

EXPLANATORY MEMORANDUM TO
THE CHARITABLE INCORPORATED ORGANISATIONS (GENERAL) REGULATIONS
2012

2012 No. 3012

1. This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations make various provisions relating to the establishment and running of charitable incorporated organisations.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The Charities Act 2006 amended the Charities Act 1993 to make provision for a new incorporated legal structure for charities, the charitable incorporated organisation (CIO). The 1993 Act has since been consolidated into the Charities Act 2011 (the “2011 Act”).

4.2 Part 11 of the 2011 Act:

4.2.1 introduces the concept of the charitable incorporated organisation (CIO) and makes provision for its constitution, its formation and registration, its name and status (Chapter 1);

4.2.2 makes provision for the powers of a CIO, constitutional requirements, third parties, duties of members and trustees, and regulation about CIO procedure (Chapter 2);

4.2.3 makes provision relating to the amendment of a CIO’s constitution, including where the Charity Commission’s consent is required (Chapter 3);

4.2.4 makes provision for the conversion of certain bodies to CIOs (not being implemented at this stage), amalgamation of CIOs and transfer of a CIO’s undertakings to another CIO (Chapter 4); and

4.2.5 makes supplementary provisions, including powers for the Minister to make further provision for CIOs through regulations (Chapter 5).

4.3 These Regulations form part of a package of secondary legislation needed to complete the legal framework for CIOs and enable implementation. The other statutory instruments are:

4.3.1 The Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012, which make provision for the insolvency, winding up, dissolution and restoration to the register of CIOs, and are subject to the affirmative resolution procedure;

4.3.2 The Charitable Incorporated Organisations (Consequential Amendments) Order 2012, which amends the Company Directors Disqualification Act 1986 to apply it to the charity trustees of CIOs and amends the Employment Rights Act 1996 to enable employees of insolvent CIOs to claim payments from the National Insurance Fund. The Order also makes several amendments to Schedule 6 to the 2011 Act in order to give a first right of appeal to the First-tier Tribunal (Charity) against a number of decisions and orders in respect of the dissolution of CIOs which could be made by the Charity Commission.

4.3.3 The Charities Act 2011 (Commencement No. 1) Order 2012, which brings into force most of the relevant provisions of the 2011 Act (the provisions enabling bodies to convert to be CIOs are not being brought into force at this stage). Although the 2011 Act came into force on 14 March 2012, transitory modifications have the effect that Part 11 is not in force until a commencement order is made.

5. Territorial Extent and Application

5.1 The Regulations extend to England and Wales.

6. European Convention on Human Rights

6.1 The Parliamentary Secretary, Cabinet Office, Nick Hurd has made the following statement regarding human rights in respect of the Regulations:

In my view the provisions of the Regulations are compatible with the Convention rights.

7. Policy background

7.1 The suggestion of a new legal form designed specifically to meet the needs of charities was first made in the then Department of Trade and Industry's review of company law in 2001. It was subsequently taken up in the review of the legal framework for charities and not-for-profits undertaken by the Cabinet Office Strategy Unit in 2001-02. One of the Strategy Unit's recommendations was that Government should develop and introduce a new corporate legal form designed specifically and only for charities.

7.2 Of the approximately 160,000 registered charities, most charities are established in an unincorporated form (132,000), usually either as an unincorporated association or a trust. In the last 20 years or so (and increasingly in recent years), many charities have been choosing to adopt a corporate structure, as this offers several advantages over unincorporated structures – particularly for larger charities. The main benefits of incorporation are:

7.2.1 legal personality, meaning the charity can conduct business in its own name, rather than in the names of its trustees, so trustees are not personally liable;

7.2.2 limited liability for its members, providing a personal safeguard from the financial liabilities it incurs in most cases;

7.2.3 clear capacity and powers, which is not always the case for unincorporated charities.

7.3 Most charities that currently opt for a corporate structure incorporate as a company limited by guarantee under company law. This means that they are subject both to charity law requirements and company law requirements. It is generally accepted that company law may not be best suited to charities, one of whose defining features is that they do not distribute profits to

their members. The CIO 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. The interaction between company law and charity law can be complex, time consuming and onerous for charities.

7.4 The 2011 Act provides only a basic framework for the CIO, leaving much of the detail to secondary legislation. This package of secondary legislation implements the 2011 Act provisions, with the exception of those which allow for the conversion to CIO status of other forms of charity (such as charitable companies, industrial and provident societies and community interest companies). The conversion provisions will be implemented in a later phase.

7.5 The Regulations draw heavily on company law requirements (which apply to charitable companies), but do not replicate them in their entirety. Where it is possible, and appropriate, to lighten the regulatory burden on CIO charity trustees, this has been done. So, for example, there are fewer requirements and no offences in relation to the maintenance of information about trustees and members. The aim is to ensure that necessary protections are in place, while minimising the regulatory burden on charity trustees. This is consistent with the Government's aim of making it easier for people to set up and run charities.

General (Part 1)

7.6 Part 1 of the Regulations makes provision for the commencement and interpretation of the Regulations.

Registration of CIOs (Part 2)

7.7 No application may be made to constitute and register a CIO where the resulting CIO would be an exempt charity (regulation 5). This provision ensures that a charity which would be an exempt charity, by virtue of meeting the criteria in Schedule 3 to the 2011 Act, cannot apply to be a CIO. The two categories of charity are mutually exclusive: exempt charities do not (in fact, are not permitted to) register with the Charity Commission, whereas CIOs only exist on registration with the Charity Commission.

7.8 Regulation 6 applies the registration provisions in Part 4 of the 2011 Act to CIOs with appropriate modifications. The register of charities must contain the name of every CIO, and such other particulars as the Charity Commission may specify or are otherwise required. The trustees of a CIO must notify the Charity Commission within 28 days of any changes to the particulars of their CIO. As with other charities, registration is conclusive proof of charity status, and registration can be challenged on the grounds that the organisation is not a charity.

