

MOU with CIC

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1. Introduction

1.1. Working for the good of the community is a central feature of the British social framework. There is in the UK a large and well-established charitable and voluntary sector, regulated by a number of statutory bodies.

1.2. The government has introduced legislation to provide for the creation of Community Interest Companies (“CICs”). CICs are a new type of company for those wishing to establish businesses that trade with a social purpose. They will be a valuable addition to existing company forms, and particularly suitable for those who wish to work within the familiar limited company structure but outside the constraints of charity status with regard to the distribution of profits and otherwise.

1.3. The purpose of this Memorandum is to establish liaison arrangements between the Charity Commission and the Regulator of Community Interest Companies which;

- ensure appropriate consultation and co-ordination of action when a charitable company proposes to convert to a CIC, or when a CIC proposes to convert to a charitable company; and
- promote appropriate and effective regulation of the company, and property held by it, after conversion has taken place.

2. Current regulatory framework

2.1. The Charity Commission (“the Commission”) is established under the Charities Act 1993 (“the 1993 Act”) and is the main regulator of charities in England and Wales. Under section 1(3) of the 1993 Act, the Commission has “..the general function of promoting the effective use of charitable resources by encouraging the development of better methods of charity administration, by giving trustees information or advice on any matter affecting the charity and by investigating and checking abuses.”

2.2. Under section 3 of the 1993 Act, the Commission maintains a register of charities. The Commission’s jurisdiction extends to all registered charities and all unregistered charities (other than limitations on the use of its powers in relation to exempt charities). The term “charities” includes companies established for exclusively charitable purposes, as well as charitable collections and funds managed on an informal basis by any person or organisation.

2.3. The Regulator of Community Interest Companies (“the Regulator”) is an independent public office holder, appointed by the Secretary of State for Trade and Industry under the Companies

(Audit, Investigations and Community Enterprise) Act 2004 (“the 2004 Act”). The objective of the Regulator is to encourage the development of CICs and to provide guidance and assistance on matters relating to them. The provisions for appointment of the Regulator came into force on 1 January 2005, and the remaining parts of the 2004 Act, relating to CICs, came into force on 1 July 2005.

3. Legal authority for disclosure of information

3.1. Section 10 of the 1993 Act permits the disclosure of information between the Commission and any person or organisation discharging functions of a public nature where the disclosure is made for any purpose connected with the discharge of that person’s or organisation’s functions. Section 100(3) of the 1993 Act provides that section 10 extends to the whole of the United Kingdom.

3.2. Section 59 of the 2004 Act permits the disclosure of information between the Regulator and any public authority where the disclosure is made in connection with the functions of either the Regulator or the public authority.

3.3. The powers to disclose information under the 1993 Act or the 2004 Act are subject to any express restriction subject to which the information was supplied.

3.4. Both the Commission and the Regulator will encourage the disclosure and exchange of information between them where appropriate, in order to maximise the efficiency of their respective functions. They will ensure that information is disclosed in a manner that is efficient, proportionate and fully in compliance with the Human Rights Act 1998 and the Data Protection Act 1998.

4. Liaison at Policy level

4.1. Representatives of the Regulator and the Commission will meet at least once a year. The purpose of these meetings will be to:

- consider any new legislation affecting the Commission or the Regulator, its practical application and the emergence of any precedent decisions by the Commissioners, the Regulator or through the Courts;
- discuss the development of relevant law and policy, including public benefit, the “community interest test” and the “charity test”;
- develop strategies that will eliminate, so far as possible, the burden of regulatory duplication upon those CICs which (as a consequence of section 39(3) of the 2004 Act) hold property on a trust in which the Commission has a regulatory interest; and
- explore possibilities to work collaboratively so as to promote best practice in community enterprise and good causes.

4.2. Additional meetings may be convened as necessary, between appropriate key staff, to address these and other issues arising. When appropriate, the Regulator and the Commission may invite representatives from other relevant bodies (such as the Department of Trade and Industry, the Registrar of Companies or the Office of the Scottish Charity Regulator) to participate in meetings and consultations.

5. Liaison at Operational level

5.1. In carrying out their respective functions, both the Commission and the Regulator will have regard to the likely impact on the other of their actions, and will render all reasonable assistance to overcome or minimise any difficulties.

