



# Charities Act 2011

## 2011 CHAPTER 25

### PART 11

#### CHARITABLE INCORPORATED ORGANISATIONS (CIOS)

### CHAPTER 4

#### CONVERSION, AMALGAMATION AND TRANSFER

##### *Conversion of certain bodies to CIO*

#### **228 Application for conversion by charitable company**

- (1) A charitable company 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.
- (2) But such an application may not be made by—
  - (a) a company having a share capital if any of the shares are not fully paid up, or
  - (b) an exempt charity.
- (3) The company must supply the Commission with—
  - (a) a copy of a resolution of the company 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 adopting the proposed constitution of the CIO,
  - (d) such other documents or information as may be prescribed by CIO regulations, and
  - (e) such other documents or information as the Commission may require for the purposes of the application.
- (4) The resolution referred to in subsection (3)(a) must be—
  - (a) a special resolution of the company, or

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- (b) a unanimous written resolution signed by or on behalf of all the members of the company who would be entitled to vote on a special resolution.
- (5) Chapter 3 of Part 3 of the Companies Act 2006 (resolutions and agreements affecting a company's constitution) does not apply to such a resolution.
- (6) In the case of a company limited by guarantee which makes an application under this section (whether or not it also has a share capital), the proposed constitution of the CIO must (unless subsection (8) applies) provide—
  - (a) for the CIO's members to be liable to contribute to its assets if it is wound up, and
  - (b) for the amount up to which they are so liable.
- (7) That amount must 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.
- (8) If the amount each member of the company is liable to contribute to its assets on its winding up is £10 or less—
  - (a) the guarantee is extinguished on the conversion of the company into a CIO, and
  - (b) the requirements of subsections (6) and (7) do not apply.

## 229 Application for conversion by registered society

- (1) A charity which is a registered society 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.  
 “Registered society” has the same meaning as in [<sup>F1</sup>the Co-operative and Community Benefit Societies Act 2014].
- (2) But such an application may not be made by—
  - (a) a registered society having a share capital if any of the shares are not fully paid up, or
  - (b) an exempt charity.
- (3) The registered society must supply the Commission with—
  - (a) a copy of a resolution of the 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 registered society adopting the proposed constitution of the CIO,
  - (d) such other documents or information as may be prescribed by CIO regulations, and
  - (e) such other documents or information as the Commission may require for the purposes of the application.
- (4) The resolution referred to in subsection (3)(a) must be—
  - (a) a special resolution of the registered society, or
  - (b) a unanimous written resolution signed by or on behalf of all the members of the registered society who would be entitled to vote on a special resolution.
- (5) In subsection (4), “special resolution” has the meaning given in [<sup>F2</sup>section 113 of the Co-operative and Community Benefit Societies Act 2014.]

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#### Textual Amendments

- F1** Words in s. 229(1) substituted (1.8.2014) by [Co-operative and Community Benefit Societies Act 2014 \(c. 14\)](#), s. 154, [Sch. 4 para. 182\(2\)](#) (with [Sch. 5](#))
- F2** Words in s. 229(5) substituted (1.8.2014) by [Co-operative and Community Benefit Societies Act 2014 \(c. 14\)](#), s. 154, [Sch. 4 para. 182\(3\)](#) (with [Sch. 5](#))

### 230 Commission to consult appropriate registrar and others

- (1) The Commission must notify the following of an application for conversion—
- (a) the appropriate registrar, and
  - (b) such other persons (if any) as the Commission thinks appropriate in the particular case,
- and must consult those notified about whether the application should be granted.
- (2) In subsection (1) and sections 231 to 233, “the appropriate registrar” means—
- (a) in the case of an application by a charitable company, the registrar of companies;
  - (b) in the case of an application by a registered society, the [<sup>F3</sup>Financial Conduct Authority and, if the society is a PRA-authorised person within the meaning of section 2B of the Financial Services and Markets Act 2000, the Prudential Regulation Authority].
- (3) In this section and sections 231 to 233, “application for conversion” means an application under section 228 or 229.