7.9 CIOs or their promoters may opt to write into their constitution more onerous voting requirements for certain types of constitutional amendment than is required by law. This is known as provision for "entrenchment". Where a proposed constitution includes provision for entrenchment that fact must be specified in the application for registration of a new CIO (regulation 8) or application for amalgamation (i.e. merger of two or more existing CIOs) (regulation 9).

7.10 The Regulations also require charity trustees applying for amalgamation of CIOs to confirm that accounting records of the existing CIOs will be transferred, and to provide for their retention (regulations 10-12).

Constitution (Part 3)

7.11 The Regulations make provision for matters that must be included in a CIO's constitution (regulation 13), which are over and above the requirements imposed by section 206 of the 2011 Act. These include the names of the CIO's first trustees, provisions dealing with the appointment and retirement of trustees and members, procedures for the holding of meetings, use of proxies, voting rights and procedures, and electronic communications with members.

7.12 The Regulations provide for the date on which a constitutional amendment takes effect, where the resolution is made otherwise than at a general meeting of the CIO. Where a CIO's constitution contains provision for entrenchment, regulation 17 requires notice of a constitutional amendment to be accompanied by a statement of compliance certifying that the amendment has been made in accordance with the provision for entrenchment.

7.13 The Regulations prevent constitutional amendments that would increase members' liability to contribute on a CIO's winding up, except where individual members agree to be bound by such an amendment.

CIO Capacity and Related Matters (Part 4)

7.14 Part 4 of the Regulations makes provision for the CIO to enter into contracts, execute documents and deeds, and use a common seal if the CIO chooses to have one. The Regulations also make provision for bills of exchange and promissory notes made under the authority of the CIO.

Registers of Members and Charity Trustees (Part 5 and Schedule 1)

7.15 'Association' CIOs (where there is a body of members separate from, or in addition, to the trustees) are required to maintain a register of members and a register of trustees. 'Foundation' CIOs (where the same persons are both members and charity trustees) must keep a register of trustees. The purpose of these registers is for the CIO to maintain accurate and up-to-date records of its trustees and members. This information must be made available to those who need it (see paragraph 7.18 below). Similar requirements apply under company law to charities that incorporate as a company limited by guarantee.

7.16 Parts 1 and 2 of Schedule 1 to the Regulations set out what information the registers must contain. Both members and trustees must provide a service address – a place where documents can be served on them, which need not be their residential address, and could (for example) be the address of the "principal office" of the CIO (this is the address of the CIO as recorded in the CIO's entry in the register of charities). Where a CIO has more than 50 members it must maintain its register of members in a way that enables the record of a particular member to be quickly located. In practice we expect CIOs to maintain their registers electronically, so this requirement will be easy to fulfil.

7.17 Part 3 of Schedule 1 to the Regulations provides for maintenance of the registers and access to the registers. CIOs are required to update their registers within 28 days of a change. The registers must also be kept available for inspection (for those with rights of access to the registers, see below) at its principal office, or another specified location resolved by the trustees.

7.18 Members and trustees of the CIO have the right to inspect or request a copy of all or part of a CIO's register of members where they want to see their own entry, or where the request is for the purposes of carrying out their duties as a member or trustee of the CIO. The only other

circumstances in which anyone else has a right of access to the register of members is in the case of a CIO being wound up, and where the request is made for the purposes of recovering contributions from members of the CIO who are liable to contribute on the winding-up of the CIO.

7.19 Any person may request inspection of or a copy of a CIO's register of trustees. The CIO may charge a reasonable fee for allowing inspection of or providing a copy to a person (other than a trustee or member either requesting their own entry or requesting for the purposes of carrying out their duties). Where the Charity Commission has given a dispensation to withhold the personal details of trustees (for example certain domestic violence charities), then the CIO may refuse a request for access to, or a copy of, its register of trustees.

7.20 The Regulations give the Charity Commission the power to order a CIO to rectify its register of members where the Charity Commission has determined the membership of a charity and finds that the membership is different from that specified in the CIO's register. The court also has the power to order rectification of the CIO's register of members where it is not being kept up-to-date.

Charity Trustees: appointment, powers and duties (Part 6)

7.21 The Regulations specify the minimum age of 16 to be a trustee of a CIO (regulation 31). Where someone has acted as a charity trustee of a CIO and it is subsequently found that they were prohibited from acting as such, their acts are nonetheless valid, although they may be liable to criminal or civil consequences under sections 183 and 184 of the Charities Act 2011 (regulation 32).

7.22 Provisions of the Trustee Act 2000 are applied to CIOs with modifications, enabling CIOs to appoint agents, nominees and custodians (regulation 33). The charity trustees of a CIO are prohibited from accepting benefits from third parties in relation to their position or actions as a charity trustee of the CIO, unless this could not be considered to give rise to a conflict of interest (regulation 34).

CIO Meetings and Procedure (Part 7)

7.23 The Regulations provide for the giving of at least 14 days' notice of resolutions to be proposed at a general meeting of the CIO. This applies to a resolution to amend the CIO's constitution or procedure under section 224 of the 2011 Act, an application for the amalgamation of CIOs under section 235 of the 2011 Act, or a resolution to transfer the undertaking of the CIO to another CIO under section 240 of the 2011 Act (regulation 35).

7.24 The charity trustees of a CIO are prohibited from participating in any transaction or arrangement of the CIO in which they could reasonably be considered to have a conflict of interest (regulation 36).

7.25 The Regulations make provision for the Charity Commission or court to order a general meeting of a CIO, and to make directions in relation to the holding of such a meeting.

