



2008 CHAPTER 12

PART 11

CHARITABLE INCORPORATED ORGANISATIONS

Conversion, amalgamation and transfer

Conversion of charitable company or registered industrial and provident society

112.—(1) The following may apply to the Commission to be converted into a CIO, and for the CIO's registration as a charity, in accordance with this section—

- (a) a charitable company,
- (b) a charity which is a registered society within the meaning of the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24).

(2) But such an application may not be made by a company or registered society having a share capital if any of the shares are not fully paid up.

(3) Such an application is referred to in this section and sections 113 and 114 as an “application for conversion”.

(4) The Commission shall notify the following of any application for conversion—

- (a) the appropriate registrar, and
 - (b) such other persons (if any) as the Commission thinks appropriate in the particular case.
- (5) The company or registered society shall supply the Commission with—
- (a) a copy of a resolution of the company or registered society that it be converted into a CIO,

- (b) a copy of the proposed constitution of the CIO,
 - (c) a copy of a resolution of the company or registered society adopting the proposed constitution of the CIO,
 - (d) such other documents or information as may be prescribed by regulations made by the Department, and
 - (e) such other documents or information as the Commission may require for the purposes of the application.
- (6) The resolution referred to in subsection (5)(a) shall be—
- (a) a special resolution of the company or registered society, or
 - (b) a unanimous resolution signed by or on behalf of all the members of the company or registered society who would be entitled to vote on a special resolution.
- (7) In the case of a company, Chapter 3 of Part 3 of the Companies Act 2006 (c. 46) does not apply to such a resolution.
- (8) In the case of a registered society, “special resolution” has the meaning given in section 61(3) of the Industrial and Provident Societies Act (Northern Ireland) 1969.
- (9) In the case of a company limited by guarantee which makes an application for conversion (whether or not it also has a share capital), the proposed constitution of the CIO shall (unless subsection (11) applies) provide for the CIO’s members to be liable to contribute to its assets if it is wound up, and for the amount up to which they are so liable.
- (10) That amount shall not be less than the amount up to which they were liable to contribute to the assets of the company if it was wound up.
- (11) If the amount each member of the company is liable to contribute to its assets on its winding up is £10 or less, the guarantee shall be extinguished on the conversion of the company into a CIO, and the requirements of subsections (9) and (10) do not apply.
- (12) In subsection (4), and in sections 113 and 114, “the appropriate registrar” means—
- (a) in the case of an application for conversion by a charitable company, the registrar of companies,
 - (b) in the case of an application for conversion by a registered society, the registrar for the purposes of the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24).
- (13) In this section, “charitable company” means a company which is a charity.

Conversion: consideration of application

113.—(1) The Commission shall consult those to whom it has given notice of an application for conversion under section 112(4) about whether the application should be granted.

(2) The Commission shall refuse an application for conversion if—

- (a) it is not satisfied that the CIO would be a charity at the time it would be registered,
- (b) the CIO's proposed constitution does not comply with one or more of the requirements of section 106 and any regulations made under that section, or
- (c) in the case of an application for conversion made by a company limited by guarantee, the CIO's proposed constitution does not comply with the requirements of subsections (9) and (10) of section 112.

(3) The Commission may refuse an application for conversion if—

- (a) the proposed name of the CIO is the same as, or is in the opinion of the Commission too like, the name of any other charity (whether registered or not),
- (b) the Commission is of the opinion referred to in any of paragraphs (b) to (e) of section 20(2) (power of Commission to require change in charity's name) in relation to the proposed name of the CIO (reading paragraph (b) as referring to the proposed purposes of the CIO and to the activities which it is proposed it should carry on), or
- (c) having considered any representations received from those whom it has consulted under subsection (1), the Commission considers (having regard to any regulations made under subsection (4)) that it would not be appropriate to grant the application.

(4) The Department may make provision in regulations about circumstances in which it would not be appropriate to grant an application for conversion.

(5) If the Commission refuses an application for conversion, it shall so notify the appropriate registrar (see section 112(12)).

Conversion: supplementary

114.—(1) If the Commission grants an application for conversion, it shall—

- (a) register the CIO to which the application related in the register of charities, and
- (b) send to the appropriate registrar (see section 112(12)) a copy of each of the resolutions of the converting company or registered society referred to in section 112(5)(a) and (c), and a copy of the entry in the register relating to the CIO.

