

This note applies only to charities.

## 1. CIOs - background

Most incorporated charities are formed under the Companies Acts. However, by virtue of the Companies (Charitable Companies) Regulations made under the Companies Act 2006, it has been possible since 2013 to set up a new type of company which has provided a legal form specifically designed for charities.

Prior to 2012, a number of other legal forms were used by charities. Those forms had been used for a long period for other types of organisations. Although they were not specifically designed for charities, they were also used by charities. In recent years, however, they have become increasingly exposed to potentially unlimited liability.

In the case of unincorporated charities, the trustees are personally liable for the financial and other liabilities of the charity. That exposure is separate from the liability of the charity to act properly, the latter being a matter for the unincorporated form. For example, in an unincorporated form, a charity trustee will have a personal liability for carrying out his role. However, if he has acted with due and reasonable care, he will not be liable as a trustee.

It is therefore the potential exposure to personal liabilities which trustees most value in choosing an incorporated form for their charity in an incorporated form. This is one of the reasons why such vehicles for charities.

Some charities, in particular those which are not in the incorporated form of a company, have a personal liability for the charity's debts, it is not possible for charities to use, for several reasons.

This led to the creation of the CIO.

## 2. Incorporated or unincorporated

The document information pages of the [Charity Association](#), [Trust Deeds](#) and [Articles of Association – Private Companies](#) consider when a particular charity might find one form more suitable than another.

Those pages also include some guidance on whether to set up an incorporated or unincorporated charity.

Before deciding whether to use an incorporated or unincorporated form, founders might find it helpful to consider the factors which touch on that point. Legal advice should be sought before that decision is made.

limited by guarantee under the Charities Act 2011 (“the Act”), it has been possible since 2013 to set up a new type of company. This legislation for the first time provided a legal form specifically designed for charities.

incorporated legal forms were used for a long period for other types of organisations. Although they were not specifically designed for charities in a number of ways, they were also used by charities. In recent years, however, they have become increasingly exposed to potentially unlimited liability.

unincorporated charities, the trustees are personally liable for the financial and other liabilities incurred by their charity. That exposure is separate from the liability of the charity to act properly, whether or not the charity is in an unincorporated or incorporated form. For example, in an unincorporated form, a charity trustee will have a personal liability for carrying out his role. However, if he has acted with due and reasonable care, he will not be liable as a trustee.

It is therefore the potential exposure to personal liabilities which trustees most value in choosing an incorporated form for their charity in an incorporated form. This is one of the reasons why such vehicles for charities.

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Those pages also include some guidance on whether to set up an incorporated or unincorporated charity.

Before deciding whether to use an unincorporated form, charity founders might find it helpful to consider the factors which touch on that point. Legal advice should be sought before that decision is made.

# SAMPLE

This note assumes that charity f

decided to incorporate.

### 3. **Company or CIO?**

If the founders have decided th  
have to decide whether it should  
designed to assist founders of  
taken before the decision is mad

in incorporated form, they then  
or as a CIO. Whilst this note is  
decision, legal advice should be  
a CIO or a company.

### 4. **Nature of CIOs**

The CIO form was created to  
burdensome legal framework th  
with a constitution and legal  
members. In that sense, whilst  
However, they are subject to  
companies and their directors a  
duties (civil and criminal), and th  
the form of companies have to  
with the Commission and Co  
charity. CIOs only have to file ac

incorporation but with a less  
A CIO is an incorporated body  
separate from its trustees or  
, they are very like companies.  
Charity Commission, whereas  
to company law obligations and  
ny law. In particular, charities in  
of annual accounts and returns  
ng additional expense for the  
the Commission.

### 5. **Converting to a CIO from**

The topic of conversion from a  
template and guidance materia  
CIOs assume that a charity co  
charity.