7.26 Minutes of CIO charity trustee meetings and records of decisions not taken at meetings must be prepared and kept for a period of six years (regulation 37). Minutes of CIO charity trustee meetings and records of CIO decisions are evidence of the proceedings of the meeting or decision, provided they are properly authenticated (regulations 38 and 39). Similar provision is made for minutes of members' meetings (including a sole member) and records of decisions not

taken at meetings, for these to be evidence if properly authenticated (regulations 41-43), and where the CIO has different classes of members with different voting rights (regulation 45).

7.27 The Regulations make provision for the inspection of minutes and records (regulation 45), and the way in which a CIO may maintain its records (regulation 46), which includes electronically.

Service of Documents (Part 8)

7.28 The Regulations make provision for how documents are served on CIOs (regulation 47), and on the charity trustees of CIOs (regulation 48).

Communications Provisions (Part 9, Schedules 2 and 3)

7.29 The Regulations make provision for the sending of documents and information to a CIO, or by a CIO, under charity law, subject to any alternative legislative or constitutional requirement or provision.

7.30 Schedule 2 makes provision for documents or information to be sent or supplied in either hard copy or electronic form to a CIO. Schedule 3 makes provision for documents or information to be sent or supplied by a CIO (including between CIOs) in either hard copy or electronic form, including through a website. These provisions are based on the provisions that apply in company law.

7.31 Where a CIO communicates with a person electronically, it is treated as having agreed to accept a response in electronic form (regulation 51). Members of a CIO are entitled on request to a hard copy of information provided to them electronically by the CIO (regulation 52). Regulation 53 makes provision for determining the time of receipt of information or documents supplied or sent by a CIO.

7.32 The Regulations enable the Charity Commission to specify its requirements (which it must publish) as to documents or information to be supplied by a CIO to the Charity Commission (regulation 54). For example, the Charity Commission may require documents to be supplied to it electronically, in a particular format, and authenticated in a particular way. Regulation 56 sets out the requirements for proper delivery of information to the Charity Commission. The Charity Commission may accept documents or information supplied by a CIO that has not been properly delivered (regulation 57). The CIO would remain liable to properly deliver the documents or information to the Charity Commission, and the Regulations make provision for the Charity Commission to accept replacement documents or information properly delivered (regulation 58).

Supplementary Provisions (Part 10)

7.33 Regulation 60 applies, with modifications, the criminal offence under section 993 of the Companies Act 2006 (fraudulent trading) to the charity trustees of CIO where they undertake activities with the intent to defraud creditors or other third parties, or for other fraudulent purposes. Every person who knowingly participates in such an activity commits an offence. This provision ensures that the same offence that applies to companies (including charitable companies) also applies to CIOs.

7.34 The purpose of regulation 61 is to make it easier for an unincorporated charity to transfer property held on special trusts to a CIO. It is anticipated that many unincorporated charities will “convert” to CIO status by constituting a new CIO and then merging with it under the merger

provisions in Part 16 of the 2011 Act. As a corporate body, a CIO cannot hold as corporate property any charitable property that is subject to special trusts (including permanent endowment). Instead it must hold such property as a corporate trustee. The same applies in the case of a charitable company. Where an existing unincorporated charity wishes to transfer all of its property to the CIO, the modifications in regulation 61 to the 2011 Act merger provisions enable property held on special trusts (including permanent endowment) to be transferred automatically to the CIO, to be held on the same trusts, with the CIO appointed as corporate trustee of the property, and with a direction that they are to be treated as a single charity for the purposes of registration, accounts, reports and returns under the 2011 Act.

7.35 Under section 133 of the 2011 Act, CIOs with an annual income of £250,000 or less may opt to prepare simpler receipts and payments accounts rather than full accruals accounts. So as to ensure an appropriate degree of transparency, regulation 62 provides that where a CIO exercises this option it includes notes to the accounts to reflect details of any secured charges over CIO property, and any guarantees given by the CIO.

Consequential Amendments to Secondary Legislation (Part 11 and Schedule 4)

7.36 The amendment to the Charities (Misleading Names) Regulations 1992 enables the Charity Commission to require a charity to change its name (section 42 of the 2011 Act) if it includes in its name the words “charitable incorporated organisation” or the Welsh equivalent, where the charity is not, in fact, a CIO. The other consequential amendments are to regulations excepting certain charities from the need to register with the Charity Commission. In each case, the amendment ensures that a charity which is constituted as a CIO is not excepted from registration.

8. Consultation outcome

8.1 Draft regulations were first published for public consultation in 2008 (http://webarchive.nationalarchives.gov.uk/20100304103842/http://www.cabinetoffice.gov.uk/third_sector/consultations/completed_consultations/cio.aspx). The then Government and the Charity Commission published a joint response to the consultation in September 2009 (http://webarchive.nationalarchives.gov.uk/20100304103842/http://www.cabinetoffice.gov.uk/third_sector/news/news_stories/090917_cioresponse.aspx).

8.2 There were 95 respondents to the 2008 consultation. Almost all of the respondents were supportive of the development of the CIO, and the potential for it to have a positive impact for the charity sector. Following consultation a number of changes were made to the draft secondary legislation, for example changes to the requirements to maintain and provide access to registers of members and trustees.

8.3 Despite the passage of time, a further consultation is not considered necessary, given the strong support from the charity sector for the implementation of the CIO. The lapse in time between the 2008 consultation and bringing forward the secondary legislation has largely been due to detailed work required on the insolvency and dissolution regime for CIOs and to make changes to the consultation drafts to address Charity Commission operational process and resource concerns.