#### Textual Amendments

- F3** Words in s. 230(2)(b) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 11 para. 11](#) (with [Sch. 12](#))

### 231 Cases where application must or may be refused

- (1) The Commission must 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 206 (constitution of CIOs) 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 section 228(6) and (7).
- (2) The Commission may refuse an application for conversion if—
- (a) the proposed name of the CIO—
    - (i) is the same as, or
    - (ii) is in the opinion of the Commission too like,the name of any other charity (whether registered or not),

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- (b) the Commission is of the opinion referred to in any of paragraphs (b) to (e) of section 42(2) (power to require charity's name to be changed) 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 section 230(1), the Commission considers (having regard to any regulations made under subsection (3)) that it would not be appropriate to grant the application.
- (3) CIO regulations may make provision about circumstances in which it would not be appropriate to grant an application for conversion.
- (4) If the Commission refuses an application for conversion, it must so notify the appropriate registrar.

## **232 Provisional and final registration of converting body**

- (1) If the Commission grants an application for conversion, it must—
- (a) register the CIO to which the application related in the register of charities, and
  - (b) send to the appropriate registrar a copy of—
    - (i) each of the relevant resolutions of the converting company or registered society, and
    - (ii) the entry in the register relating to the CIO.
- (2) In subsection (1)(b), “the relevant resolutions” means—
- (a) in the case of a converting company, the resolutions referred to in section 228(3)(a) and (c), and
  - (b) in the case of a converting society, the resolutions referred to in section 229(3)(a) and (c).
- (3) The registration of the CIO in the register is provisional only until the appropriate registrar cancels the registration of the company or society as required by subsection (4)(b).
- (4) The appropriate registrar must—
- (a) register the documents sent under subsection (1)(b), and
  - (b) cancel the registration of the company in the register of companies, or of the society in the mutual societies register,
- and must notify the Commission that this action has been taken.
- (5) The entry relating to the charity's registration in the register must 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.
- (6) But the matters mentioned in subsections (5)(a) and (b) are to be included only when the appropriate registrar has notified the Commission as required by subsection (4).
- (7) A copy of the entry in the register must be sent to the charity at the principal office of the CIO.

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### **233 Effect of registration becoming final**

- (1) Upon the cancellation by the appropriate registrar of the registration of the company or of the registered society, the company or society is converted into a CIO, 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.
- (2) If the converting company or society had a share capital—
  - (a) upon the conversion of the company or society all the shares are by virtue of this subsection cancelled, and
  - (b) no former holder of any cancelled share has any right in respect of it after its cancellation.
- (3) Subsection (2) does not affect any right which accrued in respect of a share before its cancellation.
- (4) The conversion of a company or society into a CIO does not affect, in particular, any liability to which the company or society was subject by virtue of its being a charitable company or registered society.

### **234 Conversion of community interest company**

- (1) CIO regulations may make provision for—
  - (a) the conversion of a community interest company into a CIO, and
  - (b) 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—
  - (a) sections 53 to 55 of the Companies (Audit, Investigations and Community Enterprise) Act 2004, or
  - (b) sections 228 to 233.

### *Amalgamation of CIOs*

### **235 Application for amalgamation of CIOs**

- (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) The old CIOs must supply the Commission with—
  - (a) a copy of the proposed constitution of the new CIO,
  - (b) such other documents or information as may be prescribed by CIO regulations, and
  - (c) such other documents or information as the Commission may require for the purposes of the application.
- (3) In addition to the documents and information referred to in subsection (2), the old CIOs must supply the Commission with—

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- (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.
- (4) The resolutions referred to in subsection (3) 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.
- (5) 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 section 223 treats it as having been passed (but that date may not be earlier than that on which the last member agreed to it).

### **236 Notice of application for amalgamation**

- (1) Each old CIO must—
- (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.
- (2) The notice must invite any persons who consider that they would be affected by the proposed amalgamation to make written representations to the Commission no later than a date determined by the Commission and specified in the notice.

