

Does your organisation want to become a Charitable Incorporated Organisation (CIO)?

- A CIO has only one regulator, the Charity Commission
- Your governing document as a CIO will be a constitution.
- You will have to prepare a new constitution.
- The Charity Commission has produced template constitutions for the two approved models, Foundation or Association.

There is a lengthy process to go through to set up and to register as a CIO and advance planning is advisable. It can be helpful to set a timescale with a timetable/checklist of the necessary activities. We have summarised these in this information sheet.

1) A CIO:

- is an incorporated form of charity
- is a separate legal entity and can enter into contractual agreements in its own name and so its trustees and members will not be personally liable for what it does and for the debts of the CIO as long as the decisions are reasonable and lawful
- can be set up regardless of level of charitable income
- has to register only with the Charity Commission
- **legally** exists only when it is approved and registered by the Charity Commission
- must submit annual returns, accounts and reports to the Charity Commission regardless of income level

2) Agree, Inform, Update and Record

- Your Trustees should discuss, agree and minute a proposal to become a Foundation or Association CIO (the establishment of a CIO working party to manage the process is recommended).
- Existing organisations – for example, unincorporated associations, registered charities and non-profit limited companies – may need to hold a public meeting to discuss proposal with members. This could be an EGM/AGM with a vote to approve the proposal and needs to be done in line with the arrangements described in the governing document.
- It is important that staff and trustees (and if appropriate, other stakeholders) are consulted and/or kept informed as the different aspects of the work are developed. TUPE is likely to apply as the new CIO is likely to become the new employer*
- Inform existing funders about the plan to convert to the new structure in good time as funding agreements may have to be transferred to the new CIO and consent sought for this in advance.

**NOTE: Community First Yorkshire has an Employment Advice Service which is a chargeable service and is staffed by colleagues who are CIPD registered. For more information go to: <http://communityfirstyorkshire.org.uk/services/employment-advice/>*

3) Prepare to draft your new constitution

You will need:

- to have identified a Board of Trustees of at least three people, usually Treasurer, Secretary and Chair
- everyone on an *established* Trustee Board to be named on the new CIO Board from the start (and therefore in the relevant clause in the CIO constitution)
- If you have an existing bank account, talk to your bank to explain the proposed conversion and check if a new account is needed. Most banks will require a new account for the CIO as corporate bodies operate under different mandates; if there's an overlap period, separate accounts will be essential.
- up to date end of year accounts and/or a budget for the following year showing how you are and will continue to be funded
- a business plan (optional)
- key policies under review/updated
- the Foundation or Association CIO constitution template

4) Developing your Constitution

- A CIO constitution must contain certain provisions/clauses. The Charity Commission has produced template constitutions for the two CIO models.
 1. *Association CIO* will have a wider membership including voting members other than the trustees
 2. *Foundation CIO* where the only members will be the trustees
(A Charity Commission approved model specifically for village halls and community buildings is available direct from Community First Yorkshire)
- In your constitution you must set out your *charitable purposes or objects** (what your charity is set up to achieve) and the powers of Trustees (what your Trustees can do to carry out the purposes).
- In your charity registration you must demonstrate how each of the purposes is for *public benefit*
- Your charitable purposes must fall within one or more of the Charity Commission's list of '*descriptions of charitable purposes*'. Writing your purposes and describing the public benefit can be a lengthy process of discussion and amendments. It is important to be precise and use simple language. *Take advice if you need to from Community First Yorkshire or another support provider.*

**Note: as existing (unincorporated) registered charities wanting to convert to CIO will be creating a new governing document for the new entity this can be a useful opportunity to strengthen your charitable purposes and powers.*

5) Key policies and procedures updated

Policies and procedures can help evidence your charity's compliance with the law and regulation, transparency, accountability and risk limitation. Depending on the nature of your activities, having appropriate policies in place can prove to be useful evidence for the registration form. Existing organisations converting to CIO can take this opportunity to update and amend policies and procedures*.