8.4 The Cabinet Office has worked closely with the Charity Commission in preparing these Regulations. The shared aim has been to ensure that it is as straightforward as possible to set up and run a CIO, whilst ensuring the necessary protections are in place to ensure public confidence in the CIO model. The Charity Commission supports these Regulations and the implementation of the CIO.

9. Guidance

9.1 The Charity Commission has published detailed guidance on the CIO on its website: [http://www.charitycommission.gov.uk/Start up a charity/Do I need to register/CIOs/default.aspx](http://www.charitycommission.gov.uk/Start_up_a_charity/Do_I_need_to_register/CIOs/default.aspx)

This includes general information on the CIO, how to set up a CIO, the requirements for running a CIO, and for closing down a CIO. The Commission has also published two model constitutions for CIOs (which are also available at the above website address):

9.1.1 the Foundation model is for CIOs whose constitution provides that the same persons are to be its voting members and its charity trustees;

9.1.2 the Association model is for other CIOs i.e. those that will have voting members other than (or in addition to) its charity trustees.

9.2 The Charity Commission will, using the powers conferred by section 206 of the 2011 Act, require those who wish to establish a CIO to use the Charity Commission's model constitutions unless they can justify to the Commission departure from the models in their specific circumstances. Detailed guidance notes accompany the model constitutions, explaining the provisions, and in particular where founders might wish to consider the inclusion of particular powers.

10. Impact

10.1 The CIO framework, including these Regulations, is a permissive regime. It does not impose regulation on any charities (or businesses) other than those charities that choose to adopt the CIO form.

10.2 The CIO is expected to be a popular choice for small to medium-sized charities that seek the benefits of a corporate form (principally limited liability and legal personality), but without the dual regulation and reporting faced by charities that are established as companies limited by guarantee. The CIO will not be the right legal form for all charities. The company limited by guarantee is expected to remain a popular legal form for large charities, and unincorporated associations or trusts are expected to remain popular for the smallest charities (as there are fewer reporting requirements and they are simpler to run than a CIO).

10.3 The Regulatory Policy Committee has confirmed that the CIO does not impose a cost on business. A validation impact assessment for the CIO has been prepared and is annexed to this Memorandum.

11. Regulating small business

11.1 These Regulations do not apply to small business.

12. Monitoring & review

12.1 Lord Hodgson of Astley Abbotts has undertaken a statutory review of the Charities Act 2006. Whilst the review did consider organisational forms, including the CIO, a full assessment of the CIO was not possible as the CIO had not been implemented when the review completed. Lord Hodgson did recommend swift implementation of the CIO.

12.2 There is a policy commitment to review the impact of the CIO framework within three years of commencement of these Regulations. The assessment will consider whether or not the CIO has met its aims of being relatively straightforward to establish and run.

13. Contact

Ben Harrison at the Office for Civil Society, Cabinet Office, Tel: 020 7271 6282 or email: ben.harrison@cabinet-office.gsi.gov.uk can answer any queries regarding this instrument.

Title: Charitable Incorporated Organisation (CIO) Secondary Legislation Lead department or agency: Office for Civil Society, Cabinet Office Other departments or agencies: Charity Commission for England and Wales	Validation Impact Assessment (IA)
	IA No: CO 1009
	Date: 09/10/2012
	Stage: Enactment
	Source of intervention: Domestic
	Type of measure: Secondary Legislation
Contact for enquiries: Ben Harrison 020 7271 6282	

EANCB for OIOO

Direct impact on business (EA) (£m):		
Cost: 0	Benefits: 0	Net: 0

Please note that this is a provisional figure, subject to validation by the Regulatory Policy Committee.

Summary: Analysis and Evidence

Description:

Complete the legal framework for the CIO

Price Base Year 2009	PV Base Year 2009	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 12.5	High: 36.84	Best Estimate: 24.67
TOTAL COSTS (direct and indirect) (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low	5.9		-		5.1
High	1.7		-		1.5
Best Estimate	3.8		-		3.3
Description and scale of key monetised costs to business (including charities)					
Direct (first order) monetised costs:					
<ul style="list-style-type: none"> The CIO framework <i>imposes no direct cost burdens</i> on charities or businesses. It is a permissive regulatory framework and will be optional for charities. All costs associated with this measure are second order effect because they require voluntary behaviour change in response to the new incentives and options available. If this behaviour change were not to take place, charities would incur no costs. Hypothetically if no charities took up the CIO, no organisation would incur any costs or benefits.¹ 					
Indirect (second order) monetised costs:					
<ul style="list-style-type: none"> Indirect transitional costs of CIO incorporations are £3.8m- see evidence base. 					
Other key non-monetised costs to business (including charities)					
<ul style="list-style-type: none"> No direct or indirect non-monetised costs. 					
TOTAL BENEFITS (direct and indirect) (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	-		1.7		14.0
High	-		5.1		42.0
Best Estimate	-		3.4		28.0
Description and scale of key monetised benefits to business (including charities)					
Direct (first order) monetised benefits					
<ul style="list-style-type: none"> No direct (first order) benefits to charities for the same reason as there are no direct costs. Benefits are dependent on behaviour change. If no charities choose the new CIO structure there will be no benefits – i.e. “<i>something else has to happen first</i>”². 					
Indirect (second order) monetised benefits					
<ul style="list-style-type: none"> There are significant indirect monetised benefits against the base case. The average annual accounts and reports preparation and scrutiny costs for CIOs (£421) will be much lower than for CLGs (£1307). The base case assumes that without the CIO in place, half those unincorporated charities that would have opted for CIO choose instead to opt for CLG form (the best estimate). This equates to average annual indirect benefits of £3.4m over the ten year period (£28m total benefit at present value). See evidence base for a more detailed analysis 					

¹ Advice from BRE is that the EANCB should only include direct impacts to business as defined in the OIOO methodology:

"Direct impacts are those that can be identified as resulting directly from the implementation or removal/simplification of the regulation. A first order cost/benefit occurs as a direct effect of the regulation. If the effect happens after something else happening first (as a result of the regulation) it is considered a second order effect."

