

EXPLANATORY MEMORANDUM TO
THE CHARITABLE INCORPORATED ORGANISATIONS (CONSEQUENTIAL
AMENDMENTS) ORDER 2017

2017 No. 1231

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Digital, Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This effect of this instrument is to permit a Community Interest Company (“CIC”) to appeal a decision by the Charity Commission to refuse an application for its conversion into a Charitable Incorporated Organisation (“CIO”) and its registration as a charity.

3. Matters of special interest to Parliament

3.1 None.

Other matters of interest to the House of Commons

3.2 This entire instrument applies only to England and Wales.

3.3 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament.

4. Legislative Context

4.1 This instrument amends Schedule 6 to the Charities Act 2011, which makes provision in respect of decisions which attract a right of appeal. The effect of the amendment is to enable a CIC to bring an appeal to the First-tier Tribunal against a decision by the Charity Commission to refuse an application for the conversion of a CIC into a CIO and its registration as a charity. This mirrors existing provision for bringing an appeal by charitable companies seeking to convert to a CIO.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is set out in Section 3 under “Other matters of interest to the House of Commons”.

6. European Convention on Human Rights

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

“In my view the provisions of The Charitable Incorporated Organisations (Consequential Amendments) Order 2017 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 This instrument is part of a package of three instruments which make provision in respect of CIOs. The purpose of this instrument is to enable a CICs to bring an appeal to the First-tier Tribunal against a decision by the Charity Commission to refuse an application for the conversion of a CIC into a CIO and its registration as a charity. The purpose of the three instruments is to allow CICs and charitable companies to convert more easily to CIOs and to make the process as quick and simple as possible.
- 7.2 Several legal structures are currently available to charities. These can be categorised in two groups; (i) unincorporated structures, and (ii) corporate structures.
- 7.3 Around 30,000 charities have chosen to incorporate as a companies limited by guarantee. This gives the charity its own legal personality, and extends to the directors (trustees) the benefit of limited liability. However, incorporating as a company results in dual registration and reporting obligations to both Companies House and the Charity Commission. The company structure is also not designed with the needs of charities in mind, and the interaction between company law and charity law can be complex and time consuming to navigate for charities opting for this form of incorporation. This results in significant legal and administrative burdens to charities.
- 7.4 The CIO structure is designed to offer a practical alternative for charities seeking the protection and practicality of incorporation without having to meet the dual registration and reporting requirements of the Charity Commission and Companies House.
- 7.5 Whilst it is currently possible to register a new charity as a CIO, existing charities do not have the option of converting to this legal form: it is this issue which this package of instruments addresses. Instead, if they wish to become CIOs, existing charities have to close, and re-register with the Charity Commission. This is a lengthy, costly and burdensome process, which has prevented many existing charities from taking advantages associated with the CIO legal form. It is our view that permissive regulation will provide the legal certainty that is required for a direct conversion process.
- 7.6 Since the introduction of the CIO legal structure in 2012 it has proven to be a very popular choice of structure, with approximately 12,500 charities registering as CIOs. The majority of these are newly registering charities. Of the new charity registrations accepted by the Charity Commission in the last financial year, over 50% were registered as CIOs.
- 7.7 It is expected that the option of conversion will be similarly popular, in particular, for small charities that have opted for the company structure and for CICs.
- 7.8 The Charity Commission estimates that between 20% (7,200) and 35% (12,600) of existing incorporated charities could decide to convert under the proposed CIO conversion legislation over ten years.

- 7.9 The Charity Commission estimates that take-up of the CIO form is likely to be lower with CICs: between 1% (120) and 5% (600) of current CICs could look to convert to a CIO structure.
- 7.10 The feedback to our consultation showed high levels of support for introducing a CIO conversion process, with 95% of respondents supporting the introduction of new regulations. The majority of consultation respondents (80%) also believed that there is a demand for the introduction of these regulations.
- 7.11 The devolved administration in Scotland was consulted on the proposal and supports the making of similar provision in relation to Scottish CIOs. There is currently no legislative framework for CIOs in Northern Ireland.

Consolidation

- 7.12 Not applicable.

8. Consultation outcome

- 8.1 A public consultation on the draft package of legislation took place from 1st April 2016 to 10th June 2016. The consultation sought responses from all parts of the charitable sector and from the public. There were 40 responses to the consultation. Consultation responses were received from a range of respondents including small and medium charities, legal practices representing charities, local government, voluntary sector infrastructure organisations, trusts and community associations.
- 8.2 A more detailed analysis of the consultation outcome is available at: <https://www.gov.uk/government/consultations/converting-to-a-charitable-incorporated-organisation>
- 8.3 There was a very positive response to the proposals, with 95% of respondents supporting the introduction of the legislative package. There was also support for our assumptions on the take up of the conversion process, with 80% of respondents agreeing that there would be a demand for the regulations.
- 8.4 Respondents agreed that the proposed changes would reduce burden on charities, in particular smaller charities. Respondents also confirmed that converting to a CIO would result in simpler reporting requirements, a single annual return and lower costs for registration and filing of information.
- 8.5 Minor amendments have been made to the package of legislation as a result of the comments raised through this consultation, in particular to the CIO Conversion Regulations. This includes removing the requirement for charitable companies to have filed their most recent accounts or reports with Companies House before an application to convert may be granted. We will retain the requirement to refuse an application if a charity is in default of any requirement to send documents or information to the registrar or Charity Commission.
- 8.6 Respondents commented positively on the addition of CIOs and SCIOs to the Index of Company Names.

9. Guidance

- 9.1 The Charity Commission is publishing guidance to accompany the package of legislation.

10. Impact

- 10.1 An Impact Assessment relating to the package of legislation as a whole is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

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

12. Monitoring & review

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

14. Contact

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