

<b>Title:</b> <b>Charitable Incorporated Organisation (CIO)  Secondary Legislation</b>  <b>Lead department or agency:</b> Office for Civil Society, Cabinet Office  <b>Other departments or agencies:</b> Charity Commission for England and Wales	<b>Validation Impact  Assessment (IA)</b>
	<b>IA No:</b> CO1009
	<b>Date:</b> 09/10/2012
	<b>Stage:</b> Enactment
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Secondary legislation
	<b>Contact for enquiries:</b> Ben Harrison 020 7271 6282

## EANCB for OIOO

<b>Direct impact on business (EA) (£m):</b>		
<b>Cost: 0</b>	<b>Benefits: 0</b>	<b>Net: 0</b>

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:

- The CIO framework *imposes no direct cost burdens* 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.<sup>1</sup>

#### Indirect (second order) monetised costs:

- Indirect transitional costs of CIO incorporations are £3.8m- see evidence base.

### Other key non-monetised costs to business (including charities)

- 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

- 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. “*something else has to happen first*”<sup>2</sup>.

#### Indirect (second order) monetised benefits

- 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

<sup>1</sup> 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.”*

<sup>2</sup> Ibid.

**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%).

## 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	<u>Charities Act 2006</u> (this introduced the CIO)  <u>Charities Act 2011</u> (a consolidation of existing charity legislation)
2	<u>Regulatory Impact Assessment of Charities Act 2006</u>
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	<u>Charity Commission CIO model constitutions</u>
7	<u>Consultation package on the Charitable Incorporated Organisation (CIO) – the new corporate form for charities (September 2008) including consultation stage impact assessment</u>
8	<u>Summary of consultation responses and next steps</u>

+ Add another row

### Evidence Base

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

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
<b>Transition costs</b>	£0.4	£0.4	£0.4	£0.4	£0.4	£0.4	£0.4	£0.4	£0.4	£0.4
<b>Annual recurring cost</b>	£-	£-	£-	£-	£-	£-	£-	£-	£-	£-
<b>Total annual costs</b>	£0.4	£0.4	£0.4	£0.4	£0.4	£0.4	£0.4	£0.4	£0.4	£0.4
<b>Transition benefits</b>	£-	£-	£-	£-	£-	£-	£-	£-	£-	£-
<b>Annual recurring benefits</b>	£0.6	£1.2	£1.9	£2.5	£3.1	£3.7	£4.4	£5.0	£5.6	£6.2
<b>Total annual benefits</b>	£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 guarantee<sup>3</sup>.
- 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 form<sup>4</sup>.
- 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).

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

<sup>4</sup> 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 £500k<sup>5</sup>**

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.

**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

<sup>5</sup> [www.charitycommission.gov.uk/ShowCharity/RegisterOfCharities/SectorData/CharitiesByIncomeBand.aspx](http://www.charitycommission.gov.uk/ShowCharity/RegisterOfCharities/SectorData/CharitiesByIncomeBand.aspx) data from July 2012

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)<sup>6</sup>. 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

### **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)<sup>7</sup>.

## **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

<sup>6</sup> *Charities' new legal form takes full effect: OSCR predicts continued high demand for SCIO status. 30/12/2011*

<sup>7</sup> 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](http://www.charitycommission.gov.uk/About_us/About_charities/factfigures.aspx)

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).

**Table 5: One-off indirect unit costs of incorporating a CIO<sup>8</sup>**

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 <sup>9</sup>				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 incorporation<sup>10</sup> - £27 assuming a 50%<sup>11</sup> 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

<sup>8</sup> 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.

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

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

<sup>11</sup> In the absence of any direct evidence

requirements in relation to receipts and payments accounts, costs significantly less than the 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 costs<sup>12</sup>**

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**

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

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

**Table 8 –Implement CIOs**

Unit cost	£421	£1,307	£421	
Year	Annual CIO running cost (£m)	Annual CLG running cost (£m)	Annual unincorporated running cost (£m)	Total Annual Running Costs (£m)
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 Case<sup>13</sup>**

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
<b>Total</b>	<b>- 32.57</b>	<b>50.55</b>	<b>16.28</b>	<b>34.27</b>

## **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

<sup>13</sup> 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.

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 vacancies<sup>14</sup>. 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.
- 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%)<sup>15</sup>.
- 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)<sup>16</sup>.
- 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

<sup>14</sup> The Charity Commission, *Start as you mean to go on: Trustee recruitment and induction research report* (2005)

<sup>15</sup> 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)

<sup>16</sup> 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	
<b>Option 1: Implement the CIO framework</b>	<b>81</b>	<b>64</b>	<b>72</b>	63	<b>54</b>	<b>36</b>	<b>45</b>	415
<b>Option 2: Alternatives to regulation</b>	18	56	48	63	42	32	35	290
<b>Option 3: Confer limited liability on unincorporated charities</b>	<b>81</b>	16	56	<b>72</b>	42	20	25	312