(2) The registration of the CIO in the register shall be provisional only until the appropriate registrar cancels the registration of the company or registered society as required by subsection (3)(b).

(3) The appropriate registrar shall—

- (a) register the documents received under subsection (1)(b), and
- (b) cancel the registration of the company in the register of companies, or of the society in the register maintained under the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24),

and shall notify the Commission of having done so.

(4) When the appropriate registrar cancels the registration of the company or of the registered society, the company or registered society is thereupon converted into a CIO, being a body corporate—

- (a) whose constitution is that proposed in the application for conversion,
- (b) whose name is that specified in the constitution, and
- (c) whose first members are the members of the converting company or society immediately before the moment of conversion.

(5) If the converting company or registered society had a share capital, upon the conversion of the company or registered society all the shares shall by virtue of this subsection be cancelled, and no former holder of any cancelled share shall have any right in respect of it after its cancellation.

(6) Subsection (5) does not affect any right which accrued in respect of a share before its cancellation.

(7) The entry relating to the charity's registration in the register shall include—

- (a) a note that it is constituted as a CIO,
- (b) the date on which it became so constituted, and
- (c) a note of the name of the company or society which was converted into the CIO,

but the matters mentioned in paragraphs (a) and (b) are to be included only when the appropriate registrar has notified the Commission as required by subsection (3).

(8) A copy of the entry in the register shall be sent to the charity at the principal office of the CIO.

(9) The conversion of a charitable company or of a registered society into a CIO does not affect, in particular, any liability to which the company or registered society was subject by virtue of its being a charitable company or registered society.

Conversion of community interest company

115.—(1) The Department may by regulations make provision for the conversion of a community interest company into a CIO, and for the CIO's registration as a charity.

(2) The regulations may, in particular, apply, or apply with modifications specified in the regulations, or disapply, anything in sections 53 to 55 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 or in sections 112 to 114 above.

Amalgamation of CIOs

116.—(1) Any two or more CIOs ("the old CIOs") may, in accordance with this section, apply to the Commission to be amalgamated, and for the incorporation and registration as a charity of a new CIO ("the new CIO") as their successor.

(2) Such an application is referred to in this section and section 117 as an "application for amalgamation".

(3) Subsections (2) to (4) of section 110 apply in relation to an application for amalgamation as they apply to an application for a CIO to be constituted, but in those subsections—

- (a) "the applicants" shall be construed as meaning the old CIOs, and
- (b) references to the CIO are to the new CIO.

(4) In addition to the documents and information referred to in section 110(2), the old CIOs shall supply the Commission with—

- (a) a copy of a resolution of each of the old CIOs approving the proposed amalgamation, and
- (b) a copy of a resolution of each of the old CIOs adopting the proposed constitution of the new CIO.

(5) The resolutions referred to in subsection (4) must have been passed—

- (a) by a 75% majority of those voting at a general meeting of the CIO (including those voting by proxy or by post, if voting that way is permitted), or
- (b) unanimously by the CIO's members, otherwise than at a general meeting.

(6) The date of passing of such a resolution is—

- (a) the date of the general meeting at which it was passed, or
- (b) if it was passed otherwise than at a general meeting, the date on which provision in the CIO's constitution or in regulations made under paragraph 13 of Schedule 7 deems it to have been passed (but that date may not be earlier than that on which the last member agreed to it).

(7) Each old CIO shall—

- (a) give notice of the proposed amalgamation in the way (or ways) that in the opinion of its charity trustees will make it most likely to come to the attention of those who would be affected by the amalgamation, and
- (b) send a copy of the notice to the Commission.

(8) The notice shall invite any persons who consider that they would be affected by the proposed amalgamation to make representations to the Commission not later than a date determined by the Commission and specified in the notice.

(9) In addition to being required to refuse it on one of the grounds mentioned in section 110(3) as applied by subsection (3) of this section, the Commission shall refuse an application for amalgamation if it considers that there is a serious risk that the new CIO would be unable properly to pursue its purposes.

(10) The Commission may refuse an application for amalgamation if it is not satisfied that the provision in the constitution of the new CIO about the matters mentioned in subsection (11) is the same, or substantially the same, as the provision about those matters in the constitutions of each of the old CIOs.

(11) The matters are—

- (a) the purposes of the CIO,
- (b) the application of property of the CIO on its dissolution, and
- (c) authorisation for any benefit to be obtained by charity trustees or members of the CIO or persons connected with them.