**Note: It is particularly important to have discussed and agreed procedure if any trustees (or people connected to them) will personally benefit from the charity in any way before beginning registration.*

6) Finance and accounts

Update your accounts, budget and if appropriate your business plan. *You will need this information for charity registration.*

7) Trustee Declaration Form

Each trustee must read and sign the trustee declaration form to confirm they can act as a trustee of the organisation named on the declaration form. The commission cannot accept electronic signatures. If your charity works with vulnerable people (including children), you'll need to confirm that you've read the commission's guidance on protecting vulnerable groups including children and sign a declaration that the trustees have carried out all necessary checks required by law.

8) Principal and service address requirements

A CIO must have a principal office in England and/or Wales, which will be published on the register of charities. A CIO must also have a service address, used for correspondence. The service address for trustees can be the same as the principal address

9) Registering the CIO with the Charity Commission

- You can sign up to start drafting your charity registration form any time. You are given a period of three months from the date of signing in to submit the final form. But also note, every time you sign in press 'save' and the form will automatically be re-set to expire in three months from the date saved.
- You will need to have ready all the requirements in III - VIII above to begin completing the registration form. Certain prepared documents will have to be uploaded with the registration.

10) After submitting your application

- You will get an automated email to confirm receipt of your application
- This will include a PDF copy of your application – keep this and your application reference number safe
- The Commission will assess your application and appoint a named Case Officer who will engage with the main contact on the submitted application form until a decision to accept your registration is made. *The assessment process can take up to 40 days.*

11) Confirmation of CIO and winding down of old charity

Confirmation of CIO by the Charity Commission means your organisation now legally exists. Once the new CIO is established the old charity's assets, contracts, accounts etc. are transferred to the new CIO and the old charity will be wound up according to the terms of its own governing document.

12) Deciding whether to keep the old charity in existence

If the old charity is likely to have legacies in its name trustees may wish to keep it on the Charity Commission register until any such legacies have been received, and link it to the

new CIO. Linking the two charities is a separate process and further guidance on this can be found on the Charity Commission website.

13) Transfer assets of old charity to new CIO

- The level of formality required in relation to the transfer of assets and liabilities from a charitable trust or association to a new CIO or charitable company limited by guarantee will depend upon the nature and extent of the assets and liabilities to transfer and the nature of the risks if problems arise.
- If the assets, liabilities and obligations being transferred are minimal (for example just cash in bank accounts, minimal equipment and one or two supplier contracts) then a simple exchange of correspondence will probably be sufficient. If the assets and liabilities are more numerous/varied, for example freehold or leasehold property, a number of employees, varying employment contracts, pension schemes and funding agreements or other significant contracts, extensive equipment and so on) then formal legal advice is required from a solicitor.
- If the old charity has a permanent endowment, the trustees should seek specialist legal advice on the Charity Commission's rules over its transfer.
- Set up a new bank account in the CIO name with two unrelated signatories/follow the advice from your bank given at the beginning of the process
- Any ongoing agreements with suppliers will need to be transferred to the CIO (e.g. utilities, insurance, maintenance contracts, etc.). While some suppliers will agree to simply transfer existing accounts to the new CIO (e.g. utilities) others may need to close down old accounts and set up brand new ones (e.g. bank account). All of this must be done before the new CIO registers or registers afresh with HMRC.
- There is a form on the Charity Commission website to remove the old charity from the Charity Commission register.

14) Gift Aid

Your organisation will have to register afresh with HMRC to be able to submit gift aid claim as the new charity.

15) An additional note for Village Halls and Community Buildings

An existing charity set up by a Trust Deed may have certain obligations imposed on it. If the Trustees, the local community or any other stakeholder want to see these obligations preserved and continue to apply to the new CIO, it is possible to merge the existing charity into the new CIO rather than wind it up, and complete a pre-merger vesting declaration that makes clear the obligations on the original charity will continue to apply to the new CIO.

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Further Information and Support:

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