Other key non-monetised benefits to business (including charities)

Direct non-monetised benefits

No direct non-monetised benefits.

Indirect non-monetised benefits

Non-monetised indirect benefits are considered to outweigh monetised indirect benefits.

Trustees and Members – limited liability: difficult to quantify this benefit, but the protection for the trustees and members personally from the financial liabilities of the charity is considered to be the main reason why many charities seek incorporation. Third parties (e.g. creditors) - interests are protected at point of incorporation, on an ongoing basis, and in insolvency and dissolution using much of the same framework as applies to companies limited by guarantee.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5%

Main assumptions are set out in the Costs Calculations below. Target market is charities with incomes between £10k and £500k, of which there are 70,322. Volume of take up of the CIO form is the main sensitivity for costs and benefits. We have assumed 20% of existing unincorporated charities in the target market (14,000) opt for the CIO model – as this mirrors experience in Scotland with their similar SCIO form.

On the base case, the main assumption (based on anecdotal evidence) is that in the absence of the CIO, 50% of charities (best estimate) that would have become a CIO instead opt to convert to the company structure (incurring higher indirect costs) – i.e. 10% of the target market (best estimate). We recognise that further work is needed to strengthen the evidence in this area. We have undertaken a sensitivity analysis (considering low estimates of 5% of the target market and high estimates 15%).

² Ibid.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	Charities Act 2006 (this introduced the CIO) Charities Act 2011 (a consolidation of existing charity legislation)
2	Regulatory Impact Assessment of Charities Act 2006
3	The Charitable Incorporated Organisations (General) Regulations 2012
4	The draft Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012
5	The draft Charitable Incorporation Organisations (Consequential Amendments) Order 2012
6	Charity Commission CIO model constitutions
7	Consultation package on the Charitable Incorporated Organisation (CIO) – the new corporate form for charities (September 2008) including consultation stage impact assessment
8	Summary of consultation responses and next steps

+ Add another row

Evidence Base

Annual profile of monetised direct and indirect costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	£0.4	£0.4	£0.4	£0.4	£0.4	£0.4	£0.4	£0.4	£0.4	£0.4
Annual recurring cost	£-	£-	£-	£-	£-	£-	£-	£-	£-	£-
Total annual costs	£0.4	£0.4	£0.4	£0.4	£0.4	£0.4	£0.4	£0.4	£0.4	£0.4
Transition benefits	£-	£-	£-	£-	£-	£-	£-	£-	£-	£-
Annual recurring benefits	£0.6	£1.2	£1.9	£2.5	£3.1	£3.7	£4.4	£5.0	£5.6	£6.2
Total annual benefits	£0.6	£1.2	£1.9	£2.5	£3.1	£3.7	£4.4	£5.0	£5.6	£6.2

* For non-monetised benefits please see summary pages and main evidence base section

Greater monetised indirect benefits are quickly realised (set against higher levels of indirect transitional costs).

Evidence Base (for summary sheets)

A. Introduction

- 1) As the CIO is a permissive regime (only those charities that opt to set up as a CIO will be affected) these Regulations impose no direct costs on businesses (including charities).
- 2) There are currently around 162,000 main charities on the Register of Charities. Of these, around 80% are unincorporated, and 20% incorporated (almost exclusively) as a company limited by guarantee³.
- 3) The non-monetisable indirect benefits of limited liability are considered to significantly outweigh the indirect monetised benefits of simpler accounting and reporting requirements. The importance of limited liability in being able to recruit and retain high quality trustees, and being able to take on assets or contracts, is the principal reason why charities (and those looking to set up new charities) have long argued for this new type of legal structure. The Scottish Government last year introduced a similar legal form for charities in Scotland, the Scottish CIO (SCIO). It has proved very popular with charities there with over 20% of new charities choosing to adopt the SCIO form⁴.
- 4) It is currently cheaper and simpler to run a charity with an unincorporated structure, than it is to run a charity as a company limited by guarantee. The CIO is designed to offer the benefits of the company structure, but with much lower annual administration costs (comparable to the costs of running an unincorporated charity).

B. Target market

- 5) The target market for the CIO is charities with an annual income of between £10k and £500k. While the CIO may appeal to some charities with an income of below £10,000, for these smallest charities, an unincorporated form may be simpler to operate (and the Charity Commission already provides a simple model governing document for small charities). For charities with an income of over £500,000 the Company Limited by Guarantee may offer a more appropriate legal structure (particularly as it offers a publicly searchable register of charges over property at Companies House), although some charities with an income of over £500,000 may opt for the CIO form, and will benefit from it. Table 1 below shows that there are just over 70,000 registered charities with incomes between £10,000 and £500,000, representing 44% of all charities (but only 11% of total charity sector income).

³ Data from Charity Commission's Register of Charities (November 2010, not published)

⁴ [*Charities' new legal form takes full effect: OSCR predicts continued high demand for SCIO status*](#). 30/12/2011

Table 1 - Target Market: charities with incomes of £10k to £500k⁵

Income band	Charities	% of all charities	% of charity sector income	Total annual income £m
£10k to £100k	51,201	32%	3%	1,835
£100k to £500k	19,121	12%	8%	4,274
Total (£10k to £500k)	70,322	44%	11%	6,108

C. Projected Volumes

- 6) **C.1 Base case** – The main assumption is that in the absence of the CIO structure, half the number of charities that would have set up as a CIO opt instead to incorporate as a company limited by guarantee (CLG) to obtain the benefits of limited liability that way, but with the additional indirect costs entailed. This represents 10% of the target market in addition to existing charities structured as a CLG. This assumption is based on anecdotal evidence and we recognise that more work is needed to strengthen the evidence in this area. We have undertaken a sensitivity analysis (considering low estimates of 5% of the target market and high estimates 15% of the target market – see table 11 for more detail). Anticipated volumes under the best estimate base case are shown in table 2 below.