(12) For the purposes of subsection (11)(c)—

- (a) “benefit” means a direct or indirect benefit of any nature, except that it does not include any remuneration (within the meaning of section 88) whose receipt may be authorised under that section, and
- (b) the same rules apply for determining whether a person is connected with a charity trustee or member of the CIO as apply, in accordance with section 89(5) and (6), for determining whether a person is connected with a charity trustee for the purposes of section 88.

Amalgamation: supplementary

117.—(1) If the Commission grants an application for amalgamation, it shall register the new CIO in the register of charities.

(2) Upon the registration of the new CIO it thereupon becomes by virtue of the registration a body corporate—

- (a) whose constitution is that proposed in the application for amalgamation,
- (b) whose name is that specified in the constitution, and
- (c) whose first members are the members of the old CIOs immediately before the new CIO was registered.

- (3) Upon the registration of the new CIO—
 - (a) all the property, rights and liabilities of each of the old CIOs shall become by virtue of this paragraph the property, rights and liabilities of the new CIO, and
 - (b) each of the old CIOs shall be dissolved.
- (4) Any gift which—
 - (a) is expressed as a gift to one of the old CIOs, and
 - (b) takes effect on or after the date of registration of the new CIO,takes effect as a gift to the new CIO.
- (5) The entry relating to the registration in the register of the charity constituted as the new CIO shall include—
 - (a) a note that it is constituted as a CIO,
 - (b) the date of the charity's registration, and
 - (c) a note that the CIO was formed following amalgamation, and of the name of each of the old CIOs.
- (6) A copy of the entry in the register shall be sent to the charity at the principal office of the new CIO.

Transfer of CIO's undertaking

118.—(1) A CIO may resolve that all its property, rights and liabilities should be transferred to another CIO specified in the resolution.

(2) Where a CIO has passed such a resolution, it shall send to the Commission—

- (a) a copy of the resolution, and
 - (b) a copy of a resolution of the transferee CIO agreeing to the transfer to it.
- (3) Subsections (5) and (6) of section 116 apply to the resolutions referred to in subsections (1) and (2)(b) as they apply to the resolutions referred to in section 116(4).
- (4) Having received the copy resolutions referred to in subsection (2), the Commission—
- (a) may direct the transferor CIO to give public notice of its resolution in such manner as is specified in the direction, and
 - (b) if it gives such a direction, must take into account any representations made to it by persons appearing to it to be interested in the transferor CIO, where those representations are made to it within the period of 28 days beginning with the date when public notice of the resolution is given by the transferor CIO.
- (5) The resolution shall not take effect until confirmed by the Commission.

(6) The Commission shall refuse to confirm the resolution if it considers that there is a serious risk that the transferee CIO would be unable properly to pursue the purposes of the transferor CIO.

(7) The Commission may refuse to confirm the resolution if it is not satisfied that the provision in the constitution of the transferee CIO about the matters mentioned in section 116(11) is the same, or substantially the same, as the provision about those matters in the constitution of the transferor CIO.

(8) If the Commission does not notify the transferor CIO within the relevant period that it is either confirming or refusing to confirm the resolution, the resolution is to be treated as confirmed by the Commission on the day after the end of that period.

(9) Subject to subsection (10), “the relevant period” means—

- (a) in a case where the Commission directs the transferor CIO under subsection (4) to give public notice of its resolution, the period of 6 months beginning with the date when that notice is given, or
- (b) in any other case, the period of 6 months beginning with the date when both of the copy resolutions referred to in subsection (2) have been received by the Commission.

(10) The Commission may at any time within the period of 6 months mentioned in subsection (9)(a) or (b) give the transferor CIO a notice extending the relevant period by such period (not exceeding 6 months) as is specified in the notice.

(11) A notice under subsection (10) must set out the Commission’s reasons for the extension.

(12) If the resolution is confirmed (or treated as confirmed) by the Commission—

- (a) all the property, rights and liabilities of the transferor CIO shall become by virtue of this subsection the property, rights and liabilities of the transferee CIO in accordance with the resolution, and
- (b) the transferor CIO shall be dissolved.

(13) Any gift which—

- (a) is expressed as a gift to the transferor CIO, and
- (b) takes effect on or after the date on which the resolution is confirmed (or treated as confirmed),

takes effect as a gift to the transferee CIO.