### **237 Cases where application must or may be refused**

- (1) The Commission must refuse an application for amalgamation if—
- (a) it is not satisfied that the new CIO would be a charity at the time it would be registered, or
  - (b) the new CIO's proposed constitution does not comply with one or more of the requirements of section 206 and any regulations made under that section.
- (2) In addition to being required to refuse it on one of the grounds mentioned in subsection (1), the Commission must 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.
- (3) The Commission may refuse an application for amalgamation if—
- (a) the proposed name of the new CIO—
    - (i) is the same as, or
    - (ii) is in the opinion of the Commission too like,
 the name of any other charity (whether registered or not), or
  - (b) the Commission is of the opinion referred to in any of paragraphs (b) to (e) of section 42(2) (power to require charity's name to be changed) in relation to the proposed name of the new CIO (reading paragraph (b) as referring to the proposed purposes of the new CIO and to the activities which it is proposed it should carry on).

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- (4) 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 (5) is—
  - (a) the same, or
  - (b) substantially the same,as the provision about those matters in the constitutions of each of the old CIOs.
- (5) 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.
- (6) Sections 248 (meaning of “benefit”) and 249 (meaning of “connected person”) apply for the purposes of this section.
- (7) In this section and sections 238 and 239, “application for amalgamation” means an application under section 235.

## **238 Registration of amalgamated CIO**

- (1) If the Commission grants an application for amalgamation, it must register the new CIO in the register of charities.
- (2) The entry relating to the registration in the register of the charity constituted as the new CIO must 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.
- (3) A copy of the entry in the register must be sent to the charity at the principal office of the new CIO.

## **239 Effect of registration**

- (1) Upon the registration of the new CIO it 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.
- (2) Upon the registration of the new CIO—
  - (a) all the property, rights and liabilities of each of the old CIOs become by virtue of this subsection the property, rights and liabilities of the new CIO, and
  - (b) each of the old CIOs is dissolved.
- (3) 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,

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takes effect as a gift to the new CIO.

### *Transfer of CIO's undertaking to another CIO*

## **240 Resolutions about transfer of CIO's undertaking to another CIO**

- (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 must 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) The resolutions referred to in subsections (1) and (2)(b) 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.
- (4) 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 section 223 treats it as having been passed (but that date may not be earlier than that on which the last member agreed to it).
- (5) The resolution of the transferor CIO does not take effect until confirmed by the Commission.

## **241 Notice of transfer of CIO's undertaking to another CIO**

Having received the copy resolutions referred to in section 240(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.

## **242 Cases where confirmation of resolution must or may be refused**

- (1) The Commission must refuse to confirm the resolution of the transferor CIO 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.
- (2) 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 subsection (3) is—
  - (a) the same, or
  - (b) substantially the same,
 as the provision about those matters in the constitution of the transferor CIO.
- (3) The matters are—



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- (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.
- (4) Sections 248 (meaning of “benefit”) and 249 (meaning of “connected person”) apply for the purposes of this section.

## **243 Confirmation of resolution**

- (1) If the Commission does not notify the transferor CIO within the relevant period that it is either confirming or refusing to confirm the transferor CIO's resolution, the resolution is to be treated as confirmed by the Commission on the day after the end of that period.
- (2) Subject to subsection (3), “the relevant period” means—
  - (a) if the Commission directs the transferor CIO under section 241 to give public notice of its resolution, the period of 6 months beginning with the date when that notice is given, or
  - (b) otherwise, the period of 6 months beginning with the date when both of the copy resolutions referred to in section 240(2) have been received by the Commission.
- (3) The Commission may at any time within the period of 6 months mentioned in subsection (2)(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.
- (4) A notice under subsection (3) must set out the Commission's reasons for the extension.

## **244 Effect of confirmation of resolution**

- (1) If the resolution of the transferor CIO is confirmed (or treated as confirmed) by the Commission—
  - (a) all the property, rights and liabilities of the transferor CIO 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 is dissolved.
- (2) 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.

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