### **ed or unincorporated form**

O is outside the scope of our  
which we have included about  
a CIO would do so as a *new*

Charities which already exist in s  
to a CIO. Whether they are to do  
Conversion is permitted by the C  
form to convert to a CIO, and sim  
form of a charitable company un  
Regulations 2017. The Regulatio  
to CIOs by means of an applicat

h to convert from their existing form  
only with the benefit of legal advice.  
le for a charity in unincorporated  
possible to convert to a CIO from the  
porated Organisations (Conversion)  
panies to easily and quickly convert

### 6. **Pros and Cons of a CIO**

Although CIOs have been desig  
to use a CIO or a company  
straightforward one.

### **company limited by guarantee**

ties, the decision as to whether  
may nevertheless not be a

Founders of new charities whic  
well still decide in many cases  
CIO, partly because there have  
the pros and cons of CIOs could  
and partly for a number of other  
form of a company limited by g  
into a CIO. (There is no require  
or any other official body consid

arity in incorporated form may  
ed by guarantee rather than a  
(i.e. since 2018) in which all of  
g those we have set out below),  
d many existing charities in the  
oose not to convert the charity  
or does the Charity Commission  
do so.)

A substantial number of charities  
be charities with an annual inco  
have a good deal more or less t  
form for charities, but it is still a  
of CIOs.

as CIOs, most of them likely to  
-100,000, although some CIOs  
s might ultimately be a popular  
conclusions about the popularity

# SAMPLE

## A. Some of the Pros are a

1. A new charity can have or expects to have to wait until a minimum sum be
2. It is cheap to register, with less burden and cost for
3. It is only governed by the Commission, also governed by
4. It only has to meet its more bur
5. Annual accounts, and not also with governing compa preparing, auditing CIO's annual income (The thresholds are £500,000.)
6. Apart from these be filed with the C
7. Unlike Companies annual accounts,
8. Members of a C their powers in go further the purpose such a duty. This smooth running of interests.
9. Unlike a company open to the public its first members
10. The running of a members' rights members. Members be called, demand proxy or removal included in the subsequently.

## B. Some of the Cons are a

1. A CIO is only created after registration can be as it has been for need to wait until. However, legal advice achieving registration.
2. Unlike a company the Commission e

however little annual income it example, that a charity does not ing efforts have achieved any charity as a CIO.)

is less ongoing administrative ies

ity in the form of a company is

ty Commission and meet its register with Companies House or ents.

to be filed with the Commission, and the accounting regulations CIOs. The requirements for all depend on the amount of the e, the fewer the requirements. s are £25,000, £250,000, and

s, less other information has to mpanies House

n does not charge filing fees for ion filed by charities.

y under charity law to exercise at is most likely to promote and rs of a company do not have mains to be seen) promote the that all members act in its best

members does not need to be CIO does not have to state who

e hampered by the exercise of may be exercised by Company to require a general meeting to a general meeting, appoint a ese members' rights can be y the charity's founders or

istered by the Commission and ay be some delay before such company can operate as soon (registered charity) and does not sters it before it can operate. as to what it may do prior to n.

a CIO has to be registered with is below £5000.

# SAMPLE

3. A CIO can register a mortgage over its property so. However, a CIO can also register other assets. Unlike a company, a CIO cannot operate a public company and cannot borrow money (in fact, it can offer securities). A charity's real property is not a facility for the lender to borrow. A lender can lend to a charity but guarantees the charity's borrowing as an asset of the charity as an asset of the charity, and this problem since the charity cannot be registered at the Companies Register.
4. Lack of familiarity with the law may make grants to a charity difficult.
5. Where a charity wants to do so by means of a resolution, it is likely to vote in favour of its members. However, a resolution needs to be passed by the resolution (i.e. by a majority of the written resolutions of the charity) just all of its members.
6. Trustees of a CIO are not affected by the Safety, Data Protection and Privacy of a charitable company.
7. If a CIO ceases to exist, its assets would be transferred to the charity and would still exist as a charity. The charity would still exist as a charity and convert the company into a charity.

7. The requirements of the

The Act and the Regulations cover the  
and the content of a CIO's const

The Act specifies that the constitution must be "as near to that form as the circumstances permit" (any model constitution produced to any extent) by a CIO.

