

EXPLANATORY MEMORANDUM TO

THE CHARITABLE INCORPORATED ORGANISATIONS (CONVERSION) REGULATIONS 2017

[2017] No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by The Department for Digital, Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument will allow two types of structure, a charitable company and a Community Interest Company (CIC), to convert to a Charitable Incorporated Organisation (CIO) structure.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The Charitable Incorporated Organisation (CIO) is a relatively new form of incorporated legal structure that is designed to meet the particular needs of charities and is only available to charities. The corporate structure provided by the CIO meets a demand from the charitable sector for a structure that gives a charity a legal personality of its own, enabling it to conduct business in its own name, rather than in the names of its trustees.
- 4.2 The other main option to achieve corporate structure is for charities to incorporate as a company limited by guarantee under company law. However this means that the charity is subject to both company law and charity law requirements, which results in charities having to submit to two regulatory systems. A CIO must only register with the Charity Commission and comply with the requirements of charity law.
- 4.3 There is currently no conversion process for Community Interest Companies (CICs), to become CIOs and limited provision for charitable companies. This instrument will create such a conversion process for CICs and supplement the process in place for charitable companies.

- 4.4 Section 228 of the Charities Act 2011 sets out the process for charitable companies to convert to CIOs. That is why the regulations only deal with information to be provided with an application to convert and circumstances where such an application may be refused. However, the 2011 Act makes very little provision for the conversion of CICs to CIOs, which is why the regulations set out the process in detail.
- 4.5 These provisions have sought to mirror, where possible, the process for conversion of charitable companies, although the main difference is that CICs are not charities, so as part of the conversion process there will need to be an assessment by the Charity Commission of whether the proposed CIO meets the requirements of charitable status.
- 4.6 This instrument is one of a group of three instruments concerning CIO conversions.
- 4.7 The Index of Company Names (Listed Bodies) Order 2017 adds Charitable Incorporated Organisations (CIOs) and Scottish Charitable Incorporated Organisations (SCIOs) to the Index of Company Names. The registrar of companies is required to keep an index of the names of companies and other bodies. This SI will prevent the registration of new companies with names that are the same as, or too similar to, existing CIOs and SCIOs on the index.
- 4.8 The Charitable Incorporated Organisations (Consequential Amendments) Order 2017 allows Community Interest Companies (CICs) the power to appeal to the First-tier Tribunal, a decision by the Charity Commission to refuse an application for the conversion of a Community Interest Company into a CIO and the CIO's registration as a charity. This mirrors existing powers of appeal in place for charitable companies seeking to convert to a CIO.

5. **Extent and Territorial Application**

- 5.1 The extent of this instrument applies to England and Wales.

6. **European Convention on Human Rights**

- 6.1 The Minister for Sport and Civil Society has made the following statement regarding Human Rights:

“In my view the provisions of the Charitable Incorporated Organisations (Conversion) Regulations 2017 are compatible with the Convention rights.”

7. **Policy background**

What is being done and why

- 7.1 The aim of the three instruments is to allow CICs and charitable companies to convert more easily to CIOs and to make the process as quick and simple as possible.
- 7.2 Several legal structures are currently available to charities. These can be categorised in two groups; (i) unincorporated structures, and (ii) corporate structures.
- 7.3 Around 30,000 charities have chosen to incorporate as a company limited by guarantee. This gives the charity its own legal personality, and the directors (trustees) benefit from limited liability. However, incorporating as a company results in dual registration with and reporting to both Companies House and the Charity Commission. The company structure is also not designed with the needs of charities in

mind, and the interaction between company law and charity law can be complex and time consuming for charities opting for this form of incorporation. This results in significant legal and administrative burdens to charities.