5

Table 2 – Volumes over 10 years (Base case – best estimate)

Year	CIOs	CLGs	Unincorporated
2013	-	13,423	56,899
2014	-	14,126	56,196
2015	-	14,830	55,492
2016	-	15,533	54,789
2017	-	16,236	54,086
2018	-	16,939	53,383
2019	-	17,642	52,680
2020	-	18,346	51,976
2021	-	19,049	51,273
2022	-	19,752	50,570

- 7) **C2. Implement CIOs** - The main driver of indirect costs and benefits is the volume of organisations that opt for CIO status. Evidence from Scotland where a similar legal form has been recently introduced is that 20% of charity formations opt for the Scottish CIO form (SCIO). For the purposes of this assessment the volume of existing charities adopting the CIO structure in the target market (table 1) is also assumed to be 20% (although the more charities that opt for the CIO structure, the greater the indirect benefits)⁶. The volumes over a ten year period are shown in table 3 below.

Table 3 – Volumes over 10 years (Implement CIOs)

Year	CIOs	CLGs	Unincorporated
2013	1,406	12,720	56,196
2014	2,813	12,720	54,789
2015	4,219	12,720	53,383
2016	5,626	12,720	51,976
2017	7,032	12,720	50,570
2018	8,438	12,720	49,164
2019	9,845	12,720	47,757
2020	11,251	12,720	46,351
2021	12,658	12,720	44,944
2022	14,064	12,720	43,538

⁶ [Charities' new legal form takes full effect: OSCR predicts continued high demand for SCIO status. 30/12/2011](#)

C3. Comparison of volumes of charity structures under recommended option and base case

- 8) Table 4 below summarises the distribution of the target market (70,322 charities) by the end of a 10 year period between the different types of legal structure available.

Table 4 – Volumes after 10 years under different scenarios

Options	CIOs	CLGs	Unincorporated	Total (target market)
Base case (Do not implement CIOs)- see Table 2	-	19,752	50,570	70,322
Implement CIOs- see Table 3	14,064	12,720	43,538	70, 322

- 9) The total size of the target market is expected to remain stable over the ten year period (this is borne out by Charity Commission data on the number of new registrations and removals from the register, which have in recent years generally balanced each other out)⁷.

D. Unit monetised indirect costs and benefits

D1. Monetised indirect costs

- 10) Transitional (one-off) indirect costs are incurred where an unincorporated charity seeks incorporation as a CLG or a CIO. Unit costs have been estimated using data from the Charity Commission's Admin Burdens Exercise, and are **indicative only**. The important point is that the indirect costs involved in incorporating a CIO are broadly equivalent to the indirect costs involved in incorporating a CLG. The figures in Table 5 represent an average (which will mask significant variability) – for example, a brand new small charity formation may require no legal advice, and using the model CIO constitution would not require significant trustee time. Alternatively a large existing unincorporated charity with staff, property, and liabilities such as pension schemes, may require significantly more professional advice to incorporate as a CIO (although this would be no different if it were to opt to incorporate as a CLG).

⁷ The total number of registered charities has remained at between 160,000 and 162,500 within the last three years:
http://www.charitycommission.gov.uk/About_us/About_charities/factfigures.aspx

Table 5: One-off indirect unit costs of incorporating a CIO⁸

Income band	A. Number Hours	B. Trustee rate p.h. (£)	C. External Professional Advice (£)	Total unit indirect cost of incorporating a CIO (£) ((A x B) + C)
£10k to £100k	5	18	350	440
£100k to £500k	10	18	750	930
Weighted Average ⁹				573

- 11) The one-off indirect unit cost for incorporating a CLG is considered to be the same as that for a CIO (i.e. £573) *plus* the charge of incorporation levied by Companies House (of £44 for a paper incorporation or £15 for an electronic incorporation¹⁰ - £27 assuming a 50%¹¹ split). Therefore the average indirect unit cost of a CLG incorporation is estimated as £600.
- 12) Under the base case, no CIOs are formed, so there are no CIO transitional costs. However, the number of CLGs increases from 12,720 to 19,752 (an increase of 7,032 multiplied by the additional unit incorporation cost of £600), resulting in transitional costs of £4.22m.
- 13) Implementing the CIO results in transitional costs of £8.06m relating to the formation of 14,064 CIOs (multiplied by the additional unit cost of incorporation of £573). The number of CLGs remains the same.
- 14) Therefore the total indirect transitional cost is therefore £3.8m (£8.06m minus £4.22m) over the ten year period.
- 15) There are no annual monetised indirect costs.

D2. Monetised indirect benefits

- 16) Unincorporated charities with an annual income below £250,000 can opt to prepare simple receipts and payments accounts, and this, coupled with simpler external scrutiny requirements in relation to receipts and payments accounts, costs significantly less than the

⁸ Figures based on Charity Commission's Admin Burdens Reduction data, with assumptions made on the number of trustee hours and external legal advice required. The important point is that incorporation as a CIO should cost no more than incorporation as a CLG. The weighting applied is to represent the different expected volumes in each income band.

⁹ Weighted in direct proportion to volumes of charities by income band – see table 2

¹⁰ <http://www.companieshouse.gov.uk/toolsToHelp/ourPrices.shtml#Company>

¹¹ In the absence of any direct evidence

preparation and external scrutiny costs of accruals accounts, which all CLG charities must prepare. Table 6 below shows the indirect average unit costs for the different types of charity structure in the target market.