The Charity Commission produces the guidance that charities, if they wish, use or modify, provided they meet the requirements of the Act and the Commission carefully scrutinise the proposed changes. The Commission's scrutiny of / activities of the charity will be based on whether the proposed changes meet the purposes proposed by the charity meets the public benefit test. The Commission is flexible when reviewing proposed changes.

nd Registry where it grants the same way as a company can do debenture over any of its fixed or the Charity Commission does. If the charity may need to it might only be able to do so in the form of a debenture over the since there will therefore be no more, the charity may not be able to give personal guarantees from trustees to make them personally liable for the debt. To defeat the purpose of setting up a charity as a company would not pose a problem. If a company would not pose a problem using a debenture, it could be used by a charity and lenders could inspect the

at funders could be unwilling to

ution, it may not be practical for  
ed at a meeting of its members,  
means of a written resolution of  
e of a company such a written  
% of the members who vote on  
members), in the case of a CIO  
ssed by *all* of its members (not

in much of the legislation which  
y, e.g. in relation to Health &  
to that extent is not preferable to

As a result also cease to exist and charities, whereas a company then have an opportunity to of entity (e.g. a Community

## ns

requirements governing a CIO

form required by the Regulations  
the Regulations do not require  
be adopted or followed (at all or

stitution which charities can, if proposed by a charity still meets. We understand that whilst the ensure that the stated objects ensure that the CIO constitution (the Regulations), in practice the its model forms of constitution.

# SAMPLE

Whether a CIO's founders either use the Commission's model constitutions, or they draft their own CIO constitution, they must ensure that their document complies with the requirements of the Act.

We have set out in very abbreviated form the most relevant requirements in relation to contents of constitutions. This is only a summary and it is somewhat selective and only the relevant parts of the Act and the Regulations. Founders will need to read the Regulations themselves before they finalise their constitution or apply to register the CIO. Using one of the forms of CIO constitution we have provided or

## A. The Act

A CIO's constitution must:

- state its name, its purpose, its principal office is in England or in Wales, whether or not it is to be wound up, and, if they are, how they must contribute;
- make provision about membership, and how a person becomes a member, about the one or more persons who are to be charity trustees of the CIO, and the terms of eligibility for appointment;
- contain directions about the powers of the CIO on its dissolution;
- be in English if its principal office is in England or in Welsh if its principal office is in Wales.

The members may be (but do not have to be) the same people as the trustees. Therefore, a trustee need not be a member and a member need not be a trustee.

A CIO must have a procedure for the holding of meetings of its members that may be held.

## B. The Regulations

The Regulations require that a CIO must:

- have members as well as trustees;
- keep a register of trustees and members, and the registers must meet the requirements for registers set out in Parts 1 and 2 of Schedule 1 to the Regulations;
- make available the registers on request;
- ensure that if there is only one member. If the number of members falls to one, the register must record the date when the number of members increases from one, the register must record the date when that occurred;
- record minutes of all proceedings of the trustees' meetings;
- record any decisions of the trustees that are more significant than in meetings; and
- keep those records for at least 10 years.

A CIO's constitution must state the names of the first charity trustees of the CIO.

A CIO's constitution must include the names of the first charity

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A CIO's constitution must state the names of the first charity trustees of the CIO.

- how a charity trustee of the CIO provides for powers and where and how they may be exercised;
- the minimum number of trustees and where and how they may be removed;
- if a CIO's constitution is otherwise than by voting, an alternative process by which decisions may be made;
- if there is provision for an alternative process by which decisions may be made at a meeting otherwise than by voting;
- holding of meetings of the CIO and the appointment of a chair, and how any poll may be demanded by the trustees;
- the extent to which a trustee may be authorised to enter into transactions;
- where and how a member may be removed;
- holding of general meetings of the CIO and the appointment of a chair, and how any poll may be demanded by members;
- how any common seal of the CIO may be used;
- how any proxy of a member may be used, and how any provision for proxies;
- how members can vote by electronic means;
- if there is provision for an alternative process by which decisions may be made at a general meeting otherwise than by voting;
- more than one class of members, and the rights of different classes of members;
- the electronic means (electronic communications) by which members can receive information from the CIO.