- 7.4 The CIO structure is designed to offer a practical alternative for charities seeking the protection and practicality of incorporation without having to meet the dual registration and reporting requirements of the Charity Commission and Companies House.
- 7.5 Whilst it is currently possible to register a new charity as a CIO, existing charities do not have the option of converting to this legal form. Instead, if they wish to become CIOs, existing charities have to close, and re-register with the Charity Commission. This is a lengthy, costly and burdensome process, which has prevented many existing charities from taking advantages associated with the CIO legal form. It is our view that permissive regulation will provide the legal certainty that is required for a direct conversion process.
- 7.6 Since the introduction of the CIO legal structure in 2012 it has proven to be a very popular choice of structure, with approximately 8,000 charities registering as CIOs. The majority of these are newly registering charities. Of the new charity registrations accepted by the Charity Commission in the last financial year, over 50% were registered as CIOs.
- 7.7 It is expected that the option of conversion will be similarly popular, in particular, for small charities that have opted for the company structure and for CICs.
- 7.8 The Charity Commission estimates that between 20% (7,200) and 35% (12,600) of existing incorporated charities could decide to convert under the proposed CIO conversion legislation over ten years.
- 7.9 The Charity Commission estimates that take-up of the CIO form is likely to be lower with CICs: between 1% (120) and 5% (600) of current CICs could look to convert to a CIO structure.
- 7.10 The feedback to our consultation showed high levels of support for introducing a CIO conversion process, with 95% of respondents supporting the introduction of new regulations. The majority of consultation respondents (80%) also believed that there is a demand for the introduction of these regulations.

Consolidation

- 7.11 Not applicable.

8. Consultation outcome

- 8.1 A public consultation on the draft CIO conversion regulations took place from 1 April 2016 to 10 June 2016. A draft version of the Charitable Incorporated Organisations (Conversion) Regulations was made available for review. The consultation asked for responses from all parts of the charitable sector and from the public. There were 40 responses to the consultation. Consultation responses were received from a range of respondents including small and medium charities, legal practices representing charities, local government, voluntary sector infrastructure organisations, trusts and community associations.

- 8.2 A more detailed analysis of the consultation outcome is available at:
<https://www.gov.uk/government/consultations/converting-to-a-charitable-incorporated-organisation>
- 8.3 There was a very positive response to the proposals for a simplified CIO process, with 95% of respondents supporting the introduction of the regulations. There was also support for our assumptions on the take up of the conversion process, with 80% of respondents agreeing that there would be a demand for the regulations.
- 8.4 Responses from the majority of stakeholders were positive. Most were supportive of the policy intent and some offered proposals for refining the requirements of the regulations.
- 8.5 Respondents agreed that changes to the regulations would reduce burden on charities, in particular smaller charities. Respondents also confirmed that converting to a CIO would result in simpler reporting requirements, a single annual return and lower costs for registration and filing of information.
- 8.6 We are making some minor amendments to the draft regulations as a result of the comments raised through this consultation. This includes removing the requirement for charitable companies to have filed their most recent accounts or reports with Companies House before an application is granted. We will retain the requirement to refuse an application if a charity is in default of any requirement to send documents or information to the registrar or Charity Commission.

9. Guidance

- 9.1 Guidance will be produced to support charitable companies and CICs with the conversion process. As the sector's regulator, the Charity Commission will produce this guidance in advance of the regulations coming into force.

10. Impact

- 10.1 The CIO conversion framework imposes no direct cost burdens on charities or businesses. It is a permissive regulatory framework and will be optional for charities. Only charities that choose to convert to the CIO form will be affected by this legislation. Organisations who decide to convert (at a small cost) will benefit from annual administrative savings.
- 10.2 Between 7,200 and 12,600 existing charities are expected to choose to convert to the CIO form as a result of this regulatory change over ten years. The legislative change is expected to result in small familiarisation costs, estimated at c£3.6m to currently incorporated charities (mostly companies limited by guarantee). The one-off costs of conversion is expected to total £6.0m (£4.3m-£7.6m) and is modelled to be spread across the 10-year IA period as charities may choose to convert at any time.
- 10.3 Any conversion costs are expected to be more than offset by the benefits related to simplified accounting and reporting for converted charities, estimated to total £50.6m (£36.9m-£64.5m) over the 10-year period.
- 10.4 An Impact Assessment is submitted with this memorandum and is published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 This instrument will be reviewed following a period of five years.

12.2 The review will assess the level of take up of the CIO conversion process among charitable companies and Community Interest Companies against the estimates included in paragraph 17 and 18 of the Final Impact Assessment.

13. Contact

13.1 Laura Kennedy at the Department for Digital, Culture, Media and Sport Telephone: 0207 276 0729 or email: laura.kennedy@culture.gov.uk can answer any queries regarding the instrument.