Table 6: Ongoing average unit running costs¹²

Charity structure	A. Accounts Preparation	B. Accounts External Scrutiny	C. Filing	Total (A + B + C)
CIO	£114	£307	£0	£421
Company (CLG)	£270	£1,010	£27	£1,307
Unincorporated	£114	£307	£0	£421

- 17) The benefits accrue because the costs of running a CIO each year are substantially less than the costs of running a CLG, and because of the different mix of charity structures (see table 4 above) in each case.

E. Aggregate monetised indirect costs and benefits

- 18) Table 7 below shows the total running costs of each structure under the base case (the volumes in table 2 multiplied by the relevant unit costs), whilst table 8 shows the total running costs of each structure if the CIO structure is implemented (the volumes in table 3 multiplied by the relevant unit costs).

Table 7 –Base Case

<i>Unit cost</i>	<i>£421</i>	<i>£1,307</i>	<i>£421</i>	
<i>Year</i>	<i>Annual CIO running cost (£m)</i>	<i>Annual CLG running cost (£m)</i>	<i>Annual unincorporated running cost (£m)</i>	<i>Total Annual Running Costs (£m)</i>
2013	-	17.54	23.95	41.50
2014	-	18.46	23.66	42.12
2015	-	19.38	23.36	42.74

¹² Figures based on Charity Commission Admin Burdens Reduction data and published Companies House filing charges.

2016	-	20.30	23.07	43.37
2017	-	21.22	22.77	43.99
2018	-	22.14	22.47	44.61
2019	-	23.06	22.18	45.24
2020	-	23.98	21.88	45.86
2021	-	24.90	21.59	46.48
2022	-	25.82	21.29	47.11

Table 8 –Implement CIOs

<i>Unit cost</i>	<i>£421</i>	<i>£1,307</i>	<i>£421</i>	
<i>Year</i>	<i>Annual CIO running cost (£m)</i>	<i>Annual CLG running cost (£m)</i>	<i>Annual unincorporated running cost (£m)</i>	<i>Total Annual Running Costs (£m)</i>
2013	0.59	16.63	23.66	40.88
2014	1.18	16.63	23.07	40.88
2015	1.78	16.63	22.47	40.88
2016	2.37	16.63	21.88	40.88
2017	2.96	16.63	21.29	40.88
2018	3.55	16.63	20.70	40.88
2019	4.14	16.63	20.11	40.88
2020	4.74	16.63	19.51	40.88
2021	5.33	16.63	18.92	40.88
2022	5.92	16.63	18.33	40.88

- 19) Table 9 shows the indirect annual benefits that accrue by implementing the CIO, against the base case.

Table 9: Monetised Indirect Annual Benefits - Comparison of Implementation vs Base Case¹³

Year	CIO (£m)	CLG (£m)	Unincorporated (£m)	Total Annual Indirect Benefits (£m)
2013	- 0.59	0.92	0.30	0.62
2014	- 1.18	1.84	0.59	1.25
2015	- 1.78	2.76	0.89	1.87
2016	- 2.37	3.68	1.18	2.49
2017	- 2.96	4.60	1.48	3.12
2018	- 3.55	5.51	1.78	3.74
2019	- 4.14	6.43	2.07	4.36
2020	- 4.74	7.35	2.37	4.98
2021	- 5.33	8.27	2.66	5.61
2022	- 5.92	9.19	2.96	6.23
Total	- 32.57	50.55	16.28	34.27

F. Non-monetised Indirect Benefits

- 20) It is difficult to place a financial value on the benefits that incorporation brings to charities. Whilst there are obvious practical benefits flowing from the charity having its own legal personality, the benefit of personal protection for the trustees and members from the charity's financial liabilities is hard to quantify in monetary terms. There is some anecdotal evidence that charity trustees and potential trustees (particularly professionally qualified people) perceive this as a significant benefit and one which could weigh heavily in trustees' decisions about whether or not to incorporate as a CIO (or a company limited by guarantee), or whether or not to join a trustee board.
- 21) There are believed to be around 900,000 charity trustee positions, with over 39% of charities having trouble filling trustee vacancies¹⁴. Almost all trustees are unpaid volunteers. There is increasing evidence that unincorporated charities are finding it harder to recruit and retain trustees, often due to concerns about personal liability. This is particularly the case for professionally qualified people (e.g. lawyers, accountants) as they are subject to a higher duty of care.

¹³ Whilst it may seem counter-intuitive that a negative benefit accrues under the CIO column, the benefit comes from there being fewer CLGs which incur higher annual reporting costs.

¹⁴ The Charity Commission, [Start as you mean to go on: Trustee recruitment and induction research report](#) (2005)

- 22) In a recent survey for the Charities Act Review, 46% of respondent charities reported trustee vacancies, and 53% of respondent charities considered that concern over personal liability was “very significant” in putting people off becoming trustees (a further 35% considered it was relevant). In a survey of the public conducted for the same Review, 57% of respondents reported that concern over personal liability was “very significant” in putting people off becoming trustees (the second highest response, after “lack of time to commit to the role” at 74%)¹⁵.
- 23) In the charities survey for the Charities Act Review, 25% of respondent charities said that they either would, or would consider, establishing as a CIO once the model becomes available (30% of respondents had not yet heard of the CIO structure)¹⁶.
- 24) Please see annex A for multi-criteria analysis.

G. Net Indirect Costs/Benefits and Sensitivity Analysis (expressed in present value terms)

- 25) Table 10 shows the total indirect benefits each year of implementing the CIO (the indirect annual benefits minus the indirect annual transitional costs).