A CIO may provide (in the way specified by it) that it may only be amended in certain circumstances or that certain procedures are compulsory, provided that they are not more restrictive than the Act requires.

## 8. Forms of Constitution

We have included in our template the following forms of constitution for CIOs to use.

### The Charity Commission model

Two of the forms are exactly as the Charity Commission model. The *CIO 'Foundation' model* charity (where there are no other voting members) and the *CIO 'Association' model* charity (where there are voting members in addition to trustees). (Crown copyright in the forms is hereby acknowledged).

These two forms may also be obtained from the Charity Commission. They are not word processable and the copies on our website are, however, in pdf format. They may be edited electronically and then sent to the Charity Commission for registration as a CIO.

# SAMPLE

...cases to hold office (including, where appropriate, the power to remove a charity trustee from office).

...CIO business to be discharged if the trustees are unable to make decisions at a meeting.

...stitution must make provision as to the alternative process by which decisions may be made at a meeting; and, where appropriate, how trustees can make decisions at a meeting otherwise than by voting, and how they can make decisions otherwise than by voting.

...g procedure for calling meetings, and how any poll is to be held if it can be demanded by the trustees;

...any of the CIO's arrangements or transactions;

...r (including retiring as a member); and, where appropriate, how any poll may be demanded by members; and, where appropriate, how any common seal of the CIO may be used;

...terminated and exercised, if there is provision for proxies;

...on for postal voting; and, where appropriate, how members can make decisions at a general meeting otherwise than by voting on resolutions, and how they can make decisions otherwise than by voting;

...ny different voting rights attaching to different classes of members;

...ner) by which members can receive information from the CIO, and how any provision for such means of communication.

...ns) that provisions in its constitution may be amended in certain circumstances where certain conditions are met, and that certain conditions / procedures may be more restrictive than the Act requires.

...tion for CIOs to use.

### Constitution

...y Commission, one of which is for a charity where the members of the CIO are its trustees, but which is not a *CIO 'Association' model* charity (where the trustees are not necessarily also voting members). (Crown copyright in the forms is hereby acknowledged).

...ssion, but only in pdf format, i.e. they are not word processable and the copies on our website are, however, in pdf format. They may be edited electronically and then sent to the Charity Commission for registration as a CIO.

# SAMPLE

The Regulations require CIOs to contain certain legal requirements as set out in the Regulations. The Commission has recommended these two model forms.

However, the Regulations do not require charities to adopt the Commission's models or that they must use the Commission's models as they stand. Charities may adapt the models and in some cases quite substantial changes may be made. The Regulations do allow for considerable flexibility in terms of the content of the constitution and the models can therefore be amended extensively in certain respects.

**Our adapted versions of the Commission's models**  
We have therefore also produced two adapted forms. These are based on the Commission's models with various additions and deletions.

Each of our forms contains all the provisions of the Commission's models. The changes are made so that they comply with the Regulations without the need for the Commission to decide what to do with the variations submitted to it, and each charity can use the constitution according to its needs.

Some or all of the changes in our adapted forms may be made, but they may also wish to make their own changes to the Commission's clauses which have been amended or the additions we have made to the models.

In making adaptations to the two model forms, many charities will be of modest size and that, as a result they may prefer the simpler models. Whilst the Commission's models are suitable for simple and/or complex charities, they also include a number of optional and other clauses which may be unnecessary or too complicated for some charities.

Our revised versions, whilst based on the Commission's models, are streamlined, omit optional clauses and are simpler to use.

Whether any particular provision is necessary or suitable will depend on a number of factors, including the size of the charity, the nature of its work and the legal requirement for any CIO constitution to comply with the Regulations. Therefore, each charity should take legal advice before using either a Commission's model (with or without changes), or any other form.

This means that the founders of a charity can draft their own constitution. They can use one of the Commission's models (after editing as necessary). Alternatively, if the Regulations allow, the founders can draft their own constitution from scratch.

