



Conversion to a Charitable Incorporated Organisation (CIO)

ICAEW welcomes the opportunity to comment on the Conversion to a Charitable Incorporated Organisation (CIO) consultation published by Cabinet Office on 1 April a copy of which is available from this [link](#).

This ICAEW response of 9 June 2016 reflects consultation with the ICAEW's Charity Technical Sub-Committee of the ICAEW Business Law Committee. This Sub-Committee includes representatives from public practice and the charity sector and is responsible for ICAEW policy on charity issues and related submissions to legislators, regulators and other external bodies.

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RESPONSES TO SPECIFIC QUESTIONS

Question 1: Do you support the introduction of these draft regulations?

1. Yes, ICAEW welcomes introduction of regulations that will be helpful to many small/medium sized charities that have been formed as charitable companies.

Question 2: Do you believe there is a demand for the introduction of these draft regulations? And if so, do you plan to take advantage of them?

2. Yes, we think that a range of small and medium sized charitable companies are keen to convert to CIOs and some have been waiting for the relevant provisions of the 2011 Act to be implemented to enable them to do so in a cost effective and efficient way.

Question 3: Are there any measures in the draft regulations that you believe should be removed or changed? For example, are there other circumstances in which it would not be appropriate for the Commission to approve an application for conversion beyond those that have been set out in the draft regulations?

3. There are other circumstances when it would not be appropriate for the Commission to approve an application for conversion, for instance where Companies House or the CIC Regulator is pursuing enforcement against the relevant company. A conversion regime has already been implemented in Scotland and that regime provides other examples (in particular in OSCR's *SCIOs: A Guide*).
4. We are not clear why it is proposed, in Regulation 11(2)/(3), that accounts and reports for a financial year ended by the date of application for conversion should have to be filed by that date for an application to be appropriate. As it usually takes several weeks, if not months, after the year end to finalise and file accounts and, as a matter of law, a company has 9 months in which to file, this has a distorting effect, meaning that a company wishing to convert around the time of its year end may either need to apply just before its year end or delay until its latest accounts have been finalised. Should this provision not apply only where filings are overdue? Similar issues arise in respect of Regulation 7.
5. We believe that Regulation 14 requires further consideration as it is difficult to tell from the way that it is drafted exactly what is intended. In particular, is it designed simply to make clear that, in essence, the pre-conversion regime applies to a conversion CIO in respect of financial years ending before the date of conversion and that the requirements imposed on CIOs under the 2011 Act apply in respect of financial years ending after the date of conversion or is it intended to impose additional duties on conversion CIOs in respect of pre-conversion financial years in certain cases? For instance, is it intended to impose 2011 Act duties on converting CICs in pre-conversion financial years? If the former is intended, the drafting appears to be more involved than necessary. If the latter, it would be helpful if the additional duties could be specified more clearly.
6. There are a couple of subsidiary issues on Regulation 14. The definition of 'pre-conversion financial year' applies to all years before conversion, not just the year leading up to conversion. Regulation 14(2) lists some requirements of the 2011 Act, but does not appear to cover all issues that might be relevant (depending on what is intended in Regulation 14 generally). In particular, section 145 (independent examination) is not included in the list.

Question 4: Are there any measures missing from the draft regulations that you believe should be included?

7. Please see our response to Question 3 above regarding additional circumstances where the Commission should be able to prohibit conversion).

Question 5: Do you agree the measures should be phased in? Do you have any comments on the proposed phasing in of the measures?

8. If there are concerns about resources of the Commission, then we agree that the phasing approach may be sensible. However, we suggest that the order be changed so that the smallest charitable companies can apply first. This is because they are disproportionately affected by the administrative burdens of applying with the dual company law and charity law approach of the current regime and because charitable companies under £250,000 income will have the option of switching to receipts and payments accounts after conversion to a CIO which will simplify their accounting requirements (and can therefore be expected to reduce accounting costs).

Question 6: Do you have any other comments about the regulations or issues that should be considered?

9. It would be helpful if more certainty regarding the timetable for conversion could be provided, for instance, with the Commission providing reliable indications of the time required for conversion after the application is made (in normal circumstances) and allowing companies to apply for a fixed conversion date after that time. It may be that these issues could be addressed in guidance rather than regulation.

Question 7: Do you agree with our assessment of the impact and effect this legislation will have?

10. The Explanatory Note of the draft Regulations states that 'no impact on the voluntary sector is foreseen'. While we take this to mean 'adverse impact', we would like to reiterate our belief that the Regulations, once implemented, will be of considerable benefit to the sector. In particular, we support the inclusion of CIC's in the exercise. We would like to see the position on registered societies under s.229 of the 2011 Act revisited in due course as, despite some potential complications, there are potential advantages in extending the rights to convert to community benefit societies.

Question 8: Do you have any comments to make on our assessment?

11. With regard to the draft Index of Company Names Order, we agree that it will be helpful to have CIOs (and SCIOs and NI CIOs) included on the Companies House Register.