Table 10: Assessment of total indirect costs/benefits

Year	Total Annual indirect benefits (£m)	Total annual transitional indirect costs (£m)	Total net Indirect Benefit (£m)
2013	0.62	0.38	0.24
2014	1.25	0.38	0.86
2015	1.87	0.38	1.49
2016	2.49	0.38	2.11
2017	3.12	0.38	2.73
2018	3.74	0.38	3.35
2019	4.36	0.38	3.98
2020	4.98	0.38	4.60
2021	5.61	0.38	5.22
2022	6.23	0.38	5.85

¹⁵ Online charity and public perception questionnaires undertaken for the statutory [Review of the Charities Act 2006: Trusted and Independent, Giving charity back to charities](#) (2012)

¹⁶ Ibid.

- 26) Table 10 deflates the figures in the summary sheet to present value prices to 2009 price base year) to take account of the time value of money.

Sensitivity Analysis

- 27) We recognise that the principle assumption underlying this analysis is the number of unincorporated charities in the base case that, in the absence of the CIO structure, would instead opt to incorporate as a CLG. The base case assumes that 50% of the 14,064 charities that would have opted for the CIO structure (i.e. 7,032) instead opt for CLG status. Table 11 below shows the impact on the Net Present Value if, under the base case, either 25% (3,516) opted for CLG status, or 75% (10,548) opted for CLG status.

Table 11: Sensitivity Analysis (Net Present Value)

Estimated number of unincorporated charities in the base case that convert to CLG structure instead of CIO		Net Present Value (£m)
5% of target market (low estimate)	3,516	12.5
10% of target market (best estimate)	7,032	24.67
15% of target market (high estimate)	10,548	36.84

Multi-Criteria Analysis of the Options

A multi-criteria analysis supports the implementation of the CIO. The following were considered the most relevant criteria:

a) Trustee liability concerns: the ability of the option to support the recruitment and retention of trustees by addressing concerns about the potential for personal liability;

Both the CIO (option1) and conferring limited liability on unincorporated charities (option 3) score well here. Alternatives to regulation (option 2) have not addressed concerns about liability of unincorporated registered charities, leaving them with the option of remaining unincorporated or incorporating as a company (a more expensive option).

b) Creditor protection: the ability of each option to protect the financial interests of creditors and other third parties;

The CIO (option 1) scores well because it provides a range of protections for creditors and other third parties, including access to the insolvency regimes under the Insolvency Act 1986, and protections under the Company Directors Disqualification Act 1986. However, the CIO framework does not provide a register of charges (like Companies House does for companies limited by guarantee), which means that the CIO structure is unlikely to be attractive to the largest charities, which are likely to continue to favour the company limited by guarantee structure. Option 2 could be argued to provide better creditor protection as creditors are able to pursue the individual trustees of unincorporated charities for unpaid debts. However, pursuing volunteer trustees through the courts to enforce a debt is a course of action that is rarely followed by creditors. Under option 2 some charities will opt for the more expensive options of incorporation as a company, which provides third party protections. Conferring limited liability (option 3) without the creditor protections would undermine third party confidence, potentially resulting in many third parties opting not to do business with such charities.

c) The ability to contract and take on assets: the extent to which the option enables charities to enter into contracts and take on the ownership or management of assets;

A corporate structure is strongly recommended for entering into contracts and taking on or managing assets, hence the low score for option 2 – although under this option we recognise that some charities will opt for the costly option of incorporating a company. Conferring limited liability without creditor protections and legal certainty would undermine third party confidence in contracting or leasing assets, hence the mixed result for option 3. The CIO provides the legal personality needed to enter contracts or take on assets, with the creditor protections and legal certainty needed to give confidence to the structure.

d) Ease of administration: the extent of the administrative burden required to operate under each option;

The CIO framework (option1) has been designed to balance the need for transparency and accountability with the need for simple administration. CIOs will only report to the Charity Commission, will have simple and flexible constitutions and rules, and will be required to maintain and report on the minimum level of information considered appropriate for a charitable incorporated entity. However, it will remain easier to set up and run an unincorporated charity (option 3), which because they don't have the benefit of limited liability are subject to fewer transparency requirements. Under option 2, some charities would opt to incorporate as a company to obtain the benefits of incorporation, incurring additional administrative costs – others will opt to remain unincorporated.

e) Appropriate enforcement regime: the extent to which each option provides an

enforcement regime that is appropriate and proportionate in the context of charities;

The enforcement regime for the CIO (option 1) has been designed to be proportionate and reflect the fact that CIOs will be charitable entities. Unlike company law, the CIO framework does not impose strict liability offences for administrative offences.

f) Specific merger provisions: the extent to which each option makes specific provision for merging or restructuring charities

The CIO framework makes specific provision to facilitate the merger or amalgamation of CIOs with other charities (option1). There are some charity law provisions which facilitate some merger or restructuring activity of unincorporated charities (option 2). However making these provisions available if limited liability were to be conferred without suitable creditor protections (option 3) would further undermine creditor confidence.

g) Appropriate trustee duties and powers: the extent to which each option has duties and powers that are appropriate for trustees of a charitable entity.

The CIO scores well here, as the powers and duties have been developed with the needs of a charitable entity in mind. The powers and duties of trustees or directors (in trust law and company law) are not created with the needs of charitable entities in mind (options 2 and 3).

Table - Multi-criteria analysis

Criteria	Trustee liability concerns	Creditor Protection	Ability to contract and take on assets	Ease of administration	Appropriate enforcement regime	Specific merger provisions	Appropriate trustee duties and powers	Total Score
Criteria weighting (out of 10)	9	8	8	9	6	4	5	
Option 1: Implement the CIO framework	81	64	72	63	54	36	45	415
Option 2: Alternatives to regulation	18	56	48	63	42	32	35	290
Option 3: Confer limited liability on unincorporated charities	81	16	56	72	42	20	25	312