5.2. Where a charitable company wishes to convert to a CIC and applies to the Commission for prior written consent

- to alter its memorandum and articles of association under section 64 of the 2004 Act; and/or
- to change its name under section 39 of the 2004 Act,

The Commission will ensure that the request for consent is processed with an appropriate degree of uniformity and speed by suitably trained staff. If consent is refused, the Commission will inform the Regulator accordingly.

5.3. If a charitable company, immediately prior to its conversion to a CIC, owns property, the property will, upon conversion, become impressed with a trust for charitable purposes and the CIC will be the trustee. The Regulator will provide to the Commission details of any charity that completes the process of conversion to CIC, together with the effective date of conversion.

5.4. Where a charitable company converts to a CIC and, as a consequence, becomes the trustee of charitable property, the Commission and the Regulator will discuss and agree the most appropriate and effective arrangements for the submission by the CIC of annual accounts and/or reports.

5.5. In order for a CIC to convert to a charity, it must pass a special resolution to change its memorandum and articles of association. Before the conversion can be effected, the Commission must furnish the Registrar of Companies with a statement confirming that the resolution, if passed, will render the company exclusively charitable (but not exempt) and thereby eligible to be registered as a charity. The Regulator will provide the Commission with details of all CICs which convert to charitable company status so that the Commission is able to pursue, if appropriate, any subsequent failure by a company to register as a charity.

5.6. Where it appears expedient in the interests of achieving effective and proportionate regulation, the Commission and the Regulator may conduct regulatory casework jointly. In conducting such cases, both the Regulator and the Commission will each pursue their respective functions but will share resources and pool information.

5.7. The Commission and the Regulator will consult each other prior to issuing or publishing any guidance, advice or best practice recommendations relating to the conversion of a charitable company to a CIC or vice versa.

5.8. Where it appears likely that regulatory intervention by either the Commission or the Regulator will generate media interest affecting the other party, or, given the profile and substance of the case, that a ministerial briefing ought to be considered, the Regulator and the Chief Executive of the Commission will be consulted

6. Designated points of contact

6.1. In order to ensure that matters are handled at the appropriate level, and that developing policy considerations are taken fully into account, contact between the Commission and the Regulator should be established between designated points of contact (see Appendix). Where they consider it appropriate, designated points of contact may delegate ongoing liaison to members of their staff.

7. Other assistance

7.1. As part of their respective staff training programmes, both the Commission and the Regulator will ensure that their staff are made aware of the differing organisational, operational and legal frameworks relating to CICs and charitable companies. In order to facilitate this, appropriate staff will be offered familiarisation visits to each other's offices.

7.2. The Commission and the Regulator will also explore the possibility of mounting joint training and development initiatives and, where practicable, will offer places to each other's staff on relevant internal training courses, conferences and seminars.

7.3. Under paragraph 4 of Schedule 3 to the 2004 Act, the Commission may make staff available to assist the Regulator in the exercise of his functions. Any request by the Regulator made under this part of the 2004 Act will be considered by the Commission's Chief Executive.

8. General

8.1. Whilst it is intended that the arrangements in this Memorandum should apply generally, it is recognised that some circumstances will require special handling. Nothing in this Memorandum prevents the making of arrangements to meet specific exceptional needs.

8.2. Any disagreement arising from the interpretation of this Memorandum will be referred to the Regulator and the Chief Executive of the Commission, who will endeavour to resolve it within the spirit implicit in the co-operation arrangements. The Memorandum will be amended if necessary to reflect the agreed outcome of the referral.

Signed

JOHN HANLON Regulator of Community Interest Companies
Date 19 December 2005

Signed on behalf of the Charity Commission

ANDREW HIND Chief Executive
Date 19 December 2005

Appendix

Designated Points of Contact

Area of Liaison	Charity Commission	CIC Regulator
Development and agreement of strategic policy	Chief Executive	The Regulator
Development of policy and legal framework	Director of Policy & Effectiveness	
Commission to advise Regulator that consent to alter memorandum and articles of association and/or name of charitable company has been refused (5.2)	Head of Policy Advice	
Regulator to provide Commission with details of charities that complete conversion to CIC (5.3)		
Commission and Regulator to agree arrangements for submission of annual accounts and/or reports (5.4)	Head of Information Compliance	
Conversion from CIC to charity - Commission to provide Registrar of Companies with statement (5.5)	Head of Policy Advice	
Conversion from CIC to charity – Regulator to provide Commission with details of CICs (5.5)		
Consultation on guidance, advice and best practice recommendations (5.7)	Director of Policy & Effectiveness; Head of Policy Advice	