It is recommended that charities use one of the Commission's or our model forms unchanged or with only minor amendments. It is not recommended that charities draft a constitution from scratch.

contain minimum content which meets the legal requirements. To assist charities to produce their own constitution, the Charity Commission has published and recommended these two model forms.

However, the Regulations do not require that charities have to adopt the Commission's models or that they must use the Commission's models as they stand. Charities may adapt the models and in some cases quite substantial changes may be made. The Regulations do allow for considerable flexibility in terms of the content of the constitution and the models can therefore be amended extensively in certain respects.

**Other forms of constitution for CIOs**  
We have also produced two adapted forms but with various additions and deletions.

Each of our forms contains all the provisions of the Commission's models in our view. The changes are made so that they comply with the Regulations without the need for the Commission to decide what to do with the variations submitted to it, and each charity can use the constitution for itself on the content of its own constitution.

Some or all of the changes in our adapted models can be used by charities, but they may also wish to make their own changes to the Commission's clauses which have been amended or the additions we have made to the models.

In making adaptations to the two model forms, many charities will be of modest size and that, as a result they may prefer the simpler models. Whilst the Commission's models are suitable for simple and/or complex charities, they also include a number of optional and other clauses which may be unnecessary or too complicated for some charities.

Our revised versions, whilst based on the Commission's models, are therefore shorter, more streamlined and are simpler to use.

Whether any particular provision is necessary or suitable will depend on a number of factors, including the size of the charity, the nature of its work and the legal requirement for any CIO constitution to comply with the Regulations. Therefore, each charity should take legal advice before using either a Commission's model (with or without changes), or any other form.

This means that the founders of a charity can draft their own constitution. They can use one of the Commission's models (after editing as necessary). Alternatively, if the Regulations allow, the founders can draft their own constitution from scratch.

It is recommended that charities use one of the Commission's or our model forms unchanged or with only minor amendments. It is not recommended that charities draft a constitution from scratch nor just use one of the models without editing it. To use one of the models without editing it runs the risk that the charity will not meet the legal requirements of the Regulations.

meet the requirements of the Regulations. The Commission expects the charity to submit a constitution to the Commission that the document meets the requirements for the registration of the charity as a CIO. The Commission.

It is instead recommended that charities use one of our models. They will need to adapt the model to their needs and be adapted.

If they are content to use one of our models, they may wish to use one of the models electronically as necessary.

Alternatively, if they consider that their own model is a better starting point they may wish to adapt one of modest size, prefers to adopt one of our models, any unnecessary complications and adapt the model to their needs.

In all cases, charities will have to adapt the model and they will need to ensure that the model meets the Commission has (on its website).

The Commission has asked charities to submit their proposed constitution, one marked up to show where and how it differs from the model, and assess the charity's application to the Commission that its own models comply with the Regulations. The change made by the charity to the model.

With this Commission request in the Regulations, the CIO constitution which we have adapted to the model.

If a charity uses one of our marked up models or other changes to it, it should mark up the model. Once it has a final fully marked up model, it should save that copy as a final fully marked up model, and then send both the marked up and clean copy to the Commission.

If a charity instead uses one of our own marked up models, it should mark up any changes to it electronically. It should save it and then also mark up the model and then send the marked up and clean copies to the Commission.

For convenience, we have also adapted the model to these can only be submitted to the Commission proposed by the charity. (Where the charity has a clean copy of that version produced by the charity).

The Commission's model form is in Word format, but our Constitutions for Charities are in pdf format so that charities can adapt the model with their application to the Commission.

A charity will find it difficult to satisfy the Regulations and that consequently the charity has reached agreement with the Commission.

A charity may wish to adapt one of the Commission's models, whether and how any model needs to be adapted.

If a charity only a few small changes to it, they may wish to use it as their starting point and edit it to their needs.

Alternatively, if a charity considers that their own model is a better starting point they may wish to adapt one of modest size, prefers to adopt one of our models, any unnecessary complications and adapt the model to their needs.

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The Commission's model form is in Word format, but our Constitutions for Charities are in pdf format, and so they cannot be adapted. Charities (CIOs) are in Word format so that charities can adapt the model with their application to the Commission.

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