organisation
- Activities intended or likely to influence voters in relation to an election or referendum

Examples of the kinds of activities that could fall within these headings include:

- trying to improve the quality of life for the people of a particular country which is suffering as a result of national or international political, military or economic action by persuading those responsible to cease or modify that action
- trying to influence public opinion about an activity which is currently illegal with a view to bringing about a change in the law

The reason for this wide-ranging exclusion of political activities is that Parliament did not want to put the Regulator in the position of having to decide whether particular political programmes are, or are not, beneficial to the community. Such a decision would otherwise be implicit in the application of the community interest test to companies with a significant political agenda. Inevitably, this means that some companies whose aims might appear to reasonable people to be beneficial to a particular section of the community, are barred from becoming CICs because their activities have an intrinsically political character.

However the CIC legislation recognises that there are times when a company's non-political aims and activities necessarily involve it in some form of political action or debate, without compromising its fundamentally non-political nature. Therefore, a CIC may engage in political activities if its engagement in them can reasonably be considered as incidental to activities which a reasonable person might consider are carried on for the benefit of the community, and which are not themselves incidental to political activities. For example, a CIC that uses a community centre for activities, which benefit local people, may be able to lobby local government for a grant to improve the facilities available in the building.

Inevitably, deciding when political activities fall within this incidental exception calls for the exercise of judgment. The Regulator will take into account all the available evidence, including the track record of an organisation and its members, the views of its members and the community they represent, and the likely political consequences of their activities.

The basic principles are:

1. That CICs should not be formed for political purposes, or have engagement in political activities among their main objectives; and
2. That any political activities in which CICs do engage should be closely related to the non-political community benefit activities which they are set up to carry out.

The terms used in this Chapter are given very broad meanings in the CIC legislation. If you feel that there is any chance that your activities, or proposed activities, may fall within the prescribed activities you should take early professional advice or contact the Office of the Regulator before taking any decisive steps toward forming or becoming a CIC.

2.8. CIC names

Before choosing the name of your proposed CIC you should consult the [Companies House Guidance](#) “Incorporation and Names”, which outlines the requirement which apply to all companies. In particular, it lists names that may not be used without the prior approval of the Secretary of State or other relevant bodies.

The CIC legislation sets out that a CIC must either have a CIC or community interest company name ending. Companies that are not CICs must not use these name endings and there are criminal penalties in place if they are misused (see [CAICE Act 2004 s.33](#)).

The CIC name endings are:

Public Companies

“community interest public limited company” or “community interest plc”

Other companies

“community interest company” or “cic”

Welsh Companies

To use the Welsh name endings your company’s application for registration must provide that its registered office is to be in Wales (and it must in fact be there). It is not enough to simply operate in Wales; but having your registered office in Wales